

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TACORA RESOURCES INC.**

Applicant

**AFFIDAVIT OF THOMAS GRAY
(Sworn October 26, 2023)**

I, Thomas Gray, of the City of Toronto, in the province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate in the insolvency and restructuring group at the law firm of Bennett Jones LLP ("**Bennett Jones**"). Bennett Jones is counsel to an ad-hoc group of holders (the "**Ad Hoc Group**") of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "**SPNs**") and 8.250% Senior Secured Notes due 2026 (the "**SSNs**") of Tacora Resources Inc. ("**Tacora**" or the "**Company**"). I understand that the Ad Hoc Group holds a substantial majority of both the SPNs and the SSNs. I have been staffed on Bennett Jones' mandate to represent the Ad Hoc Group, and as such, I have knowledge of the following matters, except where otherwise indicated.

2. On October 26th at 9:08am, I sent an email to the Monitor, copied to counsel to the Monitor and counsel to Tacora. That email attached a letter from Bennett Jones, a revised, binding DIP Agreement dated October 26th (the "**Revised DIP Agreement**") that had been executed by the proposed Ad Hoc Group DIP Lenders, and a binding term sheet from Javelin Global Commodities in respect of an offtake agreement for Tacora (the "**Javelin Term Sheet**"). A copy of that email is attached hereto at **Exhibit "A"**, and the letter from Bennett Jones is attached hereto at **Exhibit "B"**. The Revised DIP Agreement and a redline tracking the changes to the version submitted on October 8th are attached hereto at **Exhibits "C"** and **"D"**, respectively, with redactions applied for confidential information. The Javelin Term Sheet is attached hereto at **Exhibit "E"**, with

redactions applied for confidential information.

SWORN BEFORE ME over videoconference on this 26th day of October, 2023. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the City of Oakville, in the Province of Ontario. This Affidavit was commissioned remotely in accordance with Ontario Regulation 431/20.

Joshua Foster

JOSHUA FOSTER

Commissioner for Taking Affidavits



THOMAS GRAY

**THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF THOMAS GRAY SWORN
THE 26TH DAY OF OCTOBER, 2023**

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking affidavits, etc.

Thomas Gray

From: Thomas Gray
Sent: Thursday, October 26, 2023 9:08 AM
To: 'Nigel.Meakin@fticonsulting.com'; 'Jodi.Porepa@fticonsulting.com'
Cc: Sean Zweig; Richard Swan; 'amerskey@cassels.com'; 'rjacobs@cassels.com'; 'jdietrich@cassels.com'; 'ataylor@stikeman.com'; 'leenicholson@stikeman.com'
Subject: Tacora
Attachments: Letter to Monitor.pdf; DIP Loan Agreement - October 26 2023.pdf; Javelin term sheet October 25, 2023.pdf

DocstoreMailItemId: 8ba74689-5305-4b24-90dd-591233fd51b3

Please see the attached letter.

Thanks,

Thomas

Thomas Gray

Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 7924 | F. 416 863 1716
BennettJones.com



**THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF THOMAS GRAY SWORN
THE 26TH DAY OF OCTOBER, 2023**

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking affidavits, etc.



Bennett Jones

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130

Toronto, Ontario, Canada M5X 1A4

Tel: 416.863.1200 Fax: 416.863.1716

Sean Zweig
Partner
Direct Line: 416.777.6254
e-mail: zweigs@bennettjones.com

October 26, 2023

VIA EMAIL

FTI Consulting Canada Inc., in its capacity as the Monitor of Tacora Resources Inc.
Toronto-Dominion Centre, 79 Wellington Street West, Suite 2010
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa

Re: Proceedings of Tacora Resources Inc. (“Tacora”) under the *Companies’ Creditors Arrangement Act* (the “CCAA”), Court File No. CV-23-00707394-00CL

As you know, we are counsel to an ad hoc group of senior secured noteholders issued by Tacora (the “**Ad Hoc Group**”). Further to our appearance on October 24 at the Ontario Superior Court of Justice (Commercial List) regarding the motion brought by Tacora seeking, *inter alia*, an amended and restated initial order and the cross-motion brought by the Ad Hoc Group, enclosed please find a revised debtor in possession financing term sheet (the “**Ad Hoc Group DIP Agreement**”) that is in final, unconditional form, executed by the Ad Hoc Group proposed lenders (in such capacity, the “**DIP Lenders**”).

The Ad Hoc Group DIP Agreement is responsive to the points raised by Tacora and the Monitor in court, as well as in further discussions among the parties, and was drafted to reflect that the Ad Hoc Group strongly believes that the best path forward for a restructured Tacora is interim financing that is reasonably priced, fair and transparent, and which maximizes flexibility in a sale and investment solicitation process, all to maximize the value of the estate for the benefit of Tacora’s stakeholders as a whole. The Ad Hoc Group DIP Agreement is being provided alongside a binding term sheet for the provision of a new offtake agreement (the “**New Offtake Agreement**”) and associated services from Javelin Global Commodities (“**Javelin**”), a global leader in iron ore trading, marketing and sales, including the provision of physical and financial hedging and execution strategies. Javelin’s signature to the New Offtake Agreement term sheet has been provided in escrow and will be released upon Tacora’s execution of the Ad Hoc Group DIP Agreement. Taken together with the New Offtake Agreement, the Ad Hoc Group DIP Agreement is superior to the current DIP agreement (the “**Cargill DIP Agreement**”) put forth by Cargill, Incorporated, an affiliate of Cargill International Trading Pte Ltd. (together, “**Cargill**”), for the following reasons:

1. *Immediately Lower Cash Burden on Tacora.* The annual cash interest under the Ad Hoc Group DIP Agreement is \$11.5 million, while the annual cash interest under the Cargill DIP Agreement is \$7.5 million. However, the New Offtake Agreement creates cost savings over the corresponding Cargill agreements. For example, based on actual prices achieved on

Tacora's last 10 shipments at an annualized production level of four million tonnes, Cargill would earn \$17.2 million. Under the New Offtake Agreement, Javelin would earn \$8.7 million, saving the Company \$8.5 million over the course of a year. At the Company's nameplate capacity of six million tonnes per year, the savings would increase to \$12.7 million. **Taken together, the Ad Hoc Group DIP Agreement and the New Offtake results in annual cash savings of \$4.4 million.**¹ To further lower the cash burden on Tacora during its CCAA proceedings, Javelin has agreed to defer 100% of its post-petition marketing fees until exit subject to a CCAA court-ordered charge protecting such amounts.

2. *Operational Stability.* The New Offtake Agreement contemplates that Javelin will also provide other services and operational support to Tacora during these CCAA proceedings, guaranteeing operational stability during the CCAA proceedings from a neutral, third-party provider. Those services will be provided on the same terms as Cargill currently provides those services. The Ad Hoc Group believes that the transition to the New Offtake Agreement and associated services will not disrupt Tacora's business or operations.
3. *No Entrenchment of Cargill Offtake.* The Ad Hoc Group DIP Agreement does not create an event of default if Tacora takes any steps to disclaim or terminate the Cargill offtake agreement other than at the end of the SISP. Accordingly, the Ad Hoc Group DIP would permit the acceptance of a stalking horse bid that contemplates the non-continuation of Cargill's offtake agreement. Stalking horse bids are incontrovertibly beneficial in a SISP and should not be restricted, particularly if that restriction expressly benefits the DIP lender to the detriment of the stakeholders generally. More broadly, it remains the Ad Hoc Group's belief that (i) the Cargill offtake agreement is off-market and grossly favourable to Cargill and (ii) a successful restructuring of Tacora requires a robust sales process, including access for potential bidders and financing parties to information about the business and operations of Tacora, and a proactive approach to the treatment of Cargill's offtake agreement within the CCAA proceedings. The Ad Hoc Group DIP Agreement helps push these issues forward.
4. *Other Benefits.* Ad Hoc Group DIP Agreement provides additional benefits over the Cargill DIP Agreement, including a larger key employee retention that applies to all of Tacora's employees, and a more favourable disbursements covenant that excludes Tacora's legal fees from the variance test.

We look forward to discussing the Ad Hoc Group DIP Agreement with you at your earliest convenience and ask that in the interim you (or your counsel) forthwith provide a copy of the Ad Hoc Group DIP Agreement and this cover letter to the Court, and directly to Justice Kimmel by email. This letter and its enclosures should not otherwise be shared outside of the recipients, including with Cargill, without our consent.

¹ Including PIK interest and backstop / exit fees for both DIP agreements, total savings would be \$2.1 million.

October 26, 2023

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Yours truly,

BENNETT JONES LLP

Sean Zweig

Sean Zweig

cc: Richard Swan – Bennett Jones LLP
Alan Merskey, Ryan Jacobs & Jane Dietrich – Cassels Brock & Blackwell LLP
Ashley Taylor & Lee Nicholson – Stikeman Elliott LLP

**THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF THOMAS GRAY SWORN
THE 26TH DAY OF OCTOBER, 2023**

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking affidavits, etc.

DIP LOAN AGREEMENT

Dated as of October 26, 2023

WHEREAS the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**", and such proceeding, the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in accordance with the terms and conditions set out in this agreement (this "**DIP Agreement**");

NOW THEREFORE the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Tacora Resources Inc. (the "**Borrower**").
2. **DIP LENDERS:** (i) Brigade Capital Management, LP;
(ii) Millstreet Capital Management LLC;
(iii) MSD Partners, LP;
(iv) O'Brien-Staley Partners; and
(v) Snowcat Capital Management, LP,

(collectively, in such capacity, the "**DIP Lenders**") on behalf of the parties listed in the signature pages hereto.
3. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Agreement have the meanings given thereto in Schedule "I" hereto.
4. **PURPOSE:** As set out in Section 21(e) of this DIP Agreement or as otherwise indicated herein.
5. **DIP FACILITY AND MAXIMUM AMOUNT** A super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of \$124,000,000 (the "**Maximum Amount**").

The DIP Facility shall be split into three tranches that in aggregate total the Maximum Amount:
 - Tranche 1 - \$70,150,000 ("**Tranche 1**")
 - Tranche 2 - \$40,000,000 ("**Tranche 2**")
 - Tranche 3 - \$13,850,000 ("**Tranche 3**")

For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder

as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 10 of this DIP Agreement.

6. REPAYMENT:

The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees (including, without limitation, the Backstop Fee (as defined below)) and reasonable and documented expenses incurred by the DIP Lenders (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lenders under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the "**DIP Obligations**") shall be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lenders and in respect of which the Borrower was provided prior written notice by the DIP Lenders of such Event of Default; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court, including in connection with the Solicitation Process (as defined below); (iii) the implementation by the Borrower of a plan of compromise or arrangement in accordance with the CCAA and any Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) October 24, 2024 (the earliest of such dates being the "**Maturity Date**"). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with FTI Consulting Canada Inc., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the "**Monitor**"), and with the prior written consent of each of the DIP Lenders, in their sole discretion, for such period and on such terms and conditions as the Borrower (in consultation with the Monitor) and the DIP Lenders may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid

in full on the Maturity Date (or extended Maturity Date), without the DIP Lenders being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lenders shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal, provided, however, that any amounts applied by the Borrower to repay DIP Obligations shall go first to satisfy in full the DIP Obligations owing to non-Defaulting Lenders, then to the DIP Obligations, if any, owing to Defaulting Lenders.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lenders "credit bidding" such DIP Obligations, with the prior written consent of the Required DIP Lenders, for some or all of the assets of the Borrower pursuant to the Solicitation Process to be implemented in the CCAA Proceedings, in the Required DIP Lenders' sole discretion and subject to approval by the Court.

7. **EXIT FINANCING:** If requested by the Borrower, the DIP Lenders may, with the prior written consent of the Required DIP Lenders, in their sole discretion, and with the consent of the Borrower (in consultation with the Monitor), convert any or all of the DIP Obligations outstanding on the Maturity Date into exit financing having terms and conditions satisfactory to the DIP Lenders and the Borrower.

8. **CASH FLOW PROJECTIONS:** The Borrower, in consultation with the Monitor in the CCAA Proceedings, will provide to the DIP Lenders an updated cash flow projection. The cash flow projections attached at **Schedule "A"** hereto reflect the prior forecast and are included herein to illustrate the expected cash flow projections. The DIP Lenders acknowledge that these projections will change and shall work cooperatively with the monitor on this point. The cash flow projections shall be filed with the Court, reflecting the projected cash requirements of the Borrower for the 20-week period from the week ending October 29, 2023, through the week ending March 10, 2024, calculated on a weekly basis (together with the back-up information requested and received by the DIP Lenders, the "**Cash Flow Projection**"). Changes to the updated Cash Flow from the version last provided by the DIP Lenders shall consist of: (i) reducing the estimated professional fees for the DIP Lender's technical advisor to \$20k

per week and US counsel to \$10k per week, (ii) removing the DIP Lender's communications consultant, (iii) including the amounts required for the 994 Wheel Loader, and (iv) reflecting the AHG's proposed KERP.

The Borrower shall keep the DIP Lenders and the Monitor apprised of its cash flow requirements by providing: (i) an updated rolling Cash Flow Projection (which shall include all reasonable backup information requested by the DIP Lenders) by no later than 5:00 p.m. (Eastern Time) on the Friday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a "**Proposed Amended Cash Flow Projection**"), provided that the Borrower (in consultation with the Monitor), at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, a report showing on a line-by-line basis (a) the cumulative actual receipts and disbursements for the preceding period and (b) the cumulative variances from the amounts in the DIP Agreement Cash Flow Projection (as defined below) and noting therein all variances on a line by line basis from the amounts in the DIP Agreement Cash Flow Projection, with reasonably detailed explanations for all material variances, such information described in this clause (ii) to be delivered to the DIP Lenders and Monitor weekly by no later than 5:00 p.m. (Eastern Time) on the Friday of each week.

The Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the Majority DIP Lenders determine that the Proposed Amended Cash Flow Projection is not acceptable and deliver a written objection to the Borrower with a copy to the Monitor within three (3) Business Days of receipt thereof, stating that the Proposed Amended Cash Flow Projection is not acceptable and setting out the reasons why such Proposed Amended Cash Flow Projection is not acceptable. In such case the prior Cash Flow Projection shall remain in effect.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection) shall be the "**DIP Agreement Cash Flow Projection**".

For greater certainty, the DIP Lenders shall not be required to initiate any DIP Advances pursuant to a Proposed Amended

Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 8.

The proceeds of each DIP Advance shall be used by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the Required DIP Lenders, from time to time.

The DIP Lenders and the Company agree that Cargill, Incorporated shall be repaid for all amounts owed to it under the debtor-in-possession financing approved by this Court on October 10, 2023, with such repayment to take place by no later than November 3, 2023. The proceeds of the DIP Advances may be used to repay these amounts.

Notwithstanding anything to the contrary herein, unless the Required DIP Lenders consent in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses that are not of a type of expense that falls within an expense line-item contained in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (ii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lenders on any Court Order with respect to the validity or enforceability of the DIP Obligations, the DIP Agreement or any Order contemplated by the DIP Agreement; (iii) subject to the preceding subsection (ii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lenders (as defined below); and (iv) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than 15% relative to the aggregate disbursements in the DIP Agreement Cash Flow since the beginning of the period covered by the DIP Agreement Cash Flow Projection starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 8 above; provided,

however that: (i) the Permitted Variance calculation shall not take into account (a) the professional advisory fees (including the fees of counsel and a financial advisor) of the Borrower and the Monitor, (b) the Expenses, (c) the fees and expenses of the DIP Lenders; and (d) costs related to pre-existing compensation arrangements paid to employees based on production of the Scully mine; and (ii) an exceedance of the Permitted Variance by the Borrower only one time during any consecutive four week period beginning on the date the ARIO is granted shall not result in an Event of Default.

**9. TRANCHE 3 USE
AND DRAW
CONDITIONS**

Notwithstanding any other provisions of this DIP Agreement, amounts funded pursuant to Tranche 3 may only be used to fund: (i) required margin payments due under the Offtake Agreement; or (ii) the purchase of hedges ("**Margin or Hedge Services**").

Prior to purchasing or making any payment for Margin or Hedge Services, the Borrower and its financial advisor shall request: (a) a quote for pricing of such Margin or Hedge Services from Cargill; and (b) a quote for pricing of such Margin or Hedge Services from an independent third-party who provides such services.

The Borrower shall not purchase any Margin or Hedge Services without the consent of the Monitor. For greater certainty, Margin or Hedge Services does not include required margin payments due under the Offtake Agreement, provided that the amount of any such margin payment must be approved by the Monitor.

**10. ADVANCES UNDER
DIP FACILITY:**

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lenders shall, on a several basis, advance the following disbursements as draws against the Maximum Amount (each of the below, a "**DIP Advance**"), which shall be revised as necessary following the provision of updated cashflow information from the Monitor:

- (a) A first advance in the aggregate amount of \$17,400,000 ("**First DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such First DIP Advance to be advanced not later than one (1) Business Day (as defined below) following the satisfaction of each of the conditions to the First DIP Advance set out in Section 13 of this DIP Agreement. The First DIP Advance shall be composed of: (i) \$7,897,000 of funding from

Tranche 1; (ii) \$4,503,000 of funding from Tranche 2; and (iii) \$5,000,000 of funding from Tranche 3, or as otherwise provided in the Cash Flow Projections;

- (b) A second advance in the amount of \$68,850,000 ("**Second DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Second DIP Advance to be advanced not later than one (1) Business Day following the satisfaction of each of the conditions to the Second DIP Advance set out in Section 13 of this DIP Agreement. The Second DIP Advance shall be composed of: (i) \$38,212,000 of funding from Tranche 1; (ii) \$21,788,000 of funding from Tranche 2; and (iii) \$8,850,000 of funding from Tranche 3. The Second DIP Advance shall be adjusted with a commensurate change to the Third DIP Advance or Fourth DIP Advance if needed per the Cash Flow Projection;
- (c) A third advance in the amount of \$30,000,000 ("**Third DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Third DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Third DIP Advance set out in Section 13 of this DIP Agreement. The Third DIP Advance shall be composed of: (i) \$19,106,000 of funding from Tranche 1; and (ii) \$10,894,000 of funding from Tranche 2, or as otherwise provided in the Cash Flow Projection; and
- (d) A fourth advance in the amount of \$7,750,000 ("**Fourth DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Fourth DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Fourth DIP Advance set out in Section 13 of this DIP Agreement. The fourth DIP Advance shall be composed of: (i) \$4,935,000 of funding from Tranche 1; and (ii) \$2,815,000 of funding from Tranche 2, or as otherwise provided in the Cash Flow Projection.

11. BACKSTOP COMMITMENT

Each DIP Lender shall fund a portion of each DIP Advance equal to its Applicable Percentage of such DIP Advance.

The DIP Lenders shall, jointly and severally, backstop the DIP Financing Commitment of each other DIP Lender (each, a “**Backstop Commitment**”), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Advance or (y) fund on a Pro Rata basis a Backstop Advance (collectively, a “**Defaulting Lender Funding Obligation**”) (each such defaulting DIP Lender, a “**Defaulting Lender**”), each other DIP Lender which is not a Defaulting Lender shall, within: (A) one (1) Business Day of receiving written notice of failure to fund from the Borrower in respect of the First DIP Advance or Second DIP Advance, or (B) three (3) Business Days of receiving written notice of failure to fund from the Borrower in respect of the Third DIP Advance and Fourth DIP Advance, fund on a Pro Rata basis by way of a Backstop Advance each such Defaulting Lender Funding Obligation in accordance with this Section 11 of this DIP Agreement.

**12. SOLICITATION
PROCESS MILESTONES:**

The following milestones in respect of the Solicitation Process must be satisfied by the Borrower or such later dates as may be agreed by the Borrower, the Majority DIP Lenders and the Monitor (each a “**Solicitation Process Milestone**” and collectively, the “**Solicitation Process Milestones**”):

- (a) The Solicitation Process must commence no later than five days following the issuance of the Solicitation Process Order;
- (b) The deadline for the receipt of non-binding letters of intent: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a “**Sale LOI**”); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower’s business (an “**Alternative Offtake or Services LOI**”), must be no later than December 1, 2023;
- (c) Final deadline for the receipt of binding bids: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a “**Sale Binding Bid**”); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower’s business (an “**Alternative Offtake or Services Binding Bid**”), must be no later than January 19, 2024; and
- (d) Closing of transaction(s) for a sale of or investment in all or substantially all of the Borrower's assets or its

business (a "**Sale Transaction**"); and/or (ii) in respect of an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Transaction**"), must occur no later than February 23, 2024.

The Borrower agrees that the DIP Lenders may submit a "stalking horse" bid for a sale of or investment in all or substantially all of the Borrower's assets or its business pursuant to the Solicitation Process. The Solicitation Process Order shall provide that the Borrower shall have the right to seek approval by the Court of a "stalking horse" bid any time prior to the deadline for Sale LOIs and Alternative Offtake or Services LOI.

**13. CONDITIONS
PRECEDENT TO DIP
FACILITY
ADVANCES:**

A. CONDITIONS TO FIRST DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the First DIP Advance hereunder:

- (a) [Reserved].
- (b) The Court shall have issued on or before November 3, 2023 an amended and restated initial order in substantially the form attached as **Schedule "D"** hereto with such additional changes reasonably acceptable to the Borrower, Majority DIP Lenders and Monitor (the "**ARIO**"), the effect of which shall, among other things, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge securing the principal amount of \$124,000,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCAA or otherwise required by the Required DIP Lenders, and such ARIO shall have been obtained on notice to such parties required by the Required DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that

the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (d) The ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (e) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;
- (f) No Material Adverse Change shall have occurred since the date hereof;
- (g) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for Permitted Priority Liens;
- (i) Arrangements have been made to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance;
- (j) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute.
- (k) The Borrower shall be in compliance with all Court Orders.

B. CONDITIONS TO SECOND DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Second DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the Solicitation Process Order at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.
- (b) [Reserved];
- (c) The Borrower shall have used commercially reasonable efforts to have obtained a Court Order in form and substance acceptable to the Required DIP Lenders (the "**Solicitation Process Order**") approving a sale, investment and offtake agreement solicitation process (the "**Solicitation Process**") as set out in Schedule "E" hereto, with any changes as may be agreed by the Borrower, the Monitor and the Required DIP Lenders;
- (d) The ARIO and any other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (e) Delivery to the DIP Lenders, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in Schedule "B" hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Second DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance

with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (f) The ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (g) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Second DIP Advance;
- (h) No Material Adverse Change shall have occurred since the date hereof;
- (i) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the Second DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (j) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (k) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (l) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;
- (m) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees located in the United States), except, in each case, for any such

amounts that are not yet due and payable or which are in dispute; and

- (n) The Borrower shall be in compliance with all Court Orders.

C. CONDITIONS TO THIRD DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Third DIP Advance hereunder:

- (a) The Court shall have issued the Solicitation Process Order;
- (b) The ARIO, and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of (i) the date provided in the Cash Flow Projection and (ii) the date of receipt by the Borrower of Sale LOIs and Alternative Offtake or Services LOIs, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Third DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Third DIP Advance;
- (e) No Material Adverse Change shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Third DIP Advance (unless any representation and warranty is qualified by materiality,

in which case it shall be true and correct in all respects as of the date made or deemed made);

- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (i) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (j) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (k) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (l) The Borrower shall be in compliance with all Court Orders.

D. CONDITIONS TO FOURTH DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Fourth DIP Advance hereunder:

- (a) The ARIO, the Solicitation Process Order and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed

or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;

- (b) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of date of (i) the date provided in the Cash Flow Projection; and (ii) receipt by Borrower of Sale Binding Bids and Alternative Offtake or Services Binding Bids, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Fourth DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (c) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Fourth DIP Advance;
- (d) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (e) No Material Adverse Change shall have occurred since the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Fourth DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in

existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;

- (i) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (j) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (k) The Borrower shall be in compliance with all Court Orders.

14. DISBURSEMENTS

The proceeds of all DIP Advances shall be funded by the DIP Lenders into the Borrower's account noted in **Schedule "F"** hereto (the "**Borrower's Account**").

15. VOLUNTARY PREPAYMENTS:

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting a Pro Rata payment to the DIP Lenders, to one or more accounts to be specified in writing in advance, in minimum amounts \$1,000,000 and in increments of \$250,000 in excess thereof, without premium or penalty. Any amounts so prepaid may not be re-borrowed by the Borrower hereunder.

Any voluntary prepayments shall be applied: (i) first, to amounts outstanding under Tranche; (ii) second, once all amounts outstanding under Tranche 2 have been paid in full, to amounts outstanding under Tranche 3; and (iii) third, once all amounts outstanding under Tranche 2 and Tranche 3 have been paid in full, to amounts outstanding under Tranche 1.

16. INTEREST RATE:

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal in aggregate to (the "**Interest Rate**");

Tranche 1 – 10% per annum payable in cash in accordance with this Section 16 ("**Cash Interest**") and

3% per annum payable-in-kind in accordance with this Section 16 (the "**PIK Interest**").

Tranche 2 – 8.25% per annum Cash Interest.

Tranche 3 – 8.25% per annum Cash Interest.

Upon the occurrence and during the continuance of an Event of Default the Cash Interest rate shall be increased by an additional 2% per annum ("**Default Interest**"), payable monthly in cash in arrears on the last Business Day of each calendar month and the Interest Rate, including Default Interest, shall begin to accrue on all amounts borrowed.

The Borrower shall pay in cash the Cash Interest on the aggregate outstanding principal amount of DIP Advances monthly in arrears on the last Business Day of each calendar month beginning on October 31, 2023. The Borrower shall pay the PIK Interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with this Section 16.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days. For greater certainty, there shall not be any compounding in respect of Cash Interest provided it is paid on time in accordance with this DIP Agreement.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would

obligate the Borrower to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lenders of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

All PIK Interest and Backstop Fees (as defined below) (collectively, the "**PIK Amounts**") shall be: (i) converted to equity at plan or transaction value in the event of a sale or restructuring transaction in respect of the Borrower in which the DIP Lenders retain equity value in the Borrower or its successor(s) upon emergence from CCAA and in such circumstances, all PIK Amounts will be deemed satisfied in full; or (ii) in any other circumstance, paid in cash upon the Maturity Date (the "**PIK Mechanism**").

For greater certainty, unless otherwise expressly provided in this Agreement, all payments to be made by the Borrower to the DIP Lenders under this Agreement on account of principal, interest, fees or otherwise shall be made on a Pro Rata basis.

17. BACKSTOP FEE:

The Borrower shall pay to the DIP Lenders a backstop fee (the "**Backstop Fee**"), as compensation for their Backstop Commitments, in an amount equal to 2% of the entire Maximum Amount, which shall be earned by the DIP Lenders on a Pro Rata basis upon the Court issuing the ARIO, and shall be payable upon the Company's exit from the CCAA Proceedings.

The Backstop Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations. Only those DIP Lenders which are not Defaulting Lenders shall be entitled to any portion of the Backstop Fee when such fee is paid in cash or otherwise allocated to the DIP Lenders pursuant to the PIK Mechanism, with any amounts which would otherwise have been paid or allocated to a Defaulting Lender to instead be distributed, on a Pro Rata basis, to the DIP Lenders who are not Defaulting Lenders.

18. DIP SECURITY:

All of the DIP Obligations shall be secured by a Court-ordered charge (the "**DIP Charge**") over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the "**Collateral**").

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, Liens, claims, trusts and charges, but shall be subject to and shall rank behind or pari passu with the Permitted Priority Liens.

Any amendment to, waiver of or release of a material portion of: (i) the priority of the DIP Charge; and (ii) the Collateral (subject to the terms of the ARIIO), shall require the prior written consent of each of the DIP Lenders.

19. MANDATORY REPAYMENTS:

Unless the Borrower has obtained the prior written consent of the Majority DIP Lenders, the proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); or (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral (collectively, the "**Net Proceeds**") shall be paid: (i) first, to satisfy the Admin Charge, the D&O Charge, the Cargill Margin Charge (as defined in the ARIIO) and the KERP Charge; (ii) second, to satisfy DIP Obligations under Tranche 2; (iii) third, to satisfy DIP Obligations under Tranche 3; (iv) fourth, to satisfy DIP Obligations under Tranche 1; (v) fifth, to satisfy any other priority charges in accordance with their priorities; (vi) sixth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with their priorities; and (vii) seventh, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lenders and applied to the aggregate outstanding principal amount of the DIP Advances in accordance with Section 6 of this DIP

Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

20. REPRESENTATIONS AND WARRANTIES:

The Borrower jointly and severally represents and warrants to each DIP Lender, upon which each DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the ARIO:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary, except where the failure to have such qualification, license or registration would not have a Material Adverse Effect (as defined below). For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of the Borrower to comply with its obligations hereunder or under any Court Order;
- (b) Subject to the granting of the ARIO, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;
- (c) None of the subsidiaries and affiliates of the Borrower have any material assets;
- (d) Subject to the granting of the ARIO, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;
- (e) Subject to the granting of the ARIO, this DIP Agreement has been duly executed and delivered by the

Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;

- (f) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of: (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of the ARIO or other Court Order, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;
- (g) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, the Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect;
- (h) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement, "**Borrower's Knowledge**" means the actual knowledge of the senior officers and directors of the Borrower and the

knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;

- (i) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, would likely result in Liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (j) As at the date of the ARIO, the Borrower has good and marketable title to all of the Collateral subject to Permitted Liens;
- (k) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**, as at October 24, 2023, the Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals, except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**;
- (l) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "H"**, there are no actions, suits or proceedings (including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that have or will not have been stayed pursuant to the CCAA Proceedings which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;
- (m) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provides adequate insurance

coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons engaged in the same or similar business to the assets and operations of the Borrower;

- (n) All factual information provided by or on behalf of the Borrower to the DIP Lenders in writing for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lenders have all of their rights hereunder in the event that such actual future results are not as forecast or projected, including, without limitation, as provided for in Section 24(e) of this DIP Agreement); and
- (o) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

21. AFFIRMATIVE COVENANTS:

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Borrower subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;

- (b) The Borrower shall (i) provide the Technical Advisor with reasonable access to the Scully mine; (ii) provide the Technical Advisor with substantive operational updates; and (iii) consider recommendations made by the Technical Advisor regarding the operations of the Scully mine;
- (c) Subject to the terms of the Solicitation Process and the Solicitation Process Order, keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Solicitation Process, subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (d) Perform its obligations hereunder as and when required and in the manner required;
- (e) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projection subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings, including the Solicitation Process and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lenders in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lenders in respect of the CCAA Proceedings; and (iii) operating costs, expenses, capital expenditures and ordinary course liabilities (including, without limitation, wages, vacation pay and active employee benefits) of the Borrower;
- (f) Comply in all respects with the provisions of the court orders made in connection with the CCAA Proceedings (collectively, the "**Court Orders**" and each a "**Court Order**");
- (g) Preserve, renew and keep in full force the Borrower's corporate or other existence and all material licenses, permits or approvals required in respect of its business, properties, assets or any activities or operations carried out therein except where the failure to do so would not cause a Material Adverse Effect;

- (h) Maintain insurance coverage consistent with the coverage in existence of the date hereof with respect to the Collateral;
- (i) Conduct its activities in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance;
- (j) Promptly notify the DIP Lenders and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Event of Default (a "**Default**");
- (k) Promptly notify the DIP Lenders and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower that is not stayed by the ARIO or other Court Order;
- (l) Promptly after the same is available, but in no event later than the day that is two (2) Business Days prior to the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of the Borrower in the CCAA Proceedings and incorporate all reasonable comments of the DIP Lenders in respect of such materials;
- (m) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, health and safety, and environmental laws;
- (n) Except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory Liens, trust and other Crown claims including employee source deductions, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i)

payments that rank in priority to the DIP Charge; and
(ii) payments that are otherwise authorized pursuant to Court Order;

- (o) Either (i) pay in full; or (ii) treat as unaffected, the DIP Obligations in any plan of compromise or arrangement, proposal or any other restructuring whatsoever;
- (p) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances;
- (q) Subject to any Court Orders, grant the DIP Lenders and their professional advisors reasonable access to the Collateral and their business, properties, and books and records;
- (r) Conduct the Solicitation Process strictly in accordance with its terms (including milestones and timelines) and strictly comply with the Solicitation Process Order; and
- (s) If required, appoint the CRO (as defined below) in accordance with Section 25 of this DIP Agreement;
- (t) Deliver to the DIP Lenders and the Monitor no later than 5:00 p.m. (Eastern Time) on the Friday of each week a 13-week rolling iron ore delivery forecast prepared by the Borrower (the "**CCAA Iron Ore Delivery Forecast**"), which shall be consistent with the DIP Agreement Cash Flow Projection;
- (u) Commencing one month following the delivery of the initial CCAA Iron Ore Delivery Forecast and every month thereafter, deliver to port not less than 50% of the iron ore contemplated (in tonnes) by the most recently delivered CCAA Iron Ore Delivery Forecast on a trailing two week basis; and
- (v) By November 1, 2023, deliver to the DIP Lenders, with a copy to the Monitor, a capital expenditure budget for the 2024 calendar year, which budget shall include maintenance shutdown and winterization costs for the Scully mine and be in form and substance satisfactory to the Majority DIP Lenders, acting reasonably.

22. NEGATIVE COVENANTS:

The Borrower covenants and agrees not to do the following or permit any subsidiary to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the Required DIP Lenders or pursuant to an Order of the Court:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the ARIO; or (ii) where such transaction results in the repayment of DIP Obligations in accordance with Section 19 of this DIP Agreement;
- (b) Make any payment of principal or interest in respect of any indebtedness outstanding prior to October 10, 2023 ("**Existing Indebtedness**") other than as may be permitted or required herein or by a Court Order;
- (c) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business, in accordance with the DIP Agreement Cash Flow Projection;
- (d) Permit any new Liens to exist on any Collateral other than Permitted Liens;
- (e) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its organizational documents that would reasonably be expected to be adverse to the DIP Lenders;
- (f) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or loans, advances, payments, financial assistance, capital contributions or other distributions of any kind or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lenders in writing;
- (g) Enter into any transaction with any affiliate;
- (h) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management bonus or similar payments except in the case of (i) the KERP, or (ii) management bonuses or similar payments

to the extent provided for in the DIP Agreement Cash Flow Projection;

- (i) Engage in new businesses;
- (j) Change its fiscal year or accounting practices;
- (k) Issue any equity;
- (l) Take any action (or in any way support the taking of any action by another person) that has, or would reasonably be expected to have, a material adverse impact on the rights and interests of the DIP Lenders, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations;
- (m) Except in accordance with the Solicitation Process Order, commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or plan without the prior written consent of the Required DIP Lenders in their sole discretion;
- (n) Pay, incur any obligation to pay, or establish any retainer with respect to, the fees, expenses or disbursements of a legal, financial or other advisor of any third party, other than (i) the Borrower and its legal counsel, financial advisors and other advisors, (ii) the Monitor and its legal counsel, and (iii) the legal, financial and other advisors of the DIP Lenders, in each case engaged as of the date hereof;
- (o) Challenge or fail to support the DIP Charge and DIP Obligations;
- (p) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Agreement Cash Flow Projection subject to the Permitted Variances;
- (q) Make any individual capital expenditure in an amount greater than \$1.5 million without receiving the written approval of the CRO;
- (r) Except for the addition of the CRO, if required, not actively carry out any changes to the composition (including the addition, removal or replacement) of its board of directors (the "**Board**") (other than any

director resignation) or its officers (including the appointment of the CRO) without the consent of the Required DIP Lenders; and

- (s) Purchase the 994 Wheel Loader referenced in the Cash Flow Projection without first (i) appointing the CRO; and (ii) receiving written confirmation that an equipment financier acceptable to the Majority DIP Lenders will provide equipment financing to the Borrower in respect of the 994 Wheel Loader on emergence from the CCAA Proceedings.

23. INDEMNITY AND RELEASE:

The Borrower hereby indemnifies and holds harmless each of the DIP Lenders and each of their respective directors, officers, employees, partners, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**", and each, an "**Indemnified Person**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the fraud, gross negligence, bad faith or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating

thereto. The Borrower further covenants to, and does hereby, release each of the DIP Lenders solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

24. EVENTS OF DEFAULT:

The occurrence of any one or more of the following events, without the prior written consent of the Required DIP Lenders, shall constitute an immediate event of default ("**Event of Default**") under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral (being Collateral with an aggregate fair market value as reasonably determined by the Required DIP Lenders in excess of \$250,000, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower or any of the Collateral;
- (b) Failure to obtain the Solicitation Process Order by November 10, 2023 or satisfy any Solicitation Process Milestone by the applicable date required hereunder;
- (c) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii) that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lenders in connection with the Collateral or under this DIP Agreement or any Court Order; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;
- (d) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) Business Day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);

- (e) The issuance of an order granting a Lien of equal or superior status to that of the DIP Charge, other than as provided in Section 18 of this DIP Agreement;
- (f) Any Proposed Amended Cash Flow Projection contemplates or forecasts an adverse change or changes from the then existing DIP Agreement Cash Flow Projection and such change(s) constitute a Material Adverse Change or is not delivered to the DIP Lenders within two (2) days of the requisite time frame set out herein.
- (g) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lenders shall be incorrect or misleading in any material respect as of the date made or deemed made and, if the circumstances giving rise to the incorrect representation or warranty are capable of modification or rectification (such that, thereafter the representation or warranty would be correct), the representation or warranty remains uncorrected for a period of five (5) Business Days;
- (h) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the Borrower's business or its performance solely as a result of (i) the commencement, announcement or continuance of the CCAA Proceedings or (ii) conducting the Solicitation Process;
- (i) Any breach of any Court Order upon receipt by the Borrower (with a copy to the Monitor) of notice from the Required DIP Lenders of such breach by the Borrower and such breach is not cured within two (2) Business Days of delivery of such notice;
- (j) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and such Default shall continue unremedied for a period of five (5) Business Days after the earlier of (i) delivery of notice given by the Required DIP Lenders to the Borrower, with a copy to the Monitor or (ii) the

Borrower's Knowledge of such failure to perform or comply;

- (k) The commencement by the Borrower of an action or any other proceeding against the DIP Lenders;
- (l) The expiry without further extension of the stay of proceedings provided for in the ARIO;
- (m) Other than the appointment of the CRO, if required, any change to the composition of the Board or officers of the Borrower (other than as a result of director resignation(s)) that is not acceptable to the Majority DIP Lenders acting reasonably;
- (n) The removal, termination, replacement or material change in the scope or extent of the authority of any chief restructuring officer (if one is appointed);
- (o) Any change of control of the Borrower;
- (p) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is inconsistent with the terms of this DIP Agreement;
- (q) Failure to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance; or
- (r) Failure to appoint the CRO by November 10, 2023 on terms that are mutually acceptable to the DIP Lenders and the Borrower, acting reasonably, and in consultation with the Monitor.

25. CORPORATE GOVERNANCE

The Borrower shall cause the Board to appoint a Chief Restructuring Officer with substantial restructuring experience, acceptable to the Borrower, the Monitor and the Required DIP Lenders (the "**CRO**") forthwith following the date of this agreement, but in any event no later than November 10, 2023, on terms acceptable to the Borrower, the Monitor and the Required DIP Lenders, or as otherwise may be determined appropriate by the Court, but which terms shall require that any capital expenditure by the Company in an amount greater than \$1.5 million must be approved in writing by the CRO.

26. REMEDIES:

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lenders except in the sole discretion of the Required DIP Lenders; and (b) the Required DIP Lenders may immediately terminate the DIP Facility and demand immediate payment of all of the DIP Obligations by providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than five (5) Business Days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the Required DIP Lenders shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver; (b) exercise the rights of a secured party under the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Newfoundland and Labrador) or any other applicable law relating to the enforcement of Liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lenders in exercising any of their rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lenders shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lenders under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

27. LEGAL FEES:

The Borrower shall pay by wire transfer, within two (2) Business Days of receipt of a detailed invoice (redacted for privilege), all reasonable and documented out-of-pocket expenses, including all reasonable expenses of Canadian legal counsel and US legal counsel on a solicitor-client basis and the expenses of one financial advisor, and one Technical Advisor, incurred by the DIP Lenders in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms

hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.

- 28. DIP LENDER APPROVALS:** Any consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders to be delivered in writing may be delivered by any written instrument, including by way of email, by the DIP Lenders, the Majority DIP Lenders or Required DIP Lenders (or their counsel), as applicable, pursuant to the terms hereof. For greater certainty, any consent, approval, instruction or other expression delivered in writing by Bennett Jones LLP shall be considered as delivery of a consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders, as may be indicated by Bennett Jones LLP in such written instrument.
- 29. EVIDENCE OF INDEBTEDNESS** The DIP Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the DIP Lenders under the DIP Facility.
- 30. TAXES:** All payments by the Borrower under this DIP Agreement to the DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").
- 31. FURTHER ASSURANCES:** The Borrower shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lenders may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lenders, acting reasonably, it shall promptly execute and deliver to the DIP Lenders any general security agreement or other security documents securing its obligations to the DIP Lenders hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of

any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

32. ENTIRE AGREEMENT:

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

33. AMENDMENTS, WAIVERS, ETC.:

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Unless otherwise expressly provided in this Agreement, any waiver, amendment or other modification to this Agreement shall require the written consent of the Required DIP Lenders; provided that, notwithstanding the foregoing, solely with the consent of each DIP Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required DIP Lenders), any such agreement may:

(1) increase the DIP Financing Commitment of such DIP Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall constitute an increase of any DIP Financing Commitment of such DIP Lender;

(2) reduce or forgive the principal amount of any DIP Advances (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute a reduction or forgiveness in principal);

(3) extend the scheduled Maturity Date of any DIP Advance (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute an extension of any maturity date);

(4) reduce the Interest Rate (other than to waive any Default or Event of Default or any obligations of the Borrower to pay interest at the default rate of interest in accordance with Section 16 of this Agreement) or the amount of any fees owed to such DIP Lender;

(5) waive, amend or modify the provisions of Section 16 (with respect to Pro Rata allocation of all payments among DIP Lenders) of this Agreement in a manner that would by its terms alter the Pro Rata sharing of payments required thereby;

(6) waive, amend or modify the definition of "Pro Rata; and

(7) waive, amend or modify the provisions of this Section 33.

Notwithstanding anything else in this DIP Agreement, and for greater certainty, this DIP Agreement may not be waived, amended or modified to reduce the principal amount owed to any DIP Lender under the DIP Facility or increase the amount of any DIP Lender's commitment under the DIP Facility, in each case, without the prior written consent of such DIP Lender.

Any amendment to the terms of this DIP Agreement shall be made in writing and signed by the Borrower and the requisite DIP Lenders.

To the extent any fees or other compensation becomes payable to the DIP Lenders in connection with any amendment to this DIP Agreement, all DIP Lenders who are not Defaulting Lenders shall have the opportunity to receive their Pro Rata portion of any such fees or other compensation.

34. ASSIGNMENT:

The DIP Lenders may assign this DIP Agreement and their rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lenders with the prior written consent of the Borrower, not to be unreasonably withheld (provided that no such consent of the Borrower shall be required upon the occurrence of an Event of Default which is continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender and that the assignment will not have a material adverse impact on the Solicitation Process.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

- 35. SEVERABILITY:** Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 36. COUNTERPARTS AND SIGNATURES:** This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.
- 37. DISCLOSURE** Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of their business (the "**Communications**"), without the prior written consent of the Majority DIP Lenders, which is not to be unreasonably withheld. The Borrower shall provide the DIP Lenders with a reasonable opportunity to review and comment on all Communications in respect of this DIP Agreement or the CCAA Proceedings prior to such Communications being issued or published.
- 38. NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

(a) In the case of the Borrower:

Tacora Resources Inc.
102 NE 3rd Street Suite 120
Grand Rapids, Minnesota
55744 USA

Attention: Joe Broking & Heng Vuong
Email: joe.broking@tacoraresources.com;
heng.vuong@tacoraresources.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West, 199 Bay St.
Toronto, ON M5L 1B9

Attention: Ashley Taylor & Lee Nicholson
Email: ataylor@stikeman.com; leenicholson@stikeman.com

and

Greenhill & Co., LLC
1271 6th Ave, New York,
NY 10020, USA

Attention: Chetan Bhandari, Michael Nessim & Usman
Masood
Email: chetan.bhandari@greenhill.com;
michael.nessim@greenhill.com;
usman.masood@greenhill.com

And with a copy to the Monitor:

FTI Consulting Canada Inc.
Toronto-Dominion Centre, 79 Wellington St W Suite 2010,
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa
Email: nigel.meakin@fticonsulting.com;
jodi.porepa@fticonsulting.com

And with a copy to the Monitor's Counsel:

Cassels Brock & Blackwell LLP
Bay Adelaide Centre – North Tower,
Suite 3200, Toronto, ON M5H 0B4

Attention: Ryan Jacobs, Jane Dietrich & Michael Wunder
Email: rjacobs@cassels.com; jdietrich@cassels.com;
mwunder@cassels.com

(b) In the case of the DIP Lenders:

c/o
GLC Advisors & Co., LLC
600 Lexington Ave., 9th Floor
New York, NY 10022 USA

Attention: Michael Sellinger, Michael Kizer & Adam Kelly-
Penso

Email: michael.sellinger@glca.com; michael.kizer@glca.com;
adam.kellypenso@glca.com

With a copy to:

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Attention: Sean Zweig, Mike Shakra & Thomas Gray
Email: zweigs@bennettjones.com;
shakram@bennettjones.com;
grayt@bennettjones.com

and

Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001 USA

Attention: Sidney Levinson & Erica Weisgerber

Email: slevinson@debevoise.com;
eweisgerber@debevoise.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 ET or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day. For the purposes of this DIP Agreement, a "**Business Day**" means any day except any Saturday, any Sunday, or any day which is a legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close in the Provinces of Ontario or Newfoundland and Labrador or the State of New York.

**39. GOVERNING LAW
AND
JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**40. CURRENCY AND
JUDGMENT
CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lenders all payments on account of principal and interest hereunder in lawful money of the United States of America.

If in the recovery by the DIP Lenders of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lenders is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lenders and such shortfall can be claimed by the DIP Lenders against the Borrower as an alternative or additional cause of action.

41. PRIOR DIP LOAN AGREEMENT

The Borrower and the DIP Lenders agree to terminate the DIP Loan Agreement dated as of September 11, 2023 and the parties release and discharge each other from their respective commitments and obligations thereunder.

[- Signature pages follow -]

IN WITNESS HEREOF, the parties hereby execute this DIP Agreement as at the date first mentioned above.

BORROWER :

TACORA RESOURCES INC.

By: _____

Name:

Title:

DIP LENDERS :

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of

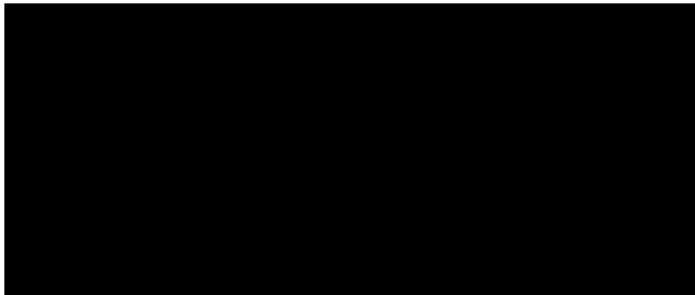


Brian D. Connolly

Name: Brian D. Connolly
Title: Managing Member

MSD PARTNERS, LP

on behalf of



Name:
Title:

O'BRIEN-STALEY PARTNERS

on behalf of



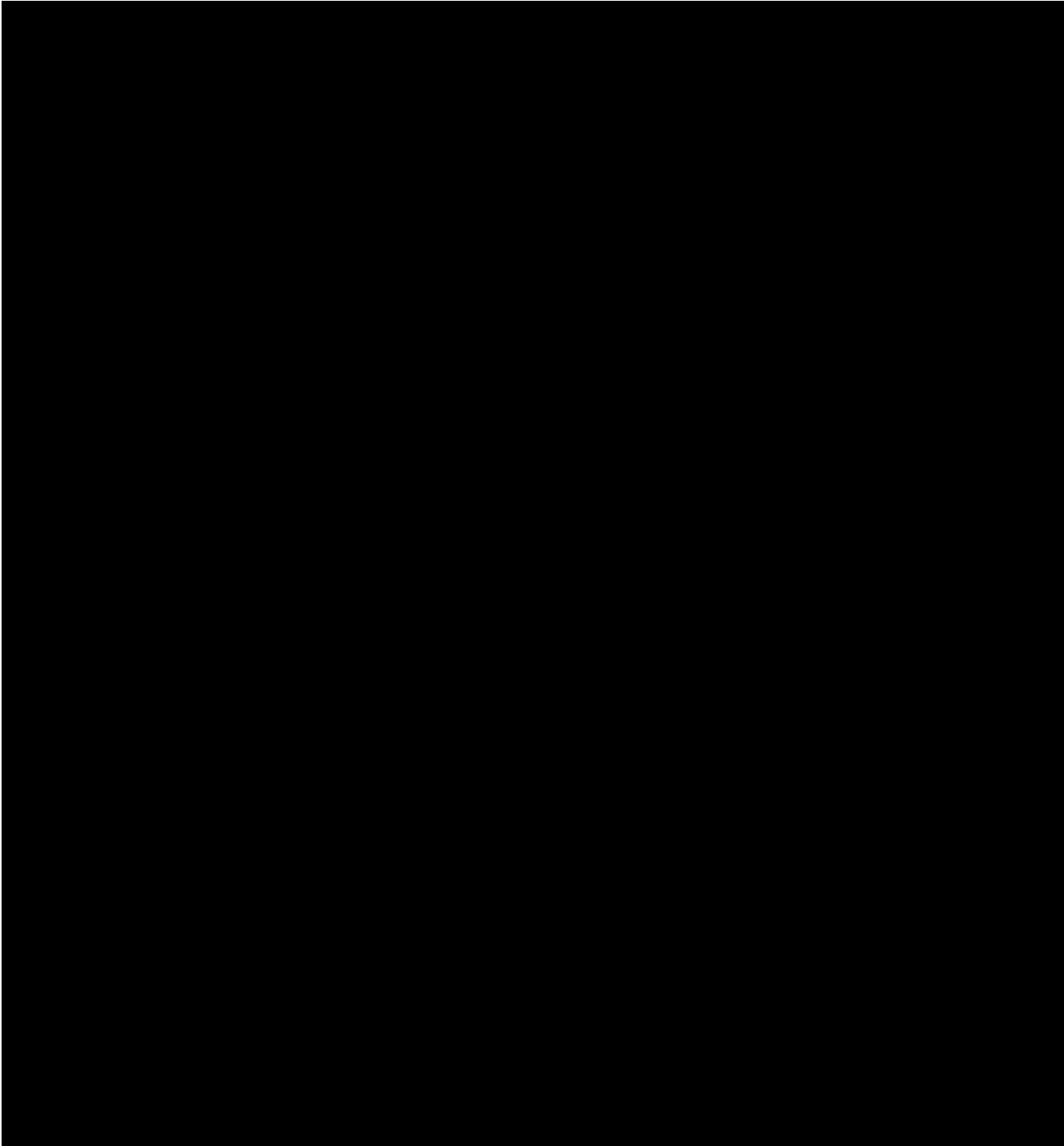
Name:
Title:

SNOWCAT CAPITAL MANAGEMENT, LP

Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



Name:
Title:

DIP LENDERS :

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of



Name:

Title:

MSD PARTNERS, LP

on behalf of

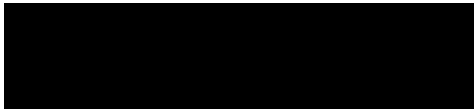


Name: Marcello Liguori

Title: Authorized Signatory

O'BRIEN-STALEY PARTNERS

on behalf of



Name:

Title:

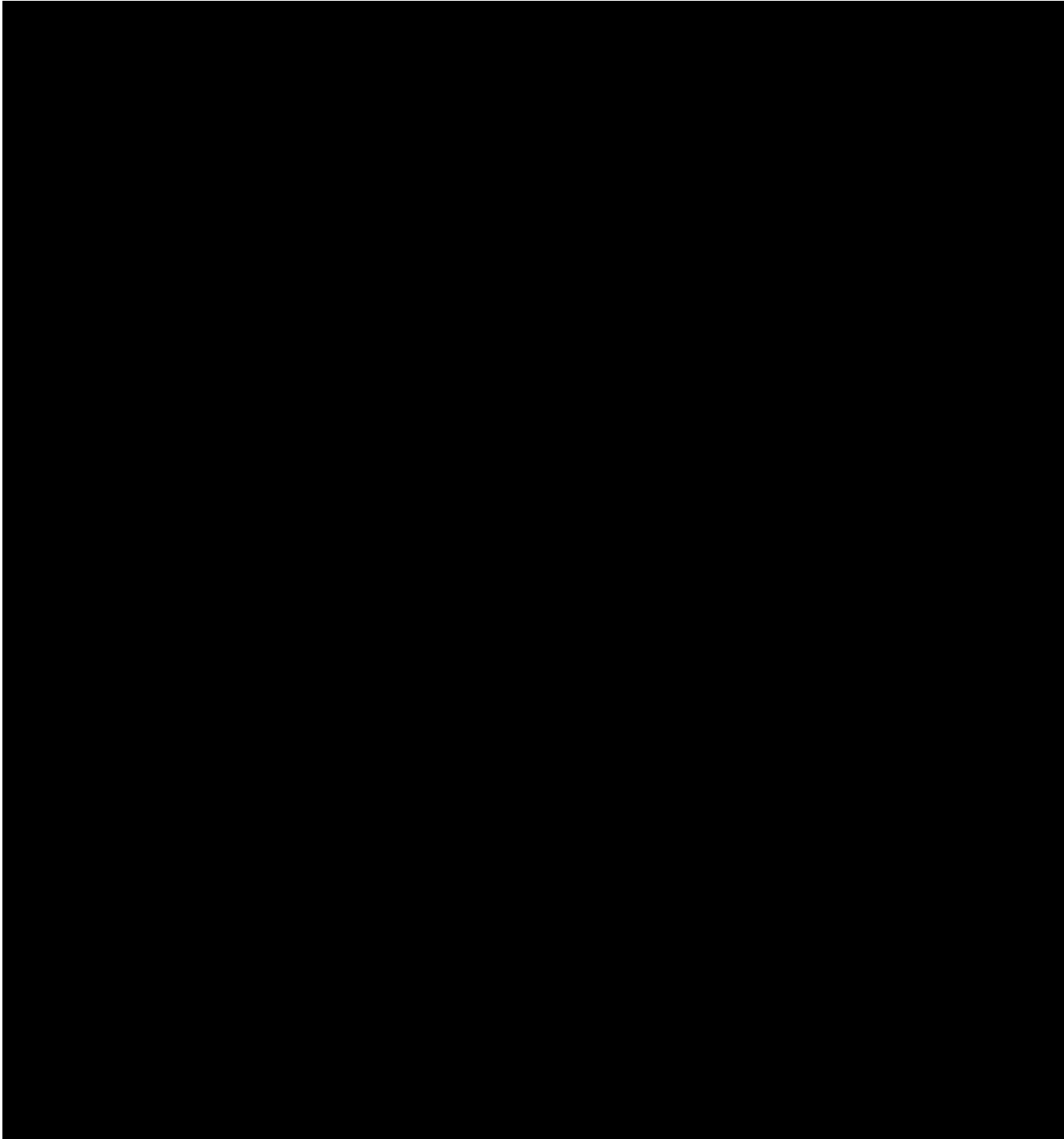
SNOWCAT CAPITAL MANAGEMENT, LP

Name:

Title:

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



Name:
Title:

DIP LENDERS :

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of

[REDACTED]

Name:

Title:

MSD PARTNERS, LP

on behalf of

[REDACTED]

Name:

Title:

O'BRIEN-STALEY PARTNERS

on behalf of

[REDACTED]


Adam Bernier (Oct 25, 2023 17:46 CDT)

Name: Adam Bernier

Title: Chief Financial Officer

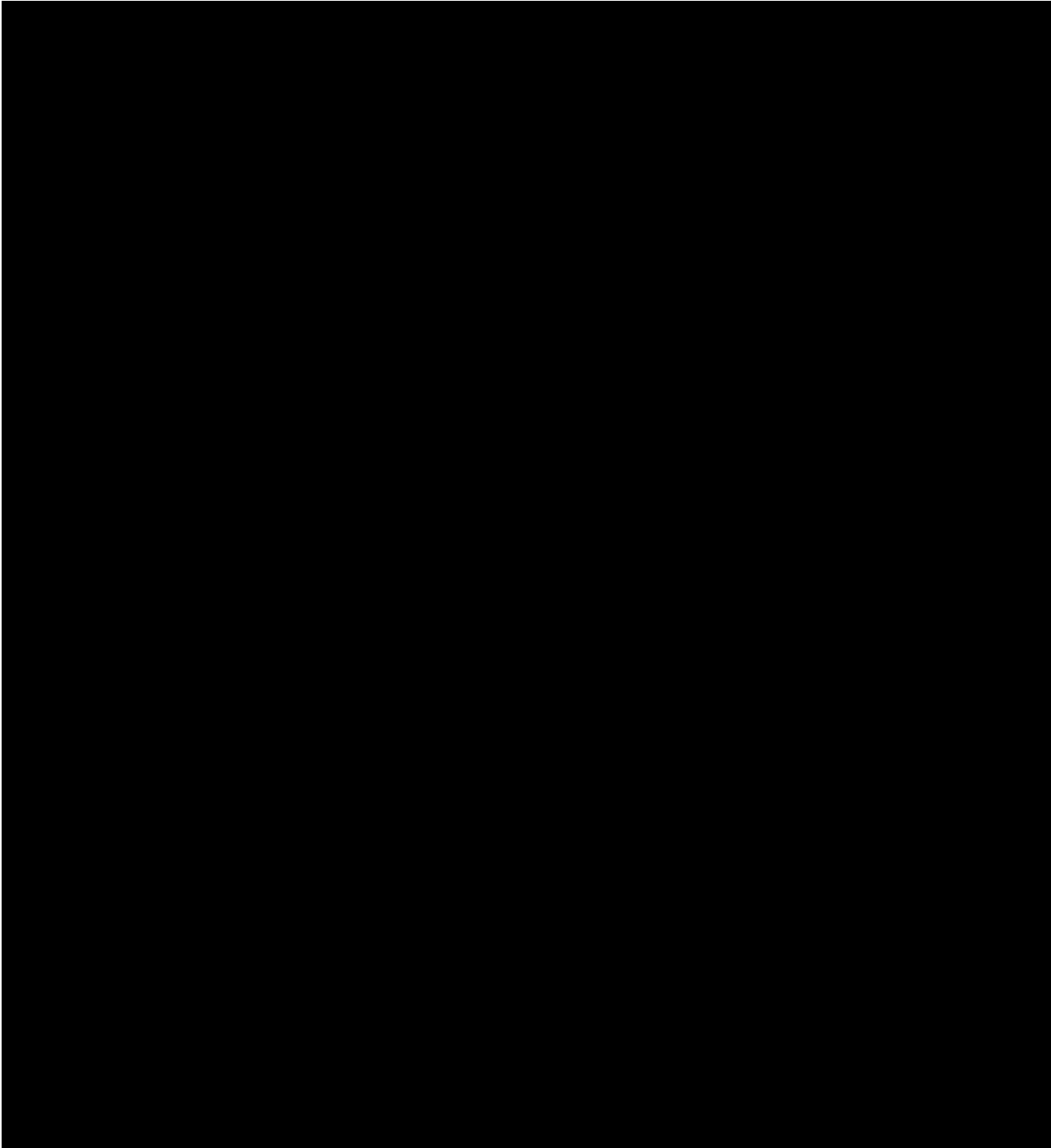
SNOWCAT CAPITAL MANAGEMENT, LP

Name:

Title:

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



Name:
Title:

DIP LENDERS :

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of



Name:

Title:

MSD PARTNERS, LP

on behalf of



Name:

Title:

O'BRIEN-STALEY PARTNERS

on behalf of



Name:

Title:

SNOWCAT CAPITAL MANAGEMENT, LP

DocuSigned by:

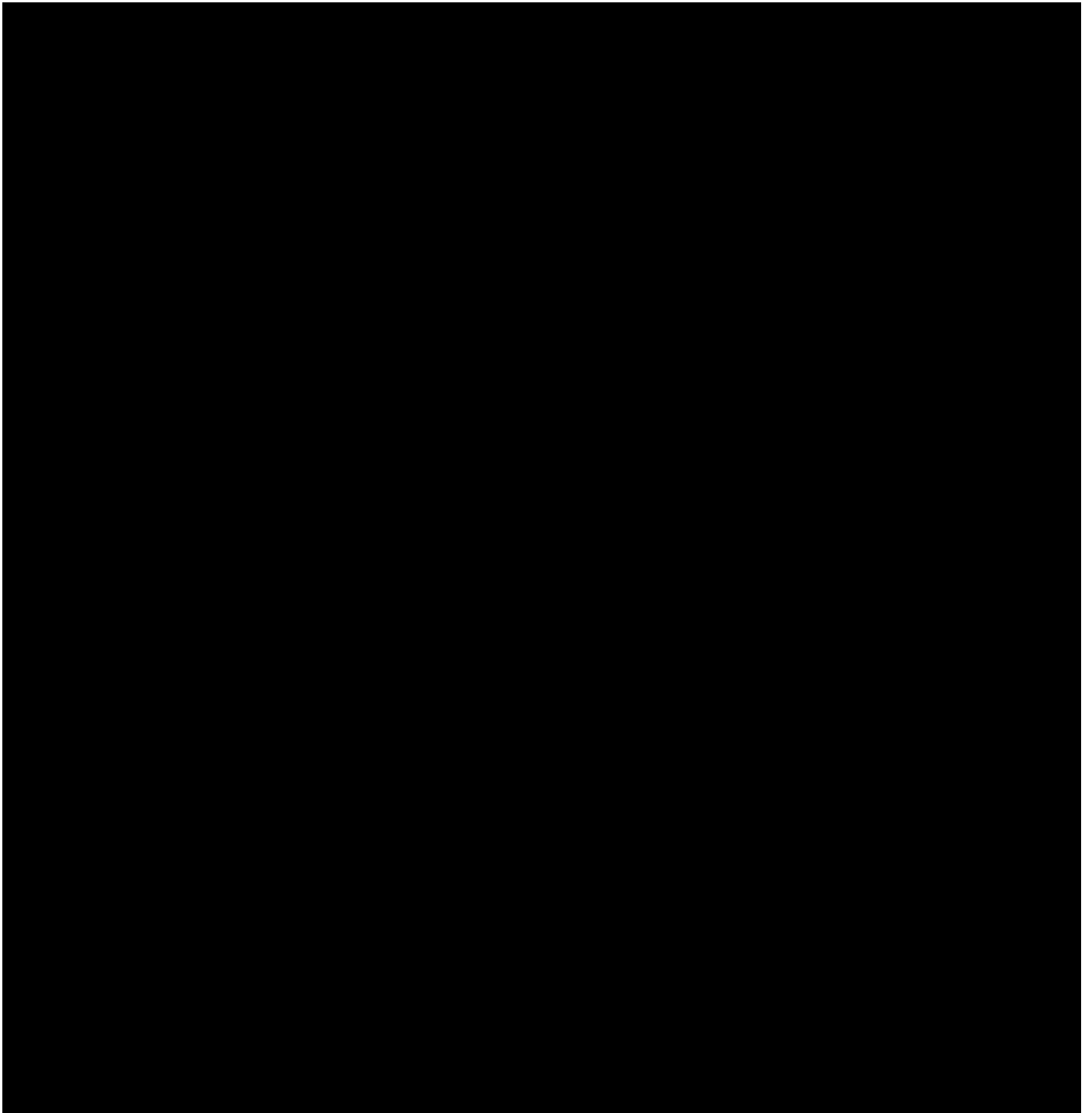
Kunal Hanagandi

Name: Kunal Hanagandi

Title: Analyst/Partner

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



Name:
Title:

DIP LENDERS :

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of

[REDACTED]

Name:

Title:

MSD PARTNERS, LP

on behalf of

[REDACTED]

Name:

Title:

O'BRIEN-STALEY PARTNERS

on behalf of

[REDACTED]

Name:

Title:

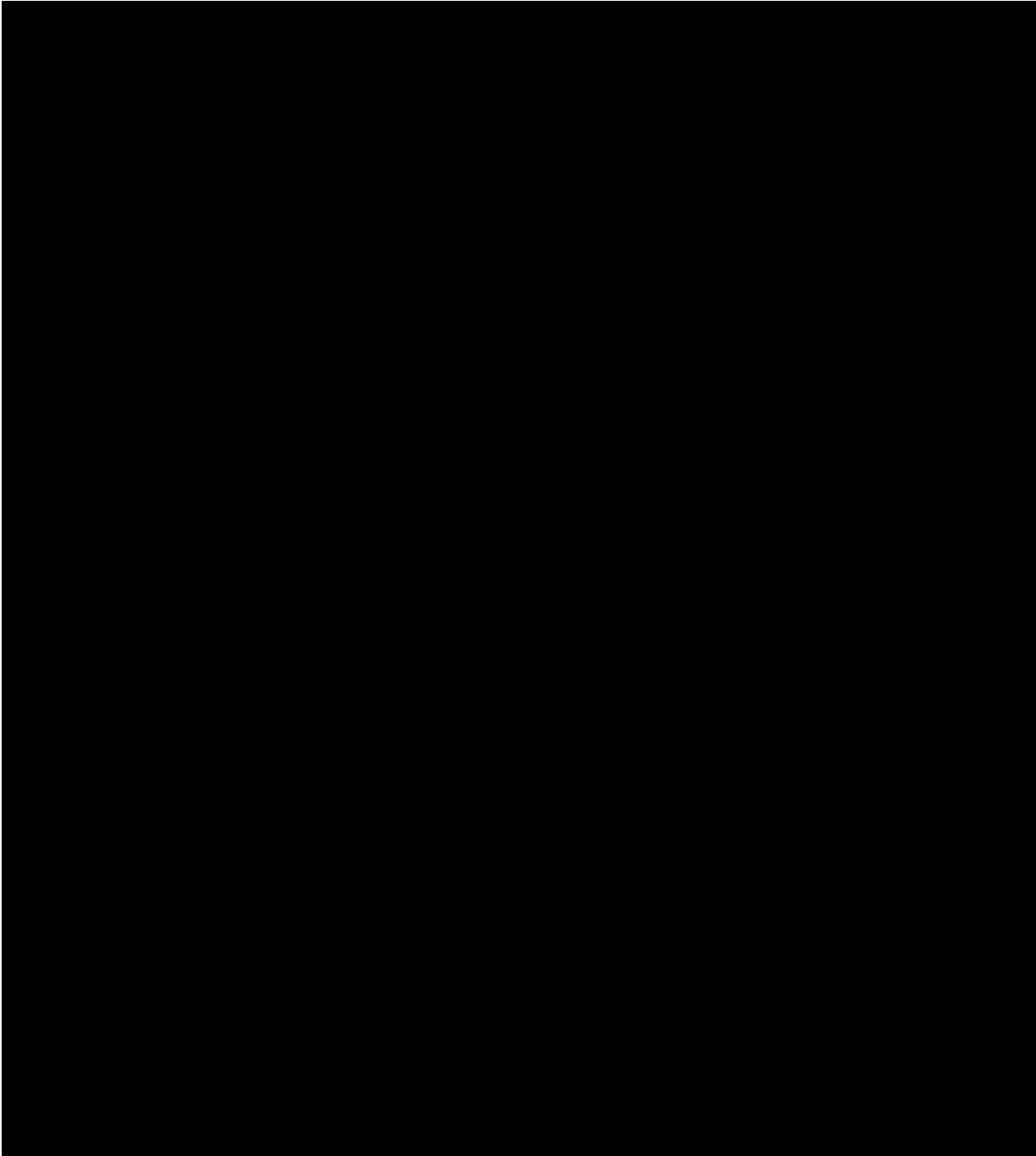
SNOWCAT CAPITAL MANAGEMENT, LP

Name:

Title:

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



A handwritten signature in cursive script, appearing to read 'Patrick Criscillo', positioned above a horizontal line.

Name: Patrick Criscillo
Title: Chief Financial Officer

SCHEDULE "A"

CASH FLOW PROJECTION

See attached.

Updated cash flow from weeks of October 29, 2023 – March 10, 2024 to be provided incorporating revisions set out in DIP Agreement

Tacora Resources Inc.

Consolidated Cash Flow Projections

(\$USD in thousands)																						
Forecast Week Ending	15-Oct-23	22-Oct-23	29-Oct-23	05-Nov-23	12-Nov-23	19-Nov-23	26-Nov-23	03-Dec-23	10-Dec-23	17-Dec-23	24-Dec-23	31-Dec-23	07-Jan-24	14-Jan-24	21-Jan-24	28-Jan-24	04-Feb-24	11-Feb-24	18-Feb-24	25-Feb-24	20 Week	
Forecast Week	[1]	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Total
Total Receipts	[2]	(807)	9,861	7,170	5,847	6,791	8,750	6,729	6,803	6,564	6,820	6,086	8,113	7,297	6,665	7,033	6,797	7,349	6,771	7,444	7,899	135,981
Operating Disbursements	[3]																					
Employees		(2,077)	(300)	(1,987)	(205)	(1,877)	(205)	(1,977)	(1,167)	(1,939)	(205)	(2,139)	(285)	(2,443)	(205)	(2,147)	(205)	(2,154)	(206)	(2,000)	(206)	(23,930)
Mine, Mill and Site Costs		(1,993)	(1,305)	(1,770)	(1,280)	(1,936)	(1,673)	(1,305)	(1,772)	(1,750)	(1,318)	(4,780)	(1,089)	(1,976)	(927)	(2,113)	(5,963)	(2,151)	(1,353)	(1,854)	(1,299)	(39,605)
Plant Repairs and Maintenance		(1,693)	(1,937)	(2,637)	(2,403)	(2,371)	(2,321)	(2,471)	(2,410)	(2,439)	(2,239)	(2,189)	(2,089)	(2,086)	(2,086)	(2,086)	(2,087)	(2,087)	(2,165)	(2,165)	(2,165)	(44,122)
Logistics		(5,097)	(1,066)	(1,199)	(4,675)	(1,243)	(1,616)	(1,066)	(1,889)	(4,114)	(1,066)	(1,733)	(1,199)	(4,562)	(1,067)	(1,067)	(1,200)	(4,827)	(1,068)	(1,245)	(1,068)	(42,065)
Capital Expenditures		(1,152)	(3,828)	(1,615)	(2,290)	(7,911)	(2,090)	(2,090)	(1,590)	(2,905)	(2,205)	(1,105)	(1,105)	(1,451)	(750)	(750)	(750)	(1,451)	(750)	(750)	(750)	(37,288)
Other		(566)	(619)	(1,079)	(400)	(400)	(400)	(400)	(608)	(400)	(400)	(633)	(400)	(400)	(987)	(987)	(513)	(400)	(400)	(400)	(455)	(10,263)
Total Operating Disbursements		(12,578)	(9,055)	(10,287)	(11,253)	(15,738)	(8,305)	(9,309)	(9,436)	(13,547)	(7,433)	(12,346)	(6,400)	(12,918)	(5,435)	(8,562)	(11,191)	(13,184)	(5,941)	(8,414)	(5,942)	(197,273)
Net Cash from Operations		(13,386)	806	(3,117)	(5,406)	(8,948)	445	(2,579)	(2,634)	(6,982)	(613)	(6,260)	1,713	(5,620)	1,230	(1,529)	(4,394)	(5,835)	830	(970)	1,957	(61,292)
Restructuring Legal and Professional Costs	[4]	(497)	(1,696)	(405)	(400)	(269)	(269)	(223)	(490)	(223)	(223)	(223)	(490)	(223)	(223)	(223)	(223)	(491)	(223)	(223)	(223)	(7,458)
KERP	[5]	-	(3,035)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(3,035)
NET CASH FLOWS		(13,882)	(3,925)	(3,521)	(5,806)	(9,216)	176	(2,802)	(3,124)	(7,205)	(835)	(6,483)	1,490	(6,111)	1,008	(1,752)	(4,617)	(6,326)	607	(1,193)	1,734	(71,784)
Cash																						
Beginning Cash Balance		12,272	13,890	9,965	15,806	10,000	10,000	10,176	13,428	10,000	10,835	10,000	10,000	11,123	10,000	11,008	15,077	10,000	10,000	10,607	9,964	12,272
Net Receipts/ (Disbursements)		(13,882)	(3,925)	(3,521)	(5,806)	(9,216)	176	(2,802)	(3,124)	(7,205)	(835)	(6,483)	1,490	(6,111)	1,008	(1,752)	(4,617)	(6,326)	607	(1,193)	1,734	(71,784)
DIP Advances/ (Repayments)	[6]	15,500	-	9,422	-	9,216	-	6,054	-	8,041	-	6,483	-	4,988	-	5,821	-	6,326	-	550	-	72,400
DIP Fees & Interest Payment	[7]	-	-	(59)	-	-	-	-	(304)	-	-	-	(367)	-	-	-	(460)	-	-	-	(540)	(1,730)
Ending Cash Balance		13,890	9,965	15,806	10,000	10,000	10,176	13,428	10,000	10,835	10,000	10,000	11,123	10,000	11,008	15,077	10,000	10,000	10,607	9,964	11,158	11,158
Memo: Total DIP Advances		15,500	-	9,422	-	9,216	-	6,054	-	8,041	-	6,483	-	4,988	-	5,821	-	6,326	-	550	-	72,400

Notes to the Consolidated Cash Flow Projections:

[1] The purpose of the Cashflow Projections is to estimate the liquidity requirements of Tacora Resources Inc. ("Tacora", or the "Company") during the forecast period. The forecast above is presented in US Dollars.

Any estimates in Canadian dollars have been translated at an fx rate of 1.35.

[2] Forecast Total Receipts are based on management's current expectations regarding productions and vessel shipments of iron ore concentrate (total tonnage) and price indices net of mark to market adjustments.

Receipts from operations have been forecast based on current payment terms, historical trends in collections and expected vessel shipment schedules.

[3] Operating disbursements include the following key categories:

Forecast Employee Costs are based on historic payroll amounts and future forecast payments.

Forecast Mine, Mill and Site Costs primarily include site costs based on forecast activity levels and known commitments including, utilities, fuel, and supplies and consumables.

Forecast Plant Repairs and Maintenance costs relate to Scully Mine. Plant repairs and maintenance also includes contract labour at the Scully Mine.

Forecast Logistics costs primarily include rail transportation costs as well as port-related payments.

Forecast Capital Expenditures include costs related to mine, milling, and other logistics / infrastructure improvements.

Forecast Other costs include environmental costs, security and other costs at the Scully Mine and corporate.

[4] Forecast Restructuring Legal and Professional Costs include legal and financial advisors associated with the CCAA proceedings and are based on estimates.

[5] Forecast Key Employee Retention Plan (KERP) consistent with the Initial Affidavit.

[6] Forecast DIP Advances/Repayments are consistent with the DIP term sheet. Forecast DIP Advances/Repayments are based on funding requirements and maintaining a minimum cash balance throughout the period.

[7] DIP Fees and Interest are calculated based on total draws.

SCHEDULE "B"

FORM OF DRAWDOWN CERTIFICATE

TO: GLC Advisors Co., on behalf of the DIP lenders under the DIP Agreement dated October 26, 2023 (the "**DIP Lenders**")

AND TO: FTI Consulting Canada Inc. (the "**Monitor**")

FROM: Tacora Resources Inc. (the "**Borrower**")

DATE: [●]

1. This certificate is delivered to you in connection with a request for a DIP Advance pursuant to the DIP Agreement made as of October 26, 2023, between the Borrower and the DIP Lenders, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.

2. The Borrower hereby requests a DIP Advance as follows:

(a) Date of DIP Advance: _____

(b) Aggregate amount of requested DIP Advance: \$[●]

to be transferred into the Borrower's Account by the DIP Lenders or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.

3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).

4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lenders, have been complied with.

5. The Borrower is in compliance with all Court Orders.

6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection (subject to the Permitted Variance), or as has been otherwise agreed to by the DIP Lenders in advance in writing.

7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

TACORA RESOURCES INC.

By: _____
Name:
Title:

cc: Stikeman Elliott LLP
Greenhill & Co Canada Ltd.

SCHEDULE "C"
INITIAL ORDER

See attached.



Court File No. CV-23-00707394-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM

)

TUESDAY, THE 10TH

JUSTICE KIMMEL

)

DAY OF OCTOBER, 2023

)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TACORA RESOURCES INC.**

(Applicant)

INITIAL ORDER

THIS APPLICATION, made by Tacora Resources Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**") was heard this day by judicial videoconference via Zoom.

ON READING the Notice of Application, the affidavit of Joe Broking sworn October 9, 2023, and the Exhibits thereto (the "**Broking Affidavit**"), the affidavit of Chetan Bhandari sworn October 9, 2023 (the "**Bhandari Affidavit**"), the consent of FTI Consulting Canada Inc. ("**FTI**") to act as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), the Pre-Filing Report of FTI, as the proposed Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for FTI and such other counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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.

4. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Broking Affidavit or replace it with another substantially similar cash management system (the "**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 propriety, 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 hereinafter defined) 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 any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay the following expenses whether 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 fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, 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), and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments and/or advances to Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for Tacora's head office located in Grand Rapids, Minnesota.

7. **THIS COURT ORDERS** that 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 which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (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 which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) 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 this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including October 20, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (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 the written consent of the Applicant and the Monitor, or 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

11. **THIS COURT ORDERS** that 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**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicant to carry on any business which the Applicant is 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, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

12. **THIS COURT ORDERS** that during the Stay Period, no Person shall 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.

NO PRE-FILING VS POST-FILING SET-OFF

13. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any person may want to make in seeking leave of the Court or following the granting of such leave.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, 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 or terminating the supply of such goods or services as may be required by the Applicant, and that 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 normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal 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

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease 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. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, 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 hereof 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 AND CHARGE

17. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that 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 US\$4,600,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

19. **THIS COURT ORDERS** that, 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 17 of this Order.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of 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.

21. **THIS COURT ORDERS** that 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;
- (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;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and their counsel, pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed between the Applicant and the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender under the DIP Agreement, which information shall be reviewed with the Monitor and delivered to the DIP Lender and their counsel in accordance with the DIP Agreement;
- (e) 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 Applicant's business and financial affairs or to perform its duties arising under this Order;

- (f) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;
- (g) 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; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, 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 of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Newfoundland Environmental Protection Act*, the *Newfoundland Water Resources Act*, the *Newfoundland Occupational Health and Safety Act*, and the regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP 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.

25. **THIS COURT ORDERS** that, 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.

ADMINISTRATION CHARGE

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, 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 bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and Greenhill & Co. Canada Ltd. ("**Greenhill**") for its Monthly Advisory Fee (as defined in the Engagement Letter dated as of January 23, 2023 between the Applicant and Greenhill) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of US\$1,000,000, as security for their professional fees and disbursements incurred at the standard 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 36 and 38 hereof.

DIP FINANCING

29. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow a super-priority, debtor-in-possession, non-revolving credit facility (the “**DIP Facility**”) under a DIP Loan Agreement dated October 9, 2023 (the “**DIP Agreement**”) from Cargill, Incorporated (in such capacity, the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the DIP Agreement shall not exceed the principal amount of US\$15,500,000 and Post-Filing Credit Extensions (as defined in the DIP Agreement) shall not exceed the principal amount of US\$20,000,000, unless permitted by further Order of this Court.

30. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached as Exhibit “K” to the Broking Affidavit.

31. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such security documents and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP 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 DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. **THIS COURT ORDERS** that the DIP Lender and Cargill International Trading Pte Ltd. (“**CITPL**”) shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Charge**”) on the Property, which DIP Charge shall not secure an obligation that exists before this Order is made, and in the case of CITPL, shall only secure Post-Filing Credit Extensions. The DIP Charge shall have the priority set out in paragraphs 36 and 38 hereof.

33. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents, the DIP Lender may cease making advances to the Applicant and, upon four (4) business days’ notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the

DIP Agreement, Definitive Documents and the DIP Charge, including without limitation, set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP 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 DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

34. **THIS COURT ORDERS AND DECLARES** that the DIP 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 *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”), with respect to any advances made under the Definitive Documents.

35. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Charge (the “**Charges**”), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of US\$1,000,000);

Second – the Directors’ Charge (to the maximum amount of US\$4,600,000); and

Third – the DIP Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that 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.

38. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except for any Person with a property perfected Encumbrance on the Property who did not receive notice of the Application. The Applicant shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.

39. **THIS COURT ORDERS** that, 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 Charges, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Administration Charge, the Directors' Charge and the DIP Charge, or further Order of this Court.

40. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the DIP Charge, the DIP Agreement and the Definitive Documents 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 DIP 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 herein; (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**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) 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 Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement 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.

41. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

42. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (iii) 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.

43. **THIS COURT ORDERS** that the Commercial List E-Service Guide (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/tacora>.

44. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

45. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

GENERAL

46. **THIS COURT ORDERS** that 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.

47. **THIS COURT ORDERS** that 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.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, 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.

49. **THIS COURT ORDERS** that 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 proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
50. **THIS COURT ORDERS** that a hearing for the balance of the relief sought by the Applicant in the Notice of Application is hereby scheduled before this Court for October 19, 2023 at 12:00 p.m. or such other date as determined by this Court.
51. **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the DIP Lender) may apply to this Court to vary or amend this Order 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.
52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.
53. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

 Digitally signed
by Jessica Kimmel
Date: 2023.10.10
16:40:14 -04'00'

Court File No. CV-23-00707394-00

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TACORA RESOURCES INC.**

(Applicant)

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

INITIAL ORDER

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Counsel to Tacora Resources Inc.

SCHEDULE "D"

ARIO

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) [•], THE [•]
JUSTICE KIMMEL)
DAY OF [•], 2023

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TACORA RESOURCES INC.**

(Applicant)

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the ad hoc group of holders (the "**Ad Hoc Group**") of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "**SPNs**") and 8.250% Senior Secured Notes (the "**SSNs**") due 2026 of Tacora Resources Inc. ("**Tacora**" or the "**Applicant**") for an order amending and restating the initial order issued by the Court on October 10, 2023 (the "**Filing Date**"), among other things, approving the Ad Hoc Group DIP Agreement (as defined below) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day in person at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Ad Hoc Group dated October 16, 2023, the Application Record of Tacora dated October 10, 2023, the affidavits of Joe Broking sworn October 9, 2023 (the "**Broking Affidavit**") and October 15, 2023 (the "**Second Broking Affidavit**"), the affidavits of Chetan Bhandari sworn October 9, 2023 and October 15, 2023, the consent of FTI Consulting Canada Inc. ("**FTI**") to act as Court-appointed monitor of Tacora (in such capacity, the "**Monitor**"), the Pre-Filing Report and First Report of FTI, and the other materials filed in connection with this motion, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Ad Hoc Group, counsel for Tacora, counsel for Cargill, Incorporated, counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Thomas Gray dated October 16, 2023,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Ad Hoc Group is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that 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 (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Broking Affidavit or replace it with another substantially similar cash management system (the "**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 propriety, 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 hereinafter defined) 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 any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay the following expenses whether 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 fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, 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), and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments on behalf of Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for the Applicant's head office located in Grand Rapids, Minnesota.

8. **THIS COURT ORDERS** that 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 which are required to be deducted from employees' wages, including, without limitation, amounts in respect of employment insurance, Canada Pension Plan, and income taxes;
- (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 which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: 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 this date; to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding US\$1,000,000 in any one transaction or US\$5,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) 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. **THIS COURT ORDERS** that 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 and, 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 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 of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then during the notice period prior to the effective time of the disclaimer, 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 at the effective time of the

disclaimer, 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, 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. **THIS COURT ORDERS** that until and including February 9, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (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 the written consent of the Applicant and the Monitor, or 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. **THIS COURT ORDERS** that 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**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicant to carry on any business which the Applicant is 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, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall 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. For greater certainty, during the Stay Period, Cargill International Trading Pte Ltd. (“**Cargill**”) shall not terminate or cease to perform pursuant to the Offtake Agreement (as defined in the Broking Affidavit) while such agreement remains in effect, except with the written consent of the Applicant and the Monitor, or leave of this Court.

NO PRE-FILING VS POST-FILING SET-OFF

17. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, 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 or terminating the supply of such goods or services as may be required by the Applicant, and that 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 normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal 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. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease 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. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, 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 hereof 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 AND CHARGE

21. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that 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 US\$5,200,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 49 and 52 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and 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.

ENGAGEMENT OF GREENHILL

24. **THIS COURT ORDERS** that the engagement of Greenhill & Co. Canada Ltd. ("**Greenhill**") by the Applicant as investment banker pursuant to the engagement letter dated as of January 23,

2023 (the “**Greenhill Engagement Letter**”) and payment by the Applicant of the Monthly Advisory Fee (as defined in the Greenhill Engagement Letter) and the Transaction Fee (as defined in the Broking Affidavit) are hereby approved, subject to the priority provided for herein.

25. **THIS COURT ORDERS** that Greenhill shall be entitled to the benefit of and are hereby granted a charge (the “**Transaction Fee Charge**”) on the Property as security for the Transaction Fee, which charge shall not exceed an aggregate amount of US\$5,600,000. The Transaction Fee Charge shall have the priority set out in paragraphs 49 and 52 herein.

26. **THIS COURT ORDERS** that Greenhill shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Greenhill Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

ENGAGEMENT OF GLC

27. **THIS COURT ORDERS** that the engagement of GLC Advisors & Co., and GLC Securities, LLC (together, “**GLC**”) as an investment banker to the DIP Lenders pursuant to the engagement letter dated as of April 25, 2023 and as amended as of September 7, 2023 (the “**GLC Engagement Letter**”) and payment by the Applicant of the Monthly Advisory Fees, Transaction Fee, Discretionary Fee and Expenses (each as defined in the GLC Engagement Letter) are hereby approved and shall be secured by the DIP Charge (as defined below) with the priority provided for herein.

APPOINTMENT OF MONITOR

28. **THIS COURT ORDERS** that FTI. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of 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.

29. **THIS COURT ORDERS** that 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;

- (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;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel, pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed between the Applicant and the DIP Lenders;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lenders under the DIP Agreement, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel in accordance with the DIP Agreement;
- (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 Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;
- (i) 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; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

30. **THIS COURT ORDERS** that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

31. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, 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 of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Newfoundland Environmental Protection Act*, the *Newfoundland Water Resources Act*, the *Newfoundland Occupational Health and Safety Act*, and the regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 Environmental Legislation, unless it is actually in possession.

32. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lenders 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.

33. **THIS COURT ORDERS** that, 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.

ADMINISTRATION CHARGE

34. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, 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 bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and Greenhill for its Monthly Advisory Fee (as defined by the Greenhill Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of US\$1,000,000, as security for their professional fees and disbursements incurred at the standard 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 49 and 52 hereof.

DIP FINANCING

37. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow a super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") under a DIP Loan Agreement dated October 26, 2023 (the "**DIP Agreement**") from (i) Brigade Capital Management, LP; (ii) Millstreet Capital Management LLC; (iii) MSD Partners, LP; (iv) O'Brien-Staley Partners; and (v) Snowcat Capital Management, LP (collectively, in such capacity, the "**DIP Lenders**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the DIP Agreement shall not exceed the principal amount of US\$124,000,000 unless permitted by further Order of this Court.

38. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement provided to the Monitor on October 26, 2023.

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such security documents and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lenders 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 DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”) on the Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 49 and 52 hereof.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents, the DIP Lenders may, upon five (5) business days notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the DIP Agreement, the Definitive Documents or the DIP 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 DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

42. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders 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 *Bankruptcy and Insolvency Act of Canada* (the “**BIA**”), with respect to any advances made under the Definitive Documents.

43. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

44. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the DIP Agreement, is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

45. **THIS COURT ORDERS** that payments made by the Applicant pursuant to the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that the Applicant is authorized to pay up to US\$5,035,000 to the Monitor to hold in a segregated account (the “**KERP Funds**”) and the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the KERP Funds (the “**KERP Charge**”), which charge shall not exceed an aggregate amount of US\$5,035,000 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 49 and 52 hereof. The Monitor shall not be responsible for making the payments to the Key Employees under the KERP; paying any tax withholdings or remittances payable to any tax authorities or otherwise in respect of the KERP; or reporting or making disclosure with respect to the KERP to any taxing authorities or otherwise.

MARGIN ADVANCES AND CARGILL MARGIN CHARGE

47. **THIS COURT ORDERS** that Cargill shall continue to make the deemed Margin Advances (as defined in the Advance Payments Facility Agreement) under section 2.2 of the Advance Payments Facility Agreement to fund any Margin Amounts (as defined in the Advance Payments Facility Agreement) required to be funded from and after the date hereof.

48. **THIS COURT ORDERS** that Cargill shall be entitled to the benefit of and is hereby granted a charge (the “**Cargill Margin Charge**”) in the amount of all such Margin Advances advanced by Cargill on or after the date hereof that are at any time outstanding.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

49. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, the Transaction Fee Charge and the DIP Charge (collectively, with the KERP Charge, the “**Charges**”), as among them, as against the Property other than the KERP Funds, shall be as follows:

First – the Administration Charge (to the maximum amount of US\$1,000,000);

Second – the Directors’ Charge (to the maximum amount of US\$5,200,000);

Third – (a) the Transaction Fee Charge (to the maximum amount of the GLC Fees (as defined in the DIP Agreement)); (b) the DIP Charge; and (c) the Cargill Margin Charge, on a *pari passu* basis; and

Fourth – the Transaction Fee Charge (to the maximum amount of US\$5,600,000 less the GLC Fees) on a *pari passu* basis with the Senior Priority Notes and Senior Priority Advances (each as defined in the First Broking Affidavit).

50. **THIS COURT ORDERS** that the KERP Charge (to the maximum amount of US\$5,035,000 million) shall rank first solely as against the KERP Funds and the other Charges shall rank subordinate to the KERP Charge as against the KERP Funds in the priorities set out in paragraph 49.

51. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that 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.

52. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for the portion of the Transaction Fee Charge which ranks *pari passu* basis with the Senior Priority Notes and Senior Priority Advances.

53. **THIS COURT ORDERS** that, 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 Charges, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Administration Charge, the Directors' Charge, DIP Charge and the KERP Charge, or further Order of this Court.

54. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge, the DIP Charge, the DIP Agreement and the Definitive Documents 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 DIP Lenders thereunder shall not otherwise be limited or impaired in any way by the pendency of these proceedings and the declarations of insolvency made herein; any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; the filing of any assignments for the general benefit of creditors made pursuant to the BIA; the provisions of any federal or provincial statutes; or 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**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) 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 Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement 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.

55. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

56. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (iii) 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.

57. **THIS COURT ORDERS** that the Commercial List E-Service Guide (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/tacora>.

58. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

59. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in

these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

GENERAL

60. **THIS COURT ORDERS** that 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.

61. **THIS COURT ORDERS** that 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.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, 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.

63. **THIS COURT ORDERS** that 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 proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the DIP Lenders) 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.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the Filing Date.

66. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT
TORONTO

Order

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*Lawyers for the Ad Hoc Group of
Noteholders*

SCHEDULE "E"
SOLICITATION PROCESS

See attached.

Procedures for the Sale, Investment and Services Solicitation Process

Tacora Resources Inc. (“**Tacora**”) is a private company that is focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making. Tacora currently sells 100% of the iron ore concentrate production of the Scully Mine, an iron ore concentrate mine located near Wabush, Newfoundland and Labrador, Canada (the “**Scully Mine**”), pursuant to the Offtake Agreement with Cargill.

On October 10, 2023, Tacora commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) in the City of Toronto (the “**Court**”) pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the “**Initial Order**”).

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”). Greenhill & Co. Canada Ltd. (the “**Financial Advisor**”) is acting as Tacora’s financial advisor and investment banker.

On October [●], 2023, the Court granted an order (the “**Solicitation Order**”), authorizing Tacora to undertake a sale, investment and services solicitation process (the “**Solicitation Process**”) to solicit offers or proposals for a sale, restructuring or recapitalization transaction in respect of Tacora’s assets (the “**Property**”) and business operations (the “**Business**”). The Solicitation Process will be conducted by the Financial Advisor with the Monitor in the manner set forth in these procedures (the “**Solicitation Procedures**”).

Defined Terms

1. Capitalized terms used in these Solicitation Procedures and not otherwise defined herein have the meanings given to them in Appendix “A”.

Solicitation Procedures

Opportunity

2. The Solicitation Process is intended to solicit interest in, and opportunities for: (a) a sale of all, substantially all, or certain portions of the Property or the Business; or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of Tacora or its Business as a going concern, or a combination thereof (the “**Transaction Opportunity**”).
3. The Solicitation Process will also provide the ability for interested parties to investigate and conduct due diligence regarding an opportunity to arrange an offtake, service or other agreement in respect of the Business (the “**Offtake Opportunity**” and together with the Transaction Opportunity, the “**Opportunity**”).

General

4. The Solicitation Procedures describe the manner in which prospective bidders may

gain access to due diligence materials concerning Tacora, the Business and the Property, the manner in which interested parties may participate in the Solicitation Process, the requirements of and the receipt and negotiation of Bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.

5. Tacora, in consultation with the Monitor and the Financial Advisor, may at any time and from time to time, modify, amend, vary or supplement the Solicitation Procedures, without the need for obtaining an order of the Court or providing notice to Phase 1 Bidders, Phase 2 Bidders, the Successful Bidder and the Back-Up Bidder, provided that the Financial Advisor and the Monitor determine that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such bidders and that are necessary or useful in order to give effect to the substance of the Solicitation, the Solicitation Procedures and the Solicitation Order.
6. Except as set forth in these Solicitation Procedures, nothing in this Solicitation Process shall prohibit a secured creditor of Tacora (a) from participating as a bidder in the Solicitation Process, or (b) committing to Bid its secured debt, including a credit bid of some or all of its outstanding indebtedness under any loan facility (inclusive of interest and other amounts payable under any loan agreement to and including the date of closing of a definitive transaction) owing to such party in the Solicitation Process.
7. Tacora, in consultation with the Financial Advisor and the Monitor, shall have complete discretion with respect to the provision of any information to any party or any consultation rights in connection with the Solicitation Process, provided that, no information regarding any Bids received shall be provided to any stakeholder of Tacora or their respective advisors.
8. Notwithstanding anything to the contrary in these Solicitation Procedures, Tacora and the Financial Advisor, in consultation with the Monitor, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Phase 1 Bid Deadline to provide certainty for Tacora and the Property/Business during the Solicitation Process. If Tacora, with the approval of the Monitor, determines that it is appropriate to utilize a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and Tacora shall bring a motion before the Court on notice to the service list in these CCAA Proceedings seeking approval to use the Stalking Horse Bid as a "stalking horse" in the Solicitation Process, together with approval of any necessary consequential amendments to these Solicitation Procedures. All interested parties that have executed an NDA in connection with this Solicitation Process shall be promptly informed of any such motion, Court approval for the use of the Stalking Horse Bid and any related amendments to these Solicitation Procedures. The terms of any Stalking Horse Bid must, at a minimum, meet all requirements under these Solicitation Procedures, including, for greater certainty, the criteria applicable to a Phase 2 Qualified Bid (which must provide for payment in cash of all obligations (unless the DIP Lender agrees otherwise) owing under the DIP Agreement in full).

Timeline

9. The following table sets out the key milestones under this Solicitation Process, which may be extended from time to time by Tacora, in consultation with the Financial Advisor

and with the consent of the Monitor, in accordance with the Solicitation Process:

Event	Timing
<u>Phase 1</u>	
1. Notice Monitor to publish a notice of the Solicitation Process on the Monitor's Website Financial Advisor / Tacora to publish notice of the Solicitation Process in industry trade publications, as determined appropriate Financial Advisor to distribute Teaser Letter and NDA (if requested) to potentially interested parties	No later than five (5) days following issuance of the Solicitation Order.
2. Phase 1 - Access to VDR Phase 1 Bidders provided access to the VDR, subject to execution of appropriate NDAs	October [●], 2023 to December 1, 2023
3. Phase 1 Bid Deadline Deadline for Phase 1 Bidders to submit non-binding LOIs in accordance with the requirements of section 23	By no later than December 1, 2023 at 12:00 p.m. (Eastern Time)
4. Notification of Phase 1 Qualified Bid Deadline to notify a Phase 1 Bidder whether it has been designated as a Phase 2 Bidder invited to participate in Phase 2	By no later than December 6, 2023, at 12:00 p.m. (Eastern Time)
<u>Phase 2</u>	
5. Phase 2 Bid Deadline Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirements of section 34)	By no later than January 19, 2024, at 12:00 p.m. (Eastern Time)
6. Definitive Documentation Deadline for completion of definitive documentation in respect of a Successful Bid and filing of the Approval Motion	By no later than February 2, 2024

7. Approval Motion Hearing of Approval Motion in respect of Successful Bid (subject to Court availability)	Week of February 5, 2024
8. Outside Date – Closing Outside Date by which the Successful Bid must close	February 23, 2024 (subject to customary conditions related to necessary and required regulatory approvals acceptable to Tacora, in consultation with the Financial Advisor and the Monitor, in their sole discretion)

Solicitation of Interest

10. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the Solicitation Order:
 - (a) the Financial Advisor, in consultation with the Monitor and Tacora, will prepare a list of potential bidders, including (i) parties that have approached Tacora, the Financial Advisor, or the Monitor indicating an interest in the Opportunity, (ii) parties suggested by Tacora’s secured creditors or their advisors, (iii) local and international strategic and financial parties, including offtakers and streamers, who the Financial Advisor, in consultation with Tacora and the Monitor, believes may be interested in the Opportunity; (iv) Cargill and the Ad Hoc Group; and (v) parties that showed an interest in Tacora and/or its assets prior to the date of the Solicitation Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the “**Potential Bidders**”);
 - (b) a notice of the Solicitation and any other relevant information that the Monitor considers appropriate regarding the Solicitation Process, in consultation with Tacora and the Financial Advisor, will be published by the Monitor on the Monitor’s Website;
 - (c) a notice of the Solicitation Process and any other relevant information that the Financial Advisor, in consultation with Tacora and the Monitor, considers appropriate may be published by the Financial Advisor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Financial Advisor; and
 - (d) the Financial Advisor, in consultation with Tacora and the Monitor, will prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the Solicitation Process and inviting recipients of the Teaser Letter to express their interest pursuant to the Solicitation Process; and (ii) a form of non-disclosure agreement in form and substance satisfactory to the Financial Advisor, Tacora, the Monitor, and their respective counsel (an “**NDA**”).
11. The Financial Advisor will cause the Teaser Letter to be sent to each Potential Bidder by no later than five (5) days after the Solicitation Order and to any other party who requests a copy of the Teaser Letter or who is identified to the Financial Advisor or the

Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable. A copy of the NDA will be provided to any Potential Bidder that requests a copy of same.

Phase 1: Non-Binding LOIs

Phase 1 Due Diligence

12. In order to participate in the Solicitation Process, and prior to the distribution of any confidential information, a Potential Bidder (each Potential Bidder interested in the Transaction Opportunity who has executed an NDA with Tacora, a "**Phase 1 Bidder**") must deliver to the Financial Advisor an executed NDA (with a copy to the Monitor).
13. Notwithstanding any other provision of this Solicitation Process, prior to Tacora executing an NDA with any Potential Bidder, Tacora, in consultation with the Financial Advisor and the Monitor, may require evidence reasonably satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of the financial wherewithal of the Potential Bidder to complete on a timely basis a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors.
14. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by Tacora to Phase 1 Bidders and Financing Parties (including those interested in the Offtake Opportunity) that have executed the NDA in accordance with Section 12 as soon as practicable. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of Tacora and the Opportunity. The Financial Advisor, in consultation with Tacora and the Monitor, may establish or cause Tacora to establish separate VDRs (including "clean rooms"), if Tacora reasonably determines that doing so would further Tacora's and any Phase 1 Bidder's compliance with applicable antitrust and competition laws, would prevent the distribution of commercially sensitive competitive information, or to protect the integrity of the Solicitation Process and Tacora's restructuring process generally. Tacora may also, in consultation with the Financial Advisor and the Monitor, limit the access of any Phase 1 Bidder to any confidential information in the VDR where Tacora may also, in consultation with the Financial Advisor and the Monitor, reasonably determine that such access could negatively impact the Solicitation Process, the ability to maintain the confidentiality of the information, the Business or its value.
15. Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) provide management presentations to Phase 1 Bidders. Any communications between Phase 1 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that such discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of the Solicitation Process. The provisions of this section are subject to further order of the Court.
16. The Financial Advisor, Tacora, the Monitor, and their respective employees, officers,

directors, agents, other representatives and their respective advisors make no representation, warranty, condition or guarantee of any kind, nature or description as to the information contained in the VDR or made available in connection with the Solicitation Process. All Phase 1 Bidders (and Financing Parties) must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the Solicitation Process.

Communication Protocol

17. Each Phase 1 Bidder and Financing Party is prohibited from communicating with any Potential Bidder or another Phase 1 Bidder or Financing Party and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process, without the consent of the Financial Advisor and the Monitor, except as provided in these Solicitation Procedures. Notwithstanding the terms of any NDA entered into by a Phase 1 Bidder or Financing Party, all Phase 1 Bidders and Financing Parties shall comply with these Solicitation Procedures.
18. Any party interested in providing debt financing (a "**Debt Financing Party**"), equity financing (a "**Equity Financing Party**") or financing through an offtake or similar agreement (including a stream or royalty agreement) in respect of the Offtake Opportunity (a "**Offtake Financing Party**" and together with Debt Financing Parties, Equity Financing Parties, the "**Financing Parties**" and each, a "**Financing Party**") shall execute a NDA with Tacora or a joinder to a NDA with the Phase 1 Bidder which the Financing Party is interested in providing financing to, prior to receiving distribution of any confidential information.
19. Each Debt Financing Party must indicate to the Financial Advisor and the Monitor whether such Debt Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential debt financing to potentially multiple Phase 1 Bidders. If a Debt Financing Party is acting exclusively with a Phase 1 Bidder, the Debt Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If the Debt Financing Party is not acting exclusively with a Phase 1 Bidder, the Debt Financing Party may communicate with multiple Phase 1 Bidders, provided that Debt Financing Party confirms in writing to the Financial Advisor and the Monitor that the Debt Financing Party has appropriate internal controls and processes to ensure information related to Bids or potential Bids (including the identity of Potential Bidders and/or Phase 1 Bidders) is not shared with multiple Phase 1 Bidders.
20. Each Offtake Financing Party must indicate to the Financial Advisor and the Monitor whether such Offtake Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential financing through an offtake or similar agreement (including a stream or royalty agreement) to potentially multiple Phase 1 Bidders. If an Offtake Financing Party is acting exclusively with a Phase 1 Bidder, the Offtake Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If an Offtake Financing Party is not acting exclusively with

a Phase 1 Bidder, the Offtake Financing Party shall submit an Offtake IOI and may communicate with Phase 1 Bidders with the consent of the Financial Advisor and the Monitor on such terms and conditions as the Financial Advisor and the Monitor deem appropriate.

21. Each Equity Financing Party must indicate to the Financial Advisor and the Monitor whether such Equity Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential equity financing to potentially multiple Phase 1 Bidders. If an Equity Financing Party is acting exclusively with a Phase 1 Bidder, the Equity Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If an Equity Financing Party is not acting exclusively with a Phase 1 Bidder, the Equity Financing Party shall submit an Equity Financing IOI and may communicate with Phase 1 Bidders with the consent of the Financial Advisor and the Monitor on such terms and conditions as the Financial Advisor and the Monitor deem appropriate.

Phase 1 Bids

22. If a Phase 1 Bidder wishes to submit a bid in respect of the Transaction Opportunity (a "**Bid**"), it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, in accordance with section 23 below, a "**Phase 1 Qualified Bid**") to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on December 1, 2023, or such other date or time as may be agreed by Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor (the "**Phase 1 Bid Deadline**").
23. An LOI submitted by a Phase 1 Bidder will only be considered a Phase 1 Qualified Bid if the LOI complies at a minimum with the following:
 - (a) it has been duly executed by all required parties;
 - (b) it is received by the Phase 1 Bid Deadline;
 - (c) it clearly indicates that:
 - (i) the Phase 1 Bidder is (A) seeking to acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a "**Sale Proposal**"); or (B) offering to make an investment in, restructure, recapitalize or refinance Tacora or the Business (a "**Recapitalization Proposal**").
 - (d) in the case of a Sale Proposal, the Bid includes:
 - (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) details regarding any consideration which is not cash;
 - (iii) any contemplated purchase price adjustment;

- (iv) a specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);
 - (v) a description of the Property that is subject to the transaction and any of the Property expected to be excluded;
 - (vi) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume or maintain the existing Offtake Agreement on its existing terms or any proposed amendments, and if not, whether the Phase 1 Bidder anticipates requiring to be paired with a Financing Party interested in the Offtake Opportunity in connection with their proposed Bid;
 - (vii) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient financial ability to complete the transaction contemplated by the Sale Proposal;
 - (viii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees;
 - (ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - (x) any other terms or conditions of the Sale Proposal that the Phase 1 Bidder believes are material to the transaction.
- (e) in the case of a Recapitalization Proposal, the Bid includes:
- (i) a description of how the Phase 1 Bidder proposes to structure and finance the proposed investment, restructuring, recapitalization or refinancing (including, but not limited to the sources of financing to fund the transaction);
 - (ii) the aggregate amount of the equity and/or debt investment to be made in Tacora or its Business;
 - (iii) details on the permitted use of proceeds;
 - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume or maintain the existing Offtake Agreement on its existing terms or any proposed amendments and if not, whether the Phase 1 Bidder anticipates requiring to be paired with a Financing Party interested in the

Offtake Opportunity in connection with their proposed Bid;

- (v) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient ability to complete the transaction contemplated by the Recapitalization Proposal;
 - (vi) the underlying assumptions regarding the pro forma capital structure;
 - (vii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees;
 - (viii) the equity, if any, to be allocated to the secured creditors, unsecured creditors, shareholders and/or any other stakeholder of Tacora;
 - (ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - (x) any other terms or conditions of the Recapitalization Proposal which the Phase 1 Bidder believes are material to the transaction.
- (f) it provides written evidence, satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of its ability to consummate the transaction within the timeframe contemplated by these Solicitation Procedures and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Phase 1 Bidder expects to finance any portion of the purchase price, the identity of the financing source and the steps necessary and associated timing to obtain the capital;
- (g) it provides any relevant details of the previous investments or acquisitions, or any other experience a Phase 1 Bidder in the mining industry, including the date, nature of the investment, amount invested, geography and any other relevant information related to such investment;
- (h) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for Tacora, in consultation with the Financial Advisor, and the Monitor, to determine that these conditions are reasonable in relation to the Phase 1 Bidder;
- (i) it includes a statement disclosing any connections or agreements between the Phase 1 Bidder, on the one hand, and Tacora, its shareholders, creditors and affiliates and all of their respective directors and officers and/or any other known Phase 1 Bidder, on the other hand;
- (j) it includes an acknowledgement that any Sale Proposal and/or Recapitalization Proposal is made on an "as-is, where-is" basis; and

- (k) it contains such other information as may be reasonably requested by Tacora, in consultation with the Financial Advisor and the Monitor.

Assessment of Phase 1 Bids

- 24. Following the Phase 1 Bid Deadline, Tacora, in consultation with the Financial Advisor and the Monitor, will assess the LOIs received by the Phase 1 Bid Deadline and determine whether such LOIs constitute Phase 1 Qualified Bids.
- 25. Tacora, in consultation with the Financial Advisor and the Monitor, may following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid.
- 26. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may (a) waive compliance with any one or more of the requirements specified above and deem such non-compliant bid to be a Phase 1 Qualified Bid; or (b) reject any LOI if it is determined that such Bid does not constitute a Phase 1 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of Tacora and its creditors and other stakeholders.

Financing Opportunity

- 27. To assist the Financial Advisor and the Monitor in making a determination of whether to introduce any Offtake Financing Party interested in the Offtake Opportunity to any Phase 1 Bidders, such parties may provide the Financial Advisor and the Monitor, prior to the Phase 1 Bid Deadline, an indication of interest in respect of the Offtake Opportunity (an "**Offtake IOI**"), which includes:
 - (a) the product to be purchased from Tacora and any required specifications;
 - (b) the term of the contract, including all options to extend;
 - (c) the committed volume of product to be purchased, including market price and hedged price (if applicable);
 - (d) product pricing terms, including price indices to be used, premiums, hedging terms (if any);
 - (e) delivery and payment terms, including delivery point for product;
 - (f) other services that the Phase 1 Bidder anticipates providing to Tacora, including any working capital financing;
 - (g) any proposed capital investment by the bidder and the form of such investment, including the criteria set forth in Sections 23(e)(ii), (iii) and (ix); and
 - (h) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer.
- 28. To assist the Financial Advisor and the Monitor in making a determination of whether to introduce any Equity Financing Party interested in the Opportunity to any Phase 1

Bidders, such parties may provide the Financial Advisor and the Monitor, prior to the Phase 1 Bid Deadline, an indication of interest in respect of the Opportunity (an “**Equity Financing IOI**”), which includes:

- (a) a description of how the Equity Financing Party proposes to structure and finance the proposed investment (including, but not limited to the sources of financing to fund the transaction);
- (b) the aggregate amount of the equity investment to be made in Tacora or its Business;
- (c) details on the permitted use of proceeds;
- (d) the underlying assumptions regarding the pro forma capital structure; and
- (e) an outline of any additional due diligence required to be conducted in order to commit to providing financing.

Selection of Phase 2 Bidders

29. The Financial Advisor shall notify each Phase 1 Bidder in writing as to whether the Phase 1 Bidder has been determined to be permitted to proceed to Phase 2 (each a “**Phase 2 Bidder**”) by no later than December 4, 2023, at 12:00 p.m. (Eastern Time) or such other date or time as may be agreed by Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor.

Phase 2 – Formal Binding Offers

Phase 2 Due Diligence

30. Each Phase 2 Bidder shall be invited to participate in on-site tours and inspections at the Scully Mine (within reason and not at the expense of Tacora maintaining “business as usual” operations, and at the sole cost and expense of such bidder).
31. Tacora, in consultation with the Financial Advisor and the Monitor, shall allow each Phase 2 Bidder such further access to due diligence materials and information relating to the Property and Business as they deem appropriate in their reasonable business judgment and subject to competitive and other business considerations.
32. Phase 2 Bidders shall have the opportunity (if requested by such party) to meet with management of Tacora. Any communications or meetings between Phase 2 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of these Solicitation Procedures. The provisions of this section are subject to further order of the Court.
33. Each Phase 2 Bidder will be prohibited from communicating with any other Phase 2 Bidder and their respective affiliates and their legal and financial advisors regarding the Transaction Opportunity during the term of the Solicitation Process, without the consent

of Tacora and the Monitor, in consultation with the Financial Advisor. Such communications shall only occur on such terms as Tacora, the Financial Advisor and the Monitor may determine.

Phase 2 Bids

34. A Phase 2 Bidder that wishes to make a definitive transaction proposal (a “**Phase 2 Bid**”) shall submit a binding offer that complies with all of the following requirements to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on January 19, 2024, or such later date determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor (the “**Phase 2 Bid Deadline**”). Such Phase 2 Bid shall be a “**Phase 2 Qualified Bid**” if it meets all of the following criteria:
- (a) it is received by the Phase 2 Bid Deadline;
 - (b) the Bid complies with all of the requirements set forth in respect of Phase 1 Qualified Bids other than the requirements set out in Sections 23(b) and 23(d)(ix) herein;
 - (c) the Bid is binding and includes a letter confirming that the Phase 2 Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Phase 2 Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (a) completion of the transaction with the Successful Bidder, and (b) February 23, 2024, subject to further extensions as may be agreed to under the applicable transaction agreement(s), with the consent of the Monitor;
 - (d) the Bid is in the form of duly authorized and executed transaction agreements, and in the case of:
 - (i) a Sale Proposal, the Bid includes an executed share or asset purchase agreement, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process; and
 - (ii) a Recapitalization Proposal, the Bid includes the draft transaction documents contemplated to effect the Recapitalization Proposal, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process;.
 - (e) the Bid includes written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor;
 - (f) the Bid is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;

- (g) any conditions to closing or required approvals, including any agreements or approvals with unions, regulators or other stakeholders, the anticipated time frame and any anticipated impediments for obtaining such approvals are set forth in detail, such that Tacora, the Financial Advisor and the Monitor, can assess the risk to closing associated with any such conditions or approvals;
- (h) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of equity and/or debt in connection with such Bid and whether such party is assuming the Offtake Agreement on its existing terms, assuming the Offtake Agreement with amendments agreed to by Cargill or entering into an offtake or similar agreement with another party in connection with the Bid), or that is sponsoring, participating or benefiting from such Bid, and such disclosure shall include, without limitation:
 - (i) in the case of a Phase 2 Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Bidder and the terms and participation percentage of such equity holder's interest in such Bid; and (ii) the identity of each entity that has or will receive a benefit from such Bid from or through the Phase 2 Bidder or any of its equity holders and the terms of such benefit;
- (i) the Bid provides a detailed timeline to closing with critical milestones;
- (j) the Bid is accompanied by a non-refundable good faith cash deposit (the "**Deposit**"), equal to 10% of the total cash component of the purchase price or investment contemplated under the Phase 2 Bid which shall be paid to the Monitor and held in trust pursuant to Section 44 hereof until the earlier of (i) closing of the Successful Bid or Back-Up Bid, as applicable; and (ii) rejection of the Phase 2 Bid pursuant to Section 43; and
- (k) The Bid includes acknowledgements and representations of the Phase 2 Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and Tacora prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or Tacora or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive transaction agreement executed by Tacora.

Assessment of Phase 2 Bids

- 35. Following the Phase 2 Bid Deadline, Tacora in consultation with the Financial Advisor and the Monitor, will assess the Phase 2 Bids received by the Phase 2 Bid Deadline and determine whether such Bids constitute Phase 2 Qualified Bids.
- 36. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Phase 2 Qualified Bid.

37. Phase 2 Bids may not be modified, amended, or withdrawn after the Phase 2 Bid Deadline without the written consent of Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Phase 2 Bid for Tacora, its creditors and other stakeholders.
38. Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may reject any Phase 2 Bid if it is determined that such Bid does not constitute a Phase 2 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of Tacora and its creditors and other stakeholders.

Evaluation of Qualified Bids and Subsequent Actions

39. Following the Phase 2 Bid Deadline, Tacora, the Financial Advisor and the Monitor will review the Phase 2 Qualified Bids. In performing such review and assessment, the Financial Advisor, Tacora, and the Monitor may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Phase 2 Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Bid in relation to other Bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) the closing conditions and other factors affecting the speed, certainty and value of the transaction; (g) planned treatment of stakeholders, including employees; (h) the assets included or excluded from the Bid; (i) any restructuring costs that would arise from the Bid; (j) the likelihood and timing of consummating the transaction; (k) the capital sufficient to implement post-closing measures and transactions; and (l) any other factors that the Financial Advisor, Tacora, and Monitor may deem relevant in their sole discretion.
40. Following evaluation of the Phase 2 Qualified Bids, Tacora may, in consultation with the Financial Advisor and the Monitor, undertake one or more of the following steps:
 - (a) accept one of the Phase 2 Qualified Bids (the “**Successful Bid**” and the offeror making such Successful Bid the “**Successful Bidder**”) and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid with Successful Bidder;
 - (b) continue negotiations with Phase 2 Bidders who have submitted a Phase 2 Qualified Bids with a view to finalizing acceptable terms with one or more of Bidders that submitted Phase 2 Qualified Bids; or
 - (c) schedule an auction with all Bidders that submitted Phase 2 Qualified Bids to determine the Successful Bid in accordance with auction procedures determined by the Financial Advisor and the Monitor, in consultation with Cargill and the Ad Hoc Group, provided they or any of their members are not Bidders that submitted Phase 2 Qualified Bids, which procedures shall be provided to all Bidders that submitted Phase 2 Qualified Bids at least four (4) Business Days prior to an auction.
41. Tacora, in consultation with the Financial Advisor and the Monitor, may select the next highest or otherwise best Phase 2 Qualified Bid which is a Sale Proposal or Recapitalization Proposal to be a back-up bid (the “**Back-Up Bid**” and such bidder, the

- “Back-Up Bidder”**). For greater certainty, Tacora shall not be required to select a Back-Up Bid.
42. If a Successful Bidder fails to consummate the Successful Bid for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and Tacora will proceed with the transaction pursuant to the terms of the Back-Up Transaction Bid. Any Back-Up Bid shall remain open for acceptance until the completion of the transaction with the Successful Bidder.
 43. All Phase 2 Qualified Bids (other than the Successful Bid and the Back-Up Bid, if applicable) shall be deemed rejected by Tacora on and as of the date of the execution of the definitive documents contemplated by the Successful Bid by Tacora.
 44. All Deposits will be retained by the Monitor and deposited in a trust account. The Deposit (without interest thereon) paid by the Successful Bidder and Back-Up Bidder whose bid(s) is/are approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder and/or Back-Up Bidder, as applicable upon closing of the approved transaction and will be non-refundable, other than in the circumstances set out in the Successful Bid or the Back-Up Bid, as applicable. The Deposits (without interest) of Qualified Bidders not selected as the Successful Bidder and Back-Up Bidder will be returned to such bidders within five (5) Business Days after the selection of the Successful Bidder and Back-Up Bidder or any earlier date as may be determined by the Monitor, in consultation with the Financial Advisor and Tacora. The Deposit of the Back-Up Bidder, if any, shall be returned to such Back-Up Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Bid .
 45. If a Successful Bidder or Back-Up Bidder breaches its obligations under the terms of the Solicitation Process, its Deposit shall be forfeited as liquidated damages and not as a penalty, without limiting any other claims or actions that Tacora may have against such Successful Bidder or Back-Up Bidder and/or their affiliates.
 46. If no Phase 2 Qualified Bids are received by the Phase 2 Bid Deadline, the Solicitation Process shall automatically terminate.

Approval Motion

47. Prior to the Approval Motion, the Monitor shall provide a report to the Court providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion. At the Approval Motion, Tacora shall seek the Approval Order.
48. The consummation of the transaction contemplated by the Successful Bid, or the Back-Up Bid if the Successful Bid does not close, will not occur unless and until the Approval Order is granted.

“As Is, Where Is”

49. Any sale of the Business and/or Property or any investment in Tacora or its Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Financial Advisor, Tacora, or Monitor, or their advisors or agents, except to the extent otherwise provided under any definitive sale or

investment agreement with the Successful Bidder executed by Tacora. None of the Financial Advisor, Tacora, or Monitor, or their advisors or agents, including the Financial Advisor, make any representation or warranty as to the information contained in the Teaser Letter, any management presentation or the VDR, except to the extent otherwise provided under any definitive sale or investment agreement with the Successful Bidder executed by Tacora. Each Phase 2 Bidder is deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding the Business and Property prior to making its Phase 2 Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale or investment agreement executed by Tacora.

No Entitlement to Expense Reimbursement or Other Amounts

50. Phase 1 Bidders and Phase 2 Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

Jurisdiction

51. Upon submitting an LOI or a Phase 2 Bid, the Phase 1 Bidder or the Phase 2 Bidder, as applicable, shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the Solicitation Process and the terms and conditions of these Solicitation Procedures, any Sale Proposal or Recapitalization Proposal.
52. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.
53. Neither Tacora, the Financial Advisor nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Solicitation Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.
54. The Monitor shall supervise the Solicitation Process as outlined herein. In the event that there is disagreement or clarification is required as to the interpretation or application of this Solicitation Process the responsibilities of the Monitor, the Financial Advisor or Tacora hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or Tacora or any other interested party with a hearing which shall be scheduled on not less than three (3) Business Days' notice.

APPENDIX A

DEFINED TERMS

- (a) “**Ad Hoc Group**” means the ad hoc group of holders of the Senior Notes and Senior Priority Notes issued by Tacora.
- (b) “**Approval Motion**” means the motion seeking approval by the Court of the Successful Bid with the Successful Bidder, and if applicable, any Back-Up Bid if the Successful Bid is not consummated.
- (c) “**Approval Order**” means an order of the Court approving, among other things, if applicable the Successful Bid and the consummation thereof, and if applicable, any Back-Up Bid if the Successful Bid is not consummated;
- (d) “**Back-Up Bid**” shall have the meaning attributed to it in Section 41;
- (e) “**Back-Up Bidder**” shall have the meaning attributed to it in Section 41;
- (f) “**Bid**” shall have the meaning attributed to it in Section 22
- (g) “**Business**” shall have the meaning attributed to it in the preamble;
- (h) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (i) “**Cargill**” means Cargill International Trading PTE Ltd. and its affiliates.
- (j) “**CCAA**” shall have the meaning attributed to it in the preamble;
- (k) “**Court**” shall have the meaning attributed to it in the preamble;
- (l) “**Debt Financing Party**” shall have the meaning attributed to it in Section 18;
- (m) “**DIP Agreement**” means the DIP Loan Agreement between Tacora and Cargill, Incorporated, dated October 9, 2023, as may be amended from time to time;
- (n) “**Equity Financing IOI**” shall have the meaning attributed to it in Section 28;
- (o) “**Equity Financing Party**” shall have the meaning attributed to it in Section 18;
- (p) “**Financial Advisor**” shall have the meaning attributed to it in the preamble;
- (q) “**Financing Party**” shall have the meaning attributed to it in Section 18;
- (r) “**Initial Order**” shall have the meaning attributed to it in the preamble;
- (s) “**LOI**” shall have the meaning attributed to it in Section 22;
- (t) “**Monitor**” shall have the meaning attributed to it in the preamble;
- (u) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/Tacora>;

- (v) “**NDA**” shall have the meaning attributed to it in Section 10(d);
- (w) “**Offtake Agreement**” means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended;
- (x) “**Offtake Financing Party**” shall have the meaning attributed to it in Section 18;
- (y) “**Offtake IOI**” shall have the meaning attributed to it in Section 27;
- (z) “**Offtake Opportunity**” shall have the meaning attributed to it in Section 3;
- (aa) “**Opportunity**” shall have the meaning attributed to it in Section 3;
- (bb) “**Phase 1 Bid Deadline**” shall have the meaning attributed to it in Section 22;
- (cc) “**Phase 1 Bidder**” shall have the meaning attributed to it in Section 12;
- (dd) “**Phase 1 Qualified Bid**” shall have the meaning attributed to it in Section 22;
- (ee) “**Phase 2 Bid**” shall have the meaning attributed to it in Section 34;
- (ff) “**Phase 2 Bid Deadline**” shall have the meaning attributed to it in Section 34;
- (gg) “**Phase 2 Bidder**” shall have the meaning attributed to it in Section 29;
- (hh) “**Phase 2 Qualified Bid**” shall have the meaning attributed to it in Section 34;
- (ii) “**Potential Bidder**” shall have the meaning attributed to it in Section 10(a);
- (jj) “**Property**” shall have the meaning attributed to it in the preamble;
- (kk) “**Recapitalization Proposal**” shall have the meaning attributed to it in Section 23(c)(i);
- (ll) “**Sale Proposal**” shall have the meaning attributed to it in Section 23(c)(i);
- (mm) “**Scully Mine**” shall have the meaning attributed to it in the preamble;
- (nn) “**Solicitation Order**” shall have the meaning attributed to it in the preamble;
- (oo) “**Solicitation Process**” shall have the meaning attributed to it in the preamble;
- (pp) “**Solicitation Procedures**” shall have the meaning attributed to it in the preamble;
- (qq) “**Stalking Horse Bid**” shall have the meaning attributed to it in Section ;
- (rr) “**Successful Bid**” shall have the meaning attributed to it in Section 40; and
- (ss) “**Successful Bidder**” shall have the meaning attributed to it in Section 40.
- (tt) “**Teaser Letter**” shall have the meaning attributed to it in Section 10(d);

(uu) **“Transaction Opportunity”** shall have the meaning attributed to it in Section 2.

SCHEDULE "F"

BORROWER'S ACCOUNT INFORMATION



Tacora Resources Inc.
102 NE 3rd Street
Suite 120
Grand Rapids, MN 55744
Ph: 218-999-5165
Fax: 218-999-5827

“USD PAYMENT ROUTING INSTRUCTIONS”

PAYMENT ROUTING INSTRUCTIONS:

Pay through:
(Destination Bank)

**Wells Fargo Bank, N.A. (formerly known as
Wachovia)
New York
S.W.I.F.T. BIC CODE: PNBPUS3NNYC**

**Fed wire ABA Number 026005092 or
CHIPS UID Number 0509**

Beneficiary’s Bank:
(BBK field
or SWIFT field 57a)

**Bank of Montreal,
Intl Banking H.O. Montreal
S.W.I.F.T. BIC CODE: BOFMCAM2
Institution Code : 0001
Transit Number : 00022**

Beneficiary Customer:
(BNF field or
SWIFT field 59)

**00024635560
Tacora Resources Inc.
102 NE 3rd St, Suite 120
Grand Rapids, MN 55744**

SCHEDULE "G"
TAXES AND SOURCE DEDUCTIONS

Nil

SCHEDULE H

LITIGATION

1. None.

For greater certainty, the following claims are ongoing but are be subject to the Initial Order granted on October 10, 2023:

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd. and subject to arbitration proceedings in Newfoundland and Labrador
3. Claims made by Construction & Expertise PG Inc. subject to proceedings before the Supreme Court of Newfoundland and Labrador (Court file. 2022 01G 3243)

SCHEDULE I

DEFINITIONS

"**Admin Charge**" means an administration charge in an aggregate amount not to exceed \$1,000,000 which shall have the priority provided in the ARIO.

"**Alternative Offtake or Services Binding Bid**" has the meaning provided in Section 12.

"**Alternative Offtake or Services LOIs**" has the meaning provided in Section 12.

"**Alternative Offtake or Services Transaction**" has the meaning provided in Section 12.

"**Applicable Percentage**" means, in respect of any DIP Lender at any time, with respect to a DIP Advance, the percentage of such DIP Advance which such DIP Lender has agreed to make available to the Borrowers at such time, determined by dividing the DIP Financing Commitment of such DIP Lender by the aggregate DIP Financing Commitments of all of the DIP Lenders.

"**ARIO**" has the meaning provided in Section 13.

"**Backstop Advance**" means an advance made by a DIP Lender to the Borrower in connection with the Backstop Commitment of such DIP Lender. 11

"**Backstop Commitment**" has the meaning provided in Section.

"**Backstop Fee**" has the meaning provided in Section 17.

"**Board**" has the meaning provided in Section 22.

"**Borrower**" has the meaning provided in Section 1.

"**Borrower's Account**" has the meaning provided in Section 14.

"**Borrower's Knowledge**" has the meaning provided in Section 20.

"**Business Day**" has the meaning provided in Section 38.

"**Cash Flow Projection**" has the meaning provided in Section 8.

"**Cash Interest**" has the meaning provided in Section 16.

"**CCAA**" has the meaning provided in the preamble.

"**CCAA Iron Ore Delivery Forecast**" has the meaning provided in Section 21.

"**CCAA Proceedings**" has the meaning provided in the preamble.

"**Collateral**" has the meaning provided in Section 18.

"**Communications**" has the meaning provided in Section 37.

"**Court**" has the meaning provided in the preamble.

"**Court Order**" has the meaning provided in Section 21.

"**CRO**" has the meaning provided in Section 25.

"**D&O Charge**" means a directors and officers liability charge in an amount not to exceed \$5,200,000 which shall have the priority provided in the ARIIO.

"**Default**" has the meaning provided in Section 21.

"**Defaulting Lender**" has the meaning provided in Section 11.

"**Defaulting Lender Funding Obligation**" has the meaning provided in Section 11.

"**DIP Advance**" has the meaning provided in Section 10.

"**DIP Agreement**" has the meaning provided in the preamble.

"**DIP Agreement Cash Flow Projection**" has the meaning provided in Section 8.

"**DIP Charge**" has the meaning provided in Section 18.

"**DIP Facility**" has the meaning provided in Section 5.

"**DIP Financing Commitment**" means, with respect to each of the respective DIP Lenders, the amount indicated in the table below, the amount of which may not be amended for a specific DIP Lender, without the prior written consent that DIP Lender:

<u>DIP Lender</u>	<u>DIP Financing Commitment (\$)</u>
Brigade Capital Management, LP	\$ [REDACTED]
Millstreet Capital Management LLC	\$ [REDACTED]
MSD Partners, LP	\$ [REDACTED]
O'Brien-Staley Partners	\$ [REDACTED]
Snowcat Capital Management, LP	\$ [REDACTED]

"**DIP Lenders**" has the meaning provided in Section 2.

"**DIP Obligations**" has the meaning provided in Section 6.

"**Event of Default**" has the meaning provided in Section 24.

"**Existing Indebtedness**" has the meaning provided in Section 22.

"**Expenses**" has the meaning provided in Section 27.

"**First DIP Advance**" has the meaning provided in Section 10.

"**Fourth DIP Advance**" has the meaning provided in Section 10.

"**GLC Fees**" means any transaction fees payable to GLC Advisors & Co., LLC under its engagement letter with Bennett Jones LLP, as may be amended.

"**Indemnified Person**" has the meaning provided in Section 23.

"**Initial Order**" means the Order granted in these proceedings on October 10, 2023 as attached at **Schedule "C"** hereto.

"**Interest Rate**" has the meaning provided in Section 16.

"**KERP**" means the key employee retention program in the form attached as Confidential Exhibit "C" to the affidavit of Joe Broking sworn October 15, 2023 (the "**Company KERP**"), with an additional \$2 million available to on-site employees not already included in the Company KERP and subject to the same payment triggers provided in the Company KERP.

"**KERP Charge**" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an amount not to exceed \$5,035,000, plus such further amount agreed to by the Required DIP Lenders in respect of the Borrower's management and executive team, to secure the Borrower's obligations under the KERP.

"**Liens**" means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Majority DIP Lenders**" means, at any time, DIP Lenders holding more than 50% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Margin or Hedge Services**" has the meaning provided in Section 9.

"**Material Adverse Change**" means an event, change or condition that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, operations, financial condition or operating results of the Borrower and its subsidiaries,

taken as a whole (other than as a result of the events leading up to and following commencement of the CCAA Proceedings).

"Material Adverse Effect" has the meaning provided in Section 20.

"Maturity Date" has the meaning provided in Section 6.

"Maximum Amount" has the meaning provided in Section 5.

"Monitor" has the meaning provided in Section 8.

"Net Proceeds" has the meaning provided in Section 19.

"Offtake Agreement" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended.

"Permitted Liens" means (i) Permitted Priority Liens, (ii) the DIP Charge, (iii) validly perfected Liens existing prior to the date hereof as in effect on the date hereof; and (iv) inchoate statutory Liens arising after the date on which the Initial Order is obtained in respect of any accounts payable arising after the date on which the Initial Order is obtained in the ordinary course of business, subject to the obligation to pay all such amounts as and when due, (v) the Subordinate Transaction Fee Charge.

"Permitted Priority Liens" means the (i) the Admin Charge, (ii) D&O Charge, (ii) KERP Charge (if applicable), (iv) the Priority Transaction Fee Charge, (v) Liens in favour of secured parties that did not receive notice of the application for the Initial Order (to the extent the Majority DIP Lenders (or their counsel) agreed based on the service list that such secured parties would not be served), (vi) Liens in respect of claims that are individually and in the aggregate immaterial, solely to the extent such Liens are not registered under a personal property registry system and (vii) any amounts payable by a Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits), income tax and workers compensation claims, in the case of this item (viii) solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Charge pursuant to the Court Orders; (ix) such other Liens existing as of the date of the Initial Order that have not been subordinated to the DIP Lender Charge pursuant to the Court Order; and (x) the Cargill Margin Charge.

"Permitted Variance" has the meaning provided in Section 8.

"PIK Amounts" has the meaning provided in Section 16.

"PIK Interest" has the meaning provided in Section 16.

"PIK Mechanism" has the meaning provided in Section 16.

"Priority Transaction Fee Charge" means a super priority charge that shall rank pari passu with the DIP Charge in favour of Greenhill & Co. Canada Ltd. in an aggregate

amount up to the GLC Fees in respect of Greenhill & Co. Canada Ltd.'s transaction fees owing under its engagement letter with the Borrower dated January 23, 2023.

"Proposed Amended Cash Flow Projection" has the meaning provided in Section 8.

"Pro Rata" means, in respect of any DIP Lender at any time, the ratio of the DIP Obligations owing to such DIP Lender at such time to the aggregate DIP Obligations owing to all DIP Lenders which are not Defaulting Lenders at such time.

"Required DIP Lenders" means, at any time, DIP Lenders holding more than 66 2/3% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"Sale Binding Bid" has the meaning provided in Section 12.

"Sale Transaction" has the meaning provided in Section 12.

"Second DIP Advance" has the meaning provided in Section 10.

"Solicitation Process" has the meaning provided in Section 13.

"Solicitation Process Milestone" has the meaning provided in Section 12.

"Solicitation Process Order" has the meaning provided in Section 13.

"Subordinate Transaction Fee Charge" means a charge that shall rank pari passu with the Senior Priority Notes, and any other secured claim that ranks pari passu with the Senior Priority Notes, in favour of Greenhill & Co. Canada Ltd. for any transaction fees payable to Greenhill & Co. Canada Ltd. in excess of the quantum of the GLC Fees under its engagement letter with the Borrower dated January 23, 2023.

"Senior Priority Notes" means the Borrower's 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

"Taxes" has the meaning provided in Section 30.

"Technical Advisor" means a technical advisor engaged by the DIP Lenders or their legal or financial advisors.

"Third DIP Advance" has the meaning provided in Section 10.

"Tranche 1" has the meaning provided in Section 5.

"Tranche 2" has the meaning provided in Section 5.

"Tranche 3" has the meaning provided in Section 5.

**THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF THOMAS GRAY SWORN
THE 26TH DAY OF OCTOBER, 2023**

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking affidavits, etc.

DIP LOAN AGREEMENT

Dated as of October ~~8~~26, 2023

WHEREAS the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA", and such proceeding, the "CCAA Proceedings") before the Ontario Superior Court of Justice (Commercial List) (the "Court") in accordance with the terms and conditions set out in this agreement (this "DIP Agreement");

NOW THEREFORE the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Tacora Resources Inc. (the "**Borrower**").

2. **DIP LENDERS:** (i) Brigade Capital Management, LP;
(ii) ~~Coneise Capital Management LP;~~
(~~iii~~) Millstreet Capital Management LLC;
(~~iv~~iii) MSD Partners, LP;
(~~v~~iv) O'Brien-Staley Partners; and
(~~vi~~v) Snowcat Capital Management, LP,

(collectively, in such capacity, the "**DIP Lenders**") on behalf of the parties listed in the signature pages hereto.

3. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Agreement have the meanings given thereto in Schedule "I" hereto.

4. **PURPOSE:** As set out in Section 21(e) of this DIP Agreement or as otherwise indicated herein.

5. **DIP FACILITY AND MAXIMUM AMOUNT** A super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of ~~\$119,005,000~~124,000,000 (the "**Maximum Amount**").

The DIP Facility shall be split into three tranches that in aggregate total the Maximum Amount:

- Tranche 1 - ~~\$65,155,000~~
70,150,000 ("Tranche 1")

- Tranche 2 - \$40,000,000
("Tranche 2")

- Tranche 3 - \$13,850,000
("Tranche 3")

For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 10 of this DIP Agreement.

6. REPAYMENT:

The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees (including, without limitation, the Backstop Fee (as defined below)) and reasonable and documented expenses incurred by the DIP Lenders (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lenders under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the "**DIP Obligations**") shall be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lenders and in respect of which the Borrower was provided prior written notice by the DIP Lenders of such Event of Default; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court, including in connection with the Solicitation Process (as defined below); (iii) the implementation by the Borrower of a plan of compromise or arrangement in accordance with the CCAA and any Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) October ~~10~~24, 2024 (the earliest of such dates being the "**Maturity Date**"). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with FTI Consulting Canada Inc., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the "**Monitor**"), and with the prior written consent of each of the DIP Lenders, in their sole discretion, for such period and on such terms and conditions as the Borrower (in consultation

with the Monitor) and the DIP Lenders may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid in full on the Maturity Date (or extended Maturity Date), without the DIP Lenders being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lenders shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal, provided, however, that any amounts applied by the Borrower to repay DIP Obligations shall go first to satisfy in full the DIP Obligations owing to non-Defaulting Lenders, then to the DIP Obligations, if any, owing to Defaulting Lenders.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lenders "credit bidding" such DIP Obligations, with the prior written consent of the Required DIP Lenders, for some or all of the assets of the Borrower pursuant to the Solicitation Process to be implemented in the CCAA Proceedings, in the Required DIP Lenders' sole discretion and subject to approval by the Court.

7. **EXIT FINANCING:** If requested by the Borrower, the DIP Lenders may, with the prior written consent of the Required DIP Lenders, in their sole discretion, and with the consent of the Borrower (in consultation with the Monitor), convert any or all of the DIP Obligations outstanding on the Maturity Date into exit financing having terms and conditions satisfactory to the DIP Lenders and the Borrower.
8. **CASH FLOW PROJECTIONS:** The Borrower, in consultation with the Monitor in the CCAA Proceedings, ~~has~~will provided to the DIP Lenders ~~the~~an updated cash flow projection. The cash flow projections attached at Schedule "A" hereto, ~~which are in form and substance satisfactory~~ reflect the prior forecast and are included herein to illustrate the expected cash flow projections. The DIP Lenders ~~and which are to~~acknowledge that these projections will change and shall work cooperatively with the monitor on this point. The cash flow projections shall be filed with the Court, reflecting the projected cash requirements of the Borrower for the 20-week

period from the week ending October ~~15~~²⁹, 2023, through the week ending ~~February 25~~^{March 10}, 2024, calculated on a weekly basis (together with the back-up information requested and received by the DIP Lenders, the "**Cash Flow Projection**"). Changes to the updated Cash Flow from the version last provided by the DIP Lenders shall consist of: (i) reducing the estimated professional fees for the DIP Lender's technical advisor to \$20k per week and US counsel to \$10k per week, (ii) removing the DIP Lender's communications consultant, (iii) including the amounts required for the 994 Wheel Loader, and (iv) reflecting the AHG's proposed KERP.

The Borrower shall keep the DIP Lenders and the Monitor apprised of its cash flow requirements by providing: (i) an updated rolling Cash Flow Projection (which shall include all reasonable backup information requested by the DIP Lenders) by no later than 5:00 p.m. (Eastern Time) on the Friday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a "**Proposed Amended Cash Flow Projection**"), provided that the Borrower (in consultation with the Monitor), at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, a report showing on a line-by-line basis (a) the cumulative actual receipts and disbursements for the preceding period and (b) the cumulative variances from the amounts in the DIP Agreement Cash Flow Projection (as defined below) and noting therein all variances on a line by line basis from the amounts in the DIP Agreement Cash Flow Projection, with reasonably detailed explanations for all material variances, such information described in this clause (ii) to be delivered to the DIP Lenders and Monitor weekly by no later than 5:00 p.m. (Eastern Time) on the Friday of each week.

The Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the Majority DIP Lenders determine that the Proposed Amended Cash Flow Projection is not acceptable and deliver a written objection to the Borrower with a copy to the Monitor within three (3) Business Days of receipt thereof, stating that the Proposed Amended Cash Flow Projection is not acceptable and setting out the reasons why such Proposed Amended Cash Flow Projection is not acceptable. In such case the prior Cash

Flow Projection shall remain in effect.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection) shall be the "**DIP Agreement Cash Flow Projection**".

For greater certainty, the DIP Lenders shall not be required to initiate any DIP Advances pursuant to a Proposed Amended Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 8.

The proceeds of each DIP Advance shall be used ~~(i)~~ by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the Required DIP Lenders, from time to time.

The DIP Lenders and the Company agree that Cargill, Incorporated shall be repaid for all amounts owed to it under the debtor-in-possession financing approved by this Court on October 10, 2023, with such repayment to take place by no later than November 3, 2023. The proceeds of the DIP Advances may be used to repay these amounts.

Notwithstanding anything to the contrary herein, unless the Required DIP Lenders consent in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses that are not of a type of expense that falls within an expense line-item contained in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (ii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lenders on any Court Order with respect to the validity or enforceability of the DIP Obligations, the DIP Agreement or any Order contemplated by the DIP Agreement; (iii) subject to the preceding subsection (ii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lenders (as defined below); and (iv) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other

lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than ~~10~~ 15% of any disbursement line item relative to the aggregate disbursements in the DIP Agreement Cash Flow since the beginning of the period covered by the DIP Agreement Cash Flow Projection starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 8 above; provided, however that: (i) the Permitted Variance calculation shall not take into account (a) the professional advisory fees (including the fees of counsel and a financial advisor) of the Borrower and the Monitor, (b) the Expenses, (c) the fees and expenses of the DIP Lenders; and (d) costs related to pre-existing compensation arrangements paid to employees based on production of the Scully mine; and (ii) an exceedance of the Permitted Variance by the Borrower only one time during any consecutive four week period beginning on the date the ~~Initial Order~~ ARIO is granted shall not result in an Event of Default.

9. TRANCHE 3 USE AND DRAW CONDITIONS

Notwithstanding any other provisions of this DIP Agreement, amounts funded pursuant to Tranche 3 may only be used to fund: (i) required margin payments due under the Offtake Agreement; or (ii) the purchase of hedges ("**Margin or Hedge Services**").

Prior to purchasing or making any payment for Margin or Hedge Services, the Borrower and its financial advisor shall request: (a) a quote for pricing of such Margin or Hedge Services from Cargill; and (b) a quote for pricing of such Margin or Hedge Services from an independent third-party who provides such services.

The Borrower shall not purchase any Margin or Hedge Services without the consent of the Monitor. For greater certainty, Margin or Hedge Services does not include required margin payments due under the Offtake Agreement, provided that the amount of any such margin payment must be approved by the Monitor.

10. ADVANCES UNDER DIP FACILITY:

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lenders shall, on a several basis, advance the following disbursements as draws against the Maximum Amount (each of the below, a "**DIP Advance**"), which shall be revised as necessary following the provision of updated

cashflow information from the Monitor:

- (a) A first advance in the aggregate amount of ~~\$17,471,000~~ 17,400,000 ("**First DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such First DIP Advance to be advanced not later than one (1) Business Day (as defined below) following the satisfaction of each of the conditions to the First DIP Advance set out in Section 13 of this DIP Agreement. The First DIP Advance shall be composed of: (i) ~~\$7,727,146~~ 7,897,000 of funding from Tranche 1; (ii) ~~\$4,743,854~~ 4,503,000 of funding from Tranche 2; and (iii) \$5,000,000 of funding from Tranche 3, or as otherwise provided in the Cash Flow Projections;
- (b) A second advance in the amount of ~~\$73,783,000~~ 68,850,000 ("**Second DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Second DIP Advance to be advanced not later than one (1) Business Day following the satisfaction of each of the conditions to the Second DIP Advance set out in Section 13 of this DIP Agreement. The Second DIP Advance shall be composed of: (i) ~~\$40,233,081~~ 38,212,000 of funding from Tranche 1; (ii) ~~\$24,699,919~~ 21,788,000 of funding from Tranche 2; and (iii) \$8,850,000 of funding from Tranche 3. ~~Tranche 1 and Tranche 2~~ The Second DIP Advance shall be adjusted ~~downward to the extent the KERP is paid later in the CCAA proceedings or upon exit from the CCAA proceedings,~~ with a commensurate ~~increase~~ change to the Third DIP Advance or Fourth DIP Advance if needed per the Cash Flow Projection;
- (c) A third advance in the amount of ~~\$24,272,000~~ 30,000,000 ("**Third DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Third DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Third DIP Advance set out in Section 13 of this DIP Agreement. The Third DIP Advance shall be composed of: (i) ~~\$15,039,153~~ 19,106,000 of funding from Tranche 1; and (ii) ~~\$9,232,847~~ 10,894,000 of funding from Tranche 2, or as otherwise provided in the Cash Flow Projection;

and

- (d) A fourth advance in the amount of ~~\$3,479,000~~ 7,750,000 ("**Fourth DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Fourth DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Fourth DIP Advance set out in Section 13 of this DIP Agreement. The fourth DIP Advance shall be composed of: (i) ~~\$2,155,620~~ 4,935,000 of funding from Tranche 1; and (ii) ~~\$1,323,380~~ 2,815,000 of funding from Tranche 2, or as otherwise provided in the Cash Flow Projection.

11. BACKSTOP COMMITMENT

Each DIP Lender shall fund a portion of each DIP Advance equal to its Applicable Percentage of such DIP Advance.

The DIP Lenders shall, jointly and severally, backstop the DIP Financing Commitment of each other DIP Lender (each, a "**Backstop Commitment**"), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Advance or (y) fund on a Pro Rata basis a Backstop Advance (collectively, a "**Defaulting Lender Funding Obligation**") (each such defaulting DIP Lender, a "**Defaulting Lender**"), each other DIP Lender which is not a Defaulting Lender shall, within: (A) one (1) Business Day of receiving written notice of failure to fund from the Borrower in respect of the First DIP Advance or Second DIP Advance, or (B) three (3) Business Days of receiving written notice of failure to fund from the Borrower in respect of the Third DIP Advance and Fourth DIP Advance, fund on a Pro Rata basis by way of a Backstop Advance each such Defaulting Lender Funding Obligation in accordance with this Section 11 of this DIP Agreement.

12. SOLICITATION PROCESS MILESTONES:

The following milestones in respect of the Solicitation Process must be satisfied by the Borrower or such later dates as may be agreed by the Borrower, the Majority DIP Lenders and the Monitor (each a "**Solicitation Process Milestone**" and collectively, the "**Solicitation Process Milestones**"):

- (a) The Solicitation Process ~~Order must be obtained by October 27, 2023 and the Solicitation Process~~ must commence no later than ~~October 30, 2023~~ five days following the issuance of the Solicitation Process Order;

- (b) The deadline for the receipt of non-binding letters of intent: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale LOI**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services LOI**"), must be no later than December 1, 2023;
- (c) Final deadline for the receipt of binding bids: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Binding Bid**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Binding Bid**"), must be no later than January 19, 2024; and
- (d) Closing of transaction(s) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Transaction**"); and/or (ii) in respect of an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Transaction**"), must occur no later than February ~~16~~23, 2024.

The Borrower agrees that the DIP Lenders may submit a "stalking horse" bid for a sale of or investment in all or substantially all of the Borrower's assets or its business pursuant to the Solicitation Process. The Solicitation Process Order shall provide that the Borrower shall have the right to seek approval by the Court of a "stalking horse" bid any time prior to the deadline for Sale LOIs and Alternative Offtake or Services LOI.

**13. CONDITIONS
PRECEDENT TO DIP
FACILITY
ADVANCES:**

A. CONDITIONS TO FIRST DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the First DIP Advance hereunder:

- (a) ~~The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the Initial Order (as defined below) at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the~~

~~circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed Initial Order, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably~~[Reserved].

- (b) The Court shall have issued on or before ~~Oct~~November ~~10~~3, 2023 an amended and restated initial order in substantially the form attached as Schedule "CD" hereto with such additional changes reasonably acceptable to the Borrower, Majority DIP Lenders and Monitor (the "~~Initial Order~~ARIO"), the effect of which shall, among other things, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge (~~as defined below~~) securing the principal amount of ~~the First DIP Advance, plus interest, fees and expenses payable pursuant to this DIP Agreement,~~\$124,000,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCAA or otherwise required by the Required DIP Lenders, and such ~~Initial Order~~ARIO shall have been obtained on notice to such parties required by the Required DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in Schedule "B" hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) The ~~Initial Order~~ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;

- (e) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;
- (f) No Material Adverse Change shall have occurred since the date hereof;
- (g) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for Permitted Priority Liens;
- (i) Arrangements have been made to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance;
- (j) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute.
- (k) The Borrower shall be in compliance with all Court Orders.

B. CONDITIONS TO SECOND DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Second DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for ~~the ARIO and~~ the Solicitation Process

Order at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, ~~which material documents shall include the proposed ARIO,~~ and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.

- (b) ~~The Court shall have issued an amended and restated Initial Order in substantially the form set out in Schedule "D" hereto, with such additional changes reasonably acceptable to the Borrower, Required DIP Lenders and Monitor (the "ARIO") the effect of which, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge securing the principal amount of \$113,850,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCA or otherwise required by the Required DIP Lenders~~ [Reserved];
- (c) The Borrower shall have used commercially reasonable efforts to have obtained a Court Order in form and substance acceptable to the Required DIP Lenders (the "**Solicitation Process Order**") approving a sale, investment and offtake agreement solicitation process (the "**Solicitation Process**") as set out in Schedule "E" hereto, with any changes as may be agreed by the Borrower, the Monitor and the Required DIP Lenders;
- (d) The ARIO and any other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (e) Delivery to the DIP Lenders, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in Schedule "B" hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Second DIP Advance requested

thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (f) The ~~Initial Order and the~~ ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (g) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Second DIP Advance;
- (h) No Material Adverse Change shall have occurred since the date hereof;
- (i) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the Second DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (j) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (k) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (l) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;
- (m) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation,

source deductions (including similar employee remittances in respect of employees located in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute; and

- (n) The Borrower shall be in compliance with all Court Orders.

C. CONDITIONS TO THIRD DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Third DIP Advance hereunder:

- (a) The Court shall have issued the Solicitation Process Order;
- (b) The ARIO, and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of (i) ~~[●], 2023~~ ~~[To be updated based on cash flow]~~ the date provided in the Cash Flow Projection and (ii) the date of receipt by the Borrower of Sale LOIs and Alternative Offtake or Services LOIs, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Third DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Third DIP Advance;
- (e) No Material Adverse Change shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this

DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Third DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);

- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (i) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (j) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (k) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (l) The Borrower shall be in compliance with all Court Orders.

D. CONDITIONS TO FOURTH DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Fourth DIP Advance hereunder:

- (a) The ARIO, the Solicitation Process Order and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (b) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of date of (i) ~~2023~~ **[to be updated based on cash flow]** the date provided in the Cash Flow Projection; and (ii) receipt by Borrower of Sale Binding Bids and Alternative Offtake or Services Binding Bids, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Fourth DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (c) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Fourth DIP Advance;
- (d) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (e) No Material Adverse Change shall have occurred since the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Fourth DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);

- (h) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (i) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (j) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (k) The Borrower shall be in compliance with all Court Orders.

14. DISBURSEMENTS

The proceeds of all DIP Advances shall be funded by the DIP Lenders into the Borrower's account noted in Schedule "F" hereto (the "**Borrower's Account**").

15. VOLUNTARY PREPAYMENTS:

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting a Pro Rata payment to the DIP Lenders, to one or more accounts to be specified in writing in advance, in minimum amounts \$1,000,000 and in increments of \$250,000 in excess thereof, without premium or penalty. Any amounts so prepaid may not be re-borrowed by the Borrower hereunder.

Any voluntary prepayments shall be applied: (i) first, to amounts outstanding under Tranche; (ii) second, once all amounts outstanding under Tranche 2 have been paid in full, to amounts outstanding under Tranche 3; and (iii) third, once all amounts outstanding under Tranche 2 and Tranche 3 have been paid in full, to amounts outstanding under Tranche 1.

16. INTEREST RATE:

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal in aggregate to (the "**Interest Rate**"):

Tranche 1 – 10% per annum payable in cash in accordance with this Section 16 ("**Cash Interest**") and 3% per annum payable-in-kind in accordance with this Section 16 (the "**PIK Interest**").

Tranche 2 – 8.25% per annum Cash Interest.

Tranche 3 – 8.25% per annum Cash Interest.

Upon the occurrence and during the continuance of an Event of Default the Cash Interest rate shall be increased by an additional 2% per annum ("**Default Interest**"), payable monthly in cash in arrears on the last Business Day of each calendar month and the Interest Rate, including Default Interest, shall begin to accrue on all amounts borrowed.

The Borrower shall pay in cash the Cash Interest on the aggregate outstanding principal amount of DIP Advances monthly in arrears on the last Business Day of each calendar month beginning on October 31, 2023. The Borrower shall pay the PIK Interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with this Section 16.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days. For greater certainty, there shall not be any compounding in respect of Cash Interest provided it is paid on time in accordance with this DIP Agreement.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lenders of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

All PIK Interest and Backstop Fees (as defined below) (collectively, the "**PIK Amounts**") shall be: (i) converted to equity at plan or transaction value in the event of a sale or restructuring transaction in respect of the Borrower in which the DIP Lenders retain equity value in the Borrower or its successor(s) upon emergence from CCAA and in such circumstances, all PIK Amounts will be deemed satisfied in full; or (ii) in any other circumstance, paid in cash upon the Maturity Date (the "**PIK Mechanism**").

For greater certainty, unless otherwise expressly provided in this Agreement, all payments to be made by the Borrower to the DIP Lenders under this Agreement on account of principal, interest, fees or otherwise shall be made on a Pro Rata basis.

17. BACKSTOP FEE:

The Borrower shall pay to the DIP Lenders a backstop fee (the "**Backstop Fee**"), as compensation for their Backstop Commitments, in an amount equal to 2% of the entire Maximum Amount, which shall be earned by the DIP Lenders on a Pro Rata basis; upon the Court issuing the ARIO, and shall be payable upon the Company's exit from the CCAA Proceedings.

The Backstop Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations. ~~Amounts representing the Backstop Fee that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and shall bear interest in accordance with Section 16 of this DIP Agreement.~~ Only those DIP Lenders which are not Defaulting Lenders shall be entitled to any portion of the Backstop Fee when such fee is paid in

cash or otherwise allocated to the DIP Lenders pursuant to the PIK Mechanism, with any amounts which would otherwise have been paid or allocated to a Defaulting Lender to instead be distributed, on a Pro Rata basis, to the DIP Lenders who are not Defaulting Lenders.

18. DIP SECURITY:

All of the DIP Obligations shall be secured by a Court-ordered charge (the "**DIP Charge**") over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the "**Collateral**").

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, Liens, claims, trusts and charges, but shall be subject to and shall rank behind or pari passu with the Permitted Priority Liens.

Any amendment to, waiver of or release of a material portion of: (i) the priority of the DIP Charge; and (ii) the Collateral (subject to the terms of the ~~Initial Order or the ARIO, as applicable~~), shall require the prior written consent of each of the DIP Lenders.

19. MANDATORY REPAYMENTS:

Unless the Borrower has obtained the prior written consent of the Majority DIP Lenders, the proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); or (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral (collectively, the "**Net Proceeds**") shall be paid: (i) first, to satisfy the Admin Charge, the D&O Charge, ~~the Cargill Margin Charge~~ **to be updated** (as defined in the ARIO) and the KERP Charge; (ii) second, to satisfy DIP Obligations under Tranche 2; (iii) third, to satisfy DIP Obligations under Tranche 3; (iv) fourth, to satisfy DIP Obligations under Tranche 1; (v) fifth, to satisfy any other priority charges in accordance with their priorities; (vi) sixth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with

their priorities; and (vii) seventh, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lenders and applied to the aggregate outstanding principal amount of the DIP Advances in accordance with Section 6 of this DIP Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

20. REPRESENTATIONS AND WARRANTIES:

The Borrower jointly and severally represents and warrants to each DIP Lender, upon which each DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the ~~Initial Order~~ARIO:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary, except where the failure to have such qualification, license or registration would not have a Material Adverse Effect (as defined below). For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of the Borrower to comply with its obligations hereunder or under any Court Order;
- (b) Subject to the granting of the ~~Initial Order and the ARIO, as the case may be~~ARIO, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;
- (c) None of the subsidiaries and affiliates of the Borrower have any material assets;
- (d) Subject to the granting of the ~~Initial Order and the ARIO, as the case may be~~ARIO, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary

corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;

- (e) Subject to the granting of the ~~Initial Order and the ARIO, as the case may be~~ ARIO, this DIP Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;
- (f) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of: (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of ~~the Initial Order,~~ the ARIO or other Court Order, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;
- (g) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, the Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect;
- (h) Unless previously disclosed to the DIP Lenders in

writing prior to execution of this DIP Agreement, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement, "**Borrower's Knowledge**" means the actual knowledge of the senior officers and directors of the Borrower and the knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;

- (i) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, would likely result in Liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (j) As at the date of the ~~Initial Order~~ [ARIO](#), the Borrower has good and marketable title to all of the Collateral subject to Permitted Liens;
- (k) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**, as at October ~~8~~[24](#), 2023, the Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals, except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**;
- (l) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "H"**, there are no actions, suits or proceedings

(including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that have or will not have been stayed pursuant to the CCAA Proceedings which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

- (m) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provides adequate insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons engaged in the same or similar business to the assets and operations of the Borrower;
- (n) All factual information provided by or on behalf of the Borrower to the DIP Lenders in writing for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lenders have all of their rights hereunder in the event that such actual future results are not as forecast or projected, including, without limitation, as provided for in Section 24(e) of this DIP Agreement); and
- (o) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

21. AFFIRMATIVE COVENANTS:

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Borrower subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (b) The Borrower shall (i) provide the Technical Advisor with reasonable access to the Scully mine; (ii) provide the Technical Advisor with substantive operational updates; and (iii) consider recommendations made by the Technical Advisor regarding the operations of the Scully mine;
- (c) Subject to the terms of the Solicitation Process and the Solicitation Process Order, keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Solicitation Process, subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (d) Perform its obligations hereunder as and when required and in the manner required;
- (e) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projections subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings, including the Solicitation Process and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lenders in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lenders in respect of the CCAA Proceedings; and (iii) operating costs, expenses, capital expenditures and ordinary course liabilities (including, without limitation, wages, vacation pay and active employee benefits) of the

Borrower;

- (f) Comply in all respects with the provisions of the court orders made in connection with the CCAA Proceedings (collectively, the "**Court Orders**" and each a "**Court Order**");
- (g) Preserve, renew and keep in full force the Borrower's corporate or other existence and all material licenses, permits or approvals required in respect of its business, properties, assets or any activities or operations carried out therein except where the failure to do so would not cause a Material Adverse Effect;
- (h) Maintain insurance coverage consistent with the coverage in existence of the date hereof with respect to the Collateral;
- (i) Conduct its activities in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance;
- (j) Promptly notify the DIP Lenders and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Event of Default (a "**Default**");
- (k) Promptly notify the DIP Lenders and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower that is not stayed by the ~~Initial Order~~, ARIO or other Court Order;
- (l) Promptly after the same is available, but in no event later than the day that is two (2) Business Days prior to the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of the Borrower in the CCAA Proceedings and incorporate all reasonable comments of the DIP Lenders in respect of such

materials;

- (m) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, health and safety, and environmental laws;
- (n) Except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory Liens, trust and other Crown claims including employee source deductions, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i) payments that rank in priority to the DIP Charge; and (ii) payments that are otherwise authorized pursuant to Court Order;
- (o) Either (i) pay in full; or (ii) treat as unaffected, the DIP Obligations in any plan of compromise or arrangement, proposal or any other restructuring whatsoever;
- (p) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances;
- (q) Subject to any Court Orders, grant the DIP Lenders and their professional advisors reasonable access to the Collateral and their business, properties, and books and records;
- (r) Conduct the Solicitation Process strictly in accordance with its terms (including milestones and timelines) and strictly comply with the Solicitation Process Order; and
- (s) If required, appoint the ~~Additional—Independent Directors~~CRO (as defined below) in accordance with Section 25 of this DIP Agreement;
- (t) Deliver to the DIP Lenders and the Monitor no later than 5:00 p.m. (Eastern Time) on the Friday of each week a 13-week rolling iron ore delivery forecast prepared by the Borrower (the "**CCAA Iron Ore Delivery Forecast**"), which shall be consistent with the DIP Agreement Cash Flow Projection;

- (u) Commencing ~~two weeks~~one month following the delivery of the initial CCAA Iron Ore Delivery Forecast and every ~~two weeks~~month thereafter, deliver to port not less than ~~85~~50% of the iron ore contemplated (in tonnes) by the most recently delivered CCAA Iron Ore Delivery Forecast on a trailing two week basis; and
- (v) By November 1, 2023, deliver to the DIP Lenders, with a copy to the Monitor, a capital expenditure budget for the 2024 calendar year, which budget shall include maintenance shutdown and winterization costs for the Scully mine and be in form and substance satisfactory to the Majority DIP Lenders, acting reasonably.

22. NEGATIVE COVENANTS:

The Borrower covenants and agrees not to do the following or permit any subsidiary to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the Required DIP Lenders or pursuant to an Order of the Court:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the ~~Initial Order or~~ ARIO; or (ii) where such transaction results in the repayment of DIP Obligations in accordance with Section 19 of this DIP Agreement;
- (b) Make any payment of principal or interest in respect of any indebtedness outstanding prior to ~~Initial Order~~ October 10, 2023 ("**Existing Indebtedness**") other than as may be permitted or required herein or by a Court Order;
- (c) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business, in accordance with the DIP Agreement Cash Flow Projection;
- (d) Permit any new Liens to exist on any Collateral other than Permitted Liens;
- (e) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its

organizational documents that would reasonably be expected to be adverse to the DIP Lenders;

- (f) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or loans, advances, payments, financial assistance, capital contributions or other distributions of any kind or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lenders in writing;
- (g) Enter into any transaction with any affiliate;
- (h) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management bonus or similar payments except in the case of (i) the KERP, or (ii) management bonuses or similar payments to the extent provided for in the DIP Agreement Cash Flow Projection;
- (i) Engage in new businesses;
- (j) Change its fiscal year or accounting practices;
- (k) Issue any equity;
- (l) Take any action (or in any way support the taking of any action by another person) that has, or would reasonably be expected to have, a material adverse impact on the rights and interests of the DIP Lenders, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations;
- (m) Except in accordance with the Solicitation Process Order, commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or plan without the prior written consent of the Required DIP Lenders in their sole discretion;
- (n) Pay, incur any obligation to pay, or establish any retainer with respect to, the fees, expenses or disbursements of a legal, financial or other advisor of any third party, other than (i) the Borrower and its legal counsel, financial advisors and other advisors, (ii) the Monitor and its legal counsel, and (iii) the legal, financial and other advisors of the DIP Lenders, in each

case engaged as of the date hereof;

- (o) Challenge or fail to support the DIP Charge and DIP Obligations;
- (p) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Agreement Cash Flow Projection subject to the Permitted Variances; ~~and~~
- (q) Make any individual capital expenditure in an amount greater than \$1.5 million without receiving the written approval of the CRO;
- (r) ~~(q)~~—Except for the addition of the ~~Additional Independent Directors~~ CRO, if required, not actively carry out any changes to the composition (including the addition, removal or replacement) of its board of directors (the "Board") (other than any director resignation) or its officers (including the appointment of ~~a chief restructuring officer~~ the CRO) without the consent of the Required DIP Lenders; and
- (s) Purchase the 994 Wheel Loader referenced in the Cash Flow Projection without first (i) appointing the CRO; and (ii) receiving written confirmation that an equipment financier acceptable to the Majority DIP Lenders will provide equipment financing to the Borrower in respect of the 994 Wheel Loader on emergence from the CCAA Proceedings.

23. INDEMNITY AND RELEASE:

The Borrower hereby indemnifies and holds harmless each of the DIP Lenders and each of their respective directors, officers, employees, partners, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "Indemnified Persons", and each, an "Indemnified Person") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other

out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the fraud, gross negligence, bad faith or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating thereto. The Borrower further covenants to, and does hereby, release each of the DIP Lenders solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

24. EVENTS OF DEFAULT:

The occurrence of any one or more of the following events, without the prior written consent of the Required DIP Lenders, shall constitute an immediate event of default ("**Event of Default**") under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral (being Collateral with an aggregate fair market value as reasonably determined by the Required DIP Lenders in excess of \$250,000, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower or any of the Collateral;
- (b) Failure to obtain the Solicitation Process Order by ~~Oct~~ November 27, 10, 2023 or satisfy any Solicitation Process Milestone by the applicable date required

hereunder;

- (c) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii) that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lenders in connection with the Collateral or under this DIP Agreement or any Court Order; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;
- (d) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) Business Day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);
- (e) The issuance of an order granting a Lien of equal or superior status to that of the DIP Charge, other than as provided in Section 18 of this DIP Agreement;
- (f) Any Proposed Amended Cash Flow Projection contemplates or forecasts an adverse change or changes from the then existing DIP Agreement Cash Flow Projection and such change(s) constitute a Material Adverse Change or is not delivered to the DIP Lenders within two (2) days of the requisite time frame set out herein.
- (g) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lenders shall be incorrect or misleading in any material respect as of the date made or deemed made and, if the circumstances giving rise to the incorrect representation or warranty are capable of modification or rectification (such that, thereafter the representation or warranty would be correct), the representation or warranty remains uncorrected for a period of five (5) Business Days;
- (h) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the

Borrower's business or its performance solely as a result of (i) the commencement, announcement or continuance of the CCAA Proceedings or (ii) conducting the Solicitation Process;

- (i) Any breach of any Court Order upon receipt by the Borrower (with a copy to the Monitor) of notice from the Required DIP Lenders of such breach by the Borrower and such breach is not cured within two (2) Business Days of delivery of such notice;
- (j) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and such Default shall continue unremedied for a period of five (5) Business Days after the earlier of (i) delivery of notice given by the Required DIP Lenders to the Borrower, with a copy to the Monitor or (ii) the Borrower's Knowledge of such failure to perform or comply;
- (k) The commencement by the Borrower of an action or any other proceeding against the DIP Lenders;
- (l) The expiry without further extension of the stay of proceedings provided for in ~~the Initial Order or~~ the ARIO, ~~as applicable~~;
- (m) Other than the appointment of the ~~Additional Independent Directors~~ CRO, if required, any change to the composition of the Board or officers of the Borrower (other than as a result of director resignation(s)) that is not acceptable to the Majority DIP Lenders acting reasonably;
- (n) The removal, termination, replacement or material change in the scope or extent of the authority of any chief restructuring officer (if one is appointed);
- (o) Any change of control of the Borrower;
- (p) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is inconsistent with the terms of this DIP Agreement; ~~or~~
- (q) Failure to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP

Advance; or

- (r) Failure to appoint the CRO by November 10, 2023 on terms that are mutually acceptable to the DIP Lenders and the Borrower, acting reasonably, and in consultation with the Monitor.

25. CORPORATE GOVERNANCE

~~At the request of the Majority DIP Lenders at any time following the granting of the ARIQ, the~~ The Borrower shall cause the Board to appoint ~~up to two (2) additional independent directors~~ a Chief Restructuring Officer with substantial restructuring experience, acceptable to the Borrower, the Monitor and the Required DIP Lenders (the "~~Additional Independent Directors~~"). ~~The Additional Independent Directors shall be appointed forthwith after any such request is made by~~ CRO") forthwith following the date of this agreement, but in any event no later than November 10, 2023, on terms acceptable to the Borrower, the Monitor and the Required DIP Lenders, ~~provided that the Required DIP Lenders shall provide the Borrower with a list of at least 5 candidates they deem acceptable concurrently with any such requestor as otherwise may be determined appropriate by the Court, but which terms shall require that any capital expenditure by the Company in an amount greater than \$1.5 million must be approved in writing by the CRO.~~

26. REMEDIES:

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lenders except in the sole discretion of the Required DIP Lenders; and (b) the Required DIP Lenders may immediately terminate the DIP Facility and demand immediate payment of all of the DIP Obligations by providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than five (5) Business Days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the Required DIP Lenders shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver; (b) exercise the rights of a secured party under the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Newfoundland

and Labrador) or any other applicable law relating to the enforcement of Liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lenders in exercising any of their rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lenders shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lenders under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

27. LEGAL FEES:

The Borrower shall pay by wire transfer, within two (2) Business Days of receipt of a detailed invoice (redacted for privilege), all reasonable and documented out-of-pocket expenses, including all reasonable expenses of Canadian legal counsel and US legal counsel on a solicitor-client basis and the expenses of one financial advisor, ~~one communications consultant~~ and one Technical Advisor, incurred by the DIP Lenders in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.

28. DIP LENDER APPROVALS:

Any consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders to be delivered in writing may be delivered by any written instrument, including by way of email, by the DIP Lenders, the Majority DIP Lenders or Required DIP Lenders (or their counsel), as applicable, pursuant to the terms hereof. For greater certainty, any consent, approval, instruction or other expression delivered in writing by Bennett Jones LLP shall be considered as delivery of a consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders, as may be indicated by Bennett Jones LLP in such written instrument.

29. EVIDENCE OF

The DIP Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the

INDEBTEDNESS

indebtedness of the Borrower to the DIP Lenders under the DIP Facility.

30. TAXES:

All payments by the Borrower under this DIP Agreement to the DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").

31. FURTHER ASSURANCES:

The Borrower shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lenders may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lenders, acting reasonably, it shall promptly execute and deliver to the DIP Lenders any general security agreement or other security documents securing its obligations to the DIP Lenders hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

32. ENTIRE AGREEMENT:

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

33. AMENDMENTS, WAIVERS, ETC.:

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Unless otherwise expressly provided in this Agreement, any waiver, amendment or other modification to this Agreement shall require the written consent of the Required DIP Lenders; provided that, notwithstanding the foregoing, solely with the consent of each DIP Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required DIP Lenders), any such agreement may:

(1) increase the DIP Financing

Commitment of such DIP Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall constitute an increase of any DIP Financing Commitment of such DIP Lender;

(2) reduce or forgive the principal amount of any DIP Advances (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute a reduction or forgiveness in principal);

(3) extend the scheduled Maturity Date of any DIP Advance (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute an extension of any maturity date);

(4) reduce the Interest Rate (other than to waive any Default or Event of Default or any obligations of the Borrower to pay interest at the default rate of interest in accordance with Section 16 of this Agreement) or the amount of any fees owed to such DIP Lender;

(5) waive, amend or modify the provisions of Section 16 (with respect to Pro Rata allocation of all payments among DIP Lenders) of this Agreement in a manner that would by its terms alter the Pro Rata sharing of payments required thereby;

(6) waive, amend or modify the definition of "Pro Rata; and

(7) waive, amend or modify the provisions of this Section 33.

Notwithstanding anything else in this DIP Agreement, and for greater certainty, this DIP Agreement may not be waived, amended or modified to reduce the principal amount owed to any DIP Lender under the DIP Facility or increase the amount of any DIP Lender's commitment under the DIP Facility, in each case, without the prior written consent of such DIP Lender.

Any amendment to the terms of this DIP Agreement shall be

made in writing and signed by the Borrower and the requisite DIP Lenders.

To the extent any fees or other compensation becomes payable to the DIP Lenders in connection with any amendment to this DIP Agreement, all DIP Lenders who are not Defaulting Lenders shall have the opportunity to receive their Pro Rata portion of any such fees or other compensation.

34. ASSIGNMENT:

The DIP Lenders may assign this DIP Agreement and their rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lenders with the prior written consent of the Borrower, not to be unreasonably withheld (provided that no such consent of the Borrower shall be required upon the occurrence of an Event of Default which is continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender and that the assignment will not have a material adverse impact on the Solicitation Process.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

35. SEVERABILITY:

Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**36. COUNTERPARTS
AND SIGNATURES:**

This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.

37. DISCLOSURE

Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of their business (the "**Communications**"), without the prior written consent of the

Majority DIP Lenders, which is not to be unreasonably withheld. The Borrower shall provide the DIP Lenders with a reasonable opportunity to review and comment on all Communications in respect of this DIP Agreement or the CCAA Proceedings prior to such Communications being issued or published.

38. NOTICES:

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

(a) In the case of the Borrower:

Tacora Resources Inc.
102 NE 3rd Street Suite 120
Grand Rapids, Minnesota
55744 USA

Attention: Joe Broking & Heng Vuong
Email: joe.broking@tacoraresources.com;
heng.vuong@tacoraresources.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West, 199 Bay St.
Toronto, ON M5L 1B9

Attention: Ashley Taylor & Lee Nicholson
Email: ataylor@stikeman.com; leenicholson@stikeman.com

and

Greenhill & Co., LLC
1271 6th Ave, New York,
NY 10020, USA

Attention: Chetan Bhandari, Michael Nessim & Usman
Masood
Email: chetan.bhandari@greenhill.com;
michael.nessim@greenhill.com;
usman.masood@greenhill.com

And with a copy to the Monitor:

FTI Consulting Canada Inc.

Toronto-Dominion Centre, 79 Wellington St W Suite 2010,
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa
Email: nigel.meakin@fticonsulting.com;
jodi.porepa@fticonsulting.com

And with a copy to the Monitor's Counsel:

Cassels Brock & Blackwell LLP
Bay Adelaide Centre – North Tower,
Suite 3200, Toronto, ON M5H 0B4

Attention: Ryan Jacobs, Jane Dietrich & Michael Wunder
Email: rjacobs@cassels.com; jdietrich@cassels.com;
mwunder@cassels.com

(b) In the case of the DIP Lenders:

c/o
GLC Advisors & Co., LLC
600 Lexington Ave., 9th Floor
New York, NY 10022 USA

Attention: Michael Sellinger, Michael Kizer & Adam
Kelly-Penso
Email: michael.sellinger@glca.com; michael.kizer@glca.com;
adam.kellypenso@glca.com

With a copy to:

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Attention: Sean Zweig, Mike Shakra & Thomas Gray
Email: zweigs@bennettjones.com;
shakram@bennettjones.com;
grayt@bennettjones.com

and

Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001 USA

Attention: Sidney Levinson & Erica Weisgerber

Email: slevinson@debevoise.com;
eweisgerber@debevoise.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 ET or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day. For the purposes of this DIP Agreement, a "**Business Day**" means any day except any Saturday, any Sunday, or any day which is a legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close in the Provinces of Ontario or Newfoundland and Labrador or the State of New York.

**39. GOVERNING LAW
AND
JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**40. CURRENCY AND
JUDGMENT
CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lenders all payments on account of principal and interest hereunder in lawful money of the United States of America.

If in the recovery by the DIP Lenders of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lenders is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lenders and such shortfall can be claimed by the DIP Lenders against the Borrower as an alternative or additional cause of action.

**41. PRIOR DIP LOAN
AGREEMENT**

The Borrower and the DIP Lenders agree to terminate the DIP Loan Agreement dated as of September 11, 2023 and the parties release and discharge each other from their respective commitments and obligations thereunder.

[- Signature pages follow -]

IN WITNESS HEREOF, the parties hereby execute this DIP Agreement as at the date first mentioned above.

BORROWER :

TACORA RESOURCES INC.

By: _____

Name:

Title:

DIP LENDERS :

~~CONCISE CAPITAL MANAGEMENT, LP~~

on behalf of



Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT
LLC**

on behalf of

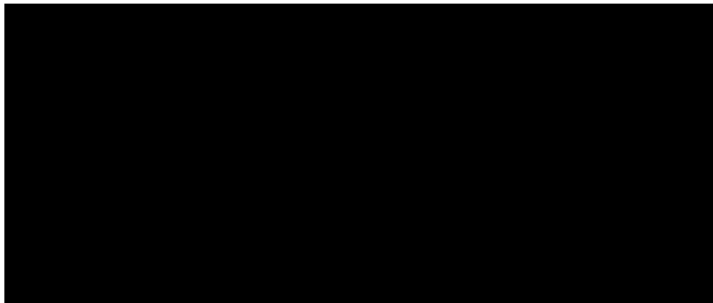


Name:

Title:

MSD PARTNERS, LP

on behalf of

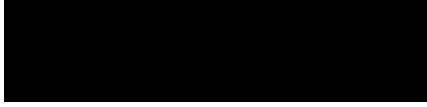


Name:

Title:

O'BRIEN-STALEY PARTNERS

on behalf of



Name:

Title:

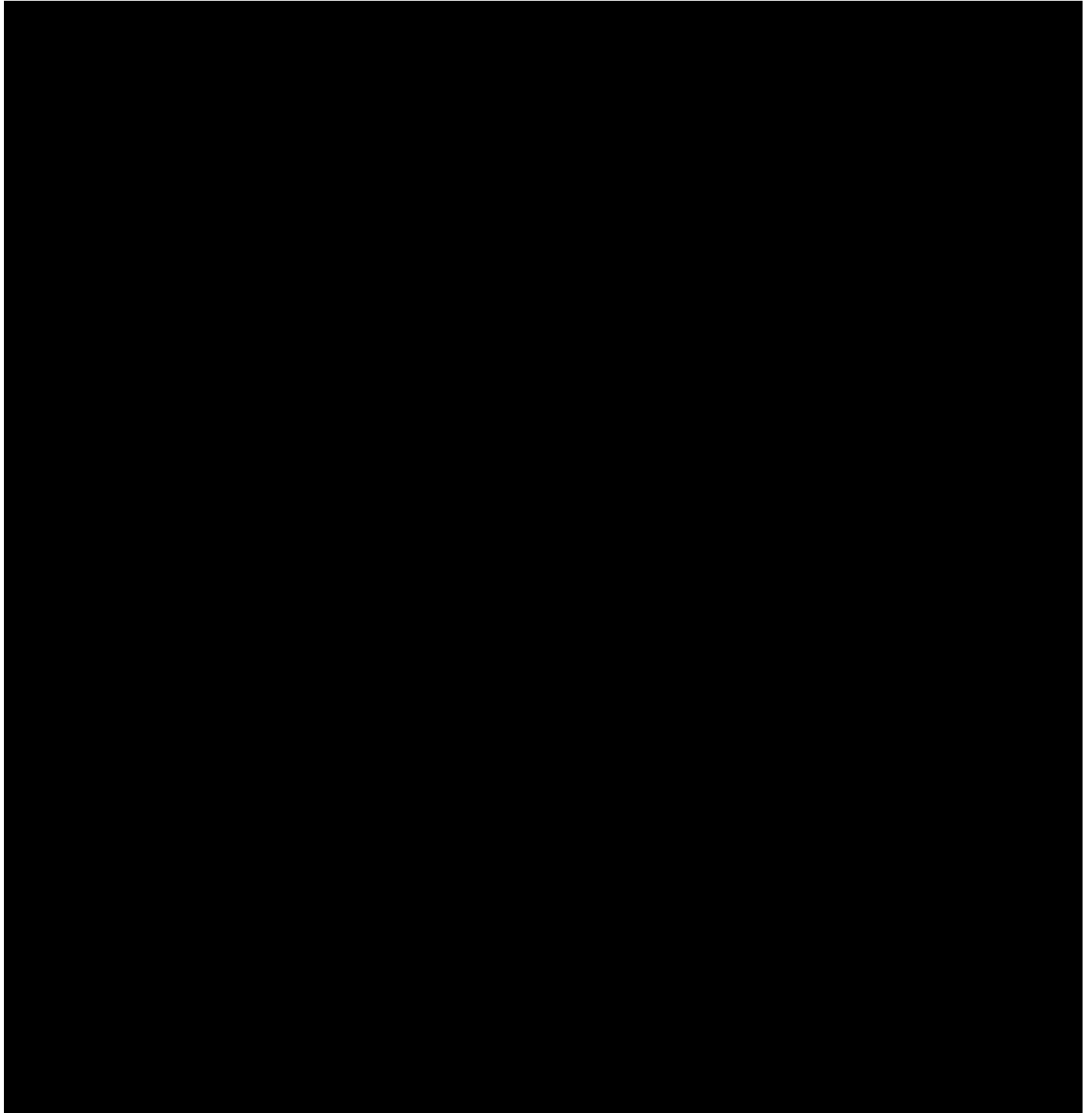
SNOWCAT CAPITAL MANAGEMENT, LP

Name:

Title:

BRIGADE CAPITAL MANAGEMENT, LP

on behalf of



Name:

Title:

SCHEDULE "A"

CASH FLOW PROJECTION

See attached.

SCHEDULE "B"

FORM OF DRAWDOWN CERTIFICATE

TO: GLC Advisors Co., on behalf of the DIP lenders under the DIP Agreement dated October 826, 2023 (the "**DIP Lenders**")

AND TO: FTI Consulting Canada Inc. (the "**Monitor**")

FROM: Tacora Resources Inc. (the "**Borrower**")

DATE: [●]

1. This certificate is delivered to you in connection with a request for a DIP Advance pursuant to the DIP Agreement made as of October 826, 2023, between the Borrower and the DIP Lenders, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.

2. The Borrower hereby requests a DIP Advance as follows:

(a) Date of DIP Advance: _____

(b) Aggregate amount of requested DIP Advance: \$[●]

to be transferred into the Borrower's Account by the DIP Lenders or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.

3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).

4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lenders, have been complied with.

5. The Borrower is in compliance with all Court Orders.

6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection (subject to the Permitted Variance), or as has been otherwise agreed to by the DIP Lenders in advance in writing.

7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

TACORA RESOURCES INC.

By: _____
Name:
Title:

cc: Stikeman Elliott LLP
Greenhill & Co Canada Ltd.

SCHEDULE "C"
INITIAL ORDER

See attached.

SCHEDULE "D"

ARIO

See attached.

SCHEDULE "E"
SOLICITATION PROCESS

See attached.

SCHEDULE "F"
BORROWER'S ACCOUNT INFORMATION

SCHEDULE "G"
TAXES AND SOURCE DEDUCTIONS

Nil

SCHEDULE H

LITIGATION

1. None.

For greater certainty, the following claims are ongoing but ~~will~~are be subject to the Initial Order granted on October 10, 2023:

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd. and subject to arbitration proceedings in Newfoundland and Labrador
3. Claims made by Construction & Expertise PG Inc. subject to proceedings before the Supreme Court of Newfoundland and Labrador (Court file. 2022 01G 3243)

SCHEDULE I

DEFINITIONS

~~"Additional Independent Directors" has the meaning provided in Section 25.~~

"Admin Charge" means an administration charge in an aggregate amount not to exceed \$1,000,000 which shall ~~rank in~~ have the priority ~~to~~ provided in the ~~DIP Charge and the D&O Charge, pursuant to the Initial Order~~ ARIO.

"Alternative Offtake or Services Binding Bid" has the meaning provided in Section 12.

"Alternative Offtake or Services LOIs" has the meaning provided in Section 12.

"Alternative Offtake or Services Transaction" has the meaning provided in Section 12.

"Applicable Percentage" means, in respect of any DIP Lender at any time, with respect to a DIP Advance, the percentage of such DIP Advance which such DIP Lender has agreed to make available to the Borrowers at such time, determined by dividing the DIP Financing Commitment of such DIP Lender by the aggregate DIP Financing Commitments of all of the DIP Lenders.

"ARIO" has the meaning provided in Section 13.

"Backstop Advance" means an advance made by a DIP Lender to the Borrower in connection with the Backstop Commitment of such DIP Lender. 11

"Backstop Commitment" has the meaning provided in Section.

"Backstop Fee" has the meaning provided in Section 17.

"Board" has the meaning provided in Section 22.

"Borrower" has the meaning provided in Section 1.

"Borrower's Account" has the meaning provided in Section 14.

"Borrower's Knowledge" has the meaning provided in Section 20.

"Business Day" has the meaning provided in Section 38.

"Cash Flow Projection" has the meaning provided in Section 8.

"Cash Interest" has the meaning provided in Section 16.

"CCAA" has the meaning provided in the preamble.

"CCAA Iron Ore Delivery Forecast" has the meaning provided in Section 21.

"CCAA Proceedings" has the meaning provided in the preamble.

"Collateral" has the meaning provided in Section 18.

"Communications" has the meaning provided in Section 37.

"Court" has the meaning provided in the preamble.

"Court Order" has the meaning provided in Section 21.

"CRO" has the meaning provided in Section 25-25.

"D&O Charge" means a directors and officers liability charge in an amount not to exceed \$~~5,300,000~~5,200,000 which shall ~~rank behind~~have the ~~Admin Charge but ahead of the DIP Charge, pursuant to the Initial Order~~priority provided in the ARIQ.

"Default" has the meaning provided in Section 21.

"Defaulting Lender" has the meaning provided in Section 11.

"Defaulting Lender Funding Obligation" has the meaning provided in Section 11.

"DIP Advance" has the meaning provided in Section 10.

"DIP Agreement" has the meaning provided in the preamble.

"DIP Agreement Cash Flow Projection" has the meaning provided in Section 8.

"DIP Charge" has the meaning provided in Section 18.

"DIP Facility" has the meaning provided in Section 5.

"DIP Financing Commitment" means, with respect to each of the respective DIP Lenders, the amount indicated in the table below, the amount of which may not be amended for a specific DIP Lender, without the prior written consent that DIP Lender: ~~[NTD: DIP Lenders to advise of updated allocations]~~

<u>DIP Lender</u>	<u>DIP Financing Commitment (\$)</u>
Brigade Capital Management, LP	██████████
Concise Capital Management LP	██████████

Millstreet Capital Management LLC	[REDACTED]
MSD Partners, LP	[REDACTED]
O'Brien-Staley Partners	[REDACTED]
Snowcat Capital Management, LP	[REDACTED]

"DIP Lenders" has the meaning provided in Section 2.

"DIP Obligations" has the meaning provided in Section 6.

"Event of Default" has the meaning provided in Section 24.

"Existing Indebtedness" has the meaning provided in Section 22.

"Expenses" has the meaning provided in Section 27.

"First DIP Advance" has the meaning provided in Section 10.

"Fourth DIP Advance" has the meaning provided in Section 10.

"GLC Fees" means any transaction fees payable to GLC Advisors & Co., LLC under its engagement letter with Bennett Jones LLP, as may be amended.

"Indemnified Person" has the meaning provided in Section 23.

"Initial Order" ~~has means~~ the ~~meaning provided in Section 13~~ Order granted in these proceedings on October 10, 2023 as attached at Schedule "C" hereto.

"Interest Rate" has the meaning provided in Section 16.

"KERP" means ~~at the~~ key employee retention program in ~~an amount not to exceed \$5,000,000 in the aggregate, which program shall be acceptable to the Required DIP Lenders in all material respects, including milestones and allocation, which the DIP Lenders covenant to make good faith efforts to resolve with the Borrower in a timely manner~~ the form attached as Confidential Exhibit "C" to the affidavit of Joe Broking sworn October 15, 2023 (the "Company KERP"), with an additional \$2 million available to on-site employees not already included in the Company KERP and subject to the same payment triggers provided in the Company KERP.

"KERP Charge" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an

amount not to exceed \$~~5,000,000~~5,035,000, plus such further amount agreed to by the Required DIP Lenders in respect of the Borrower's management and executive team, to secure the Borrower's obligations under the KERP.

“**Liens**” means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Majority DIP Lenders**" means, at any time, DIP Lenders holding more than 50% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Margin or Hedge Services**" has the meaning provided in Section 9.

“**Material Adverse Change**” means an event, change or condition that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, operations, financial condition or operating results of the Borrower and its subsidiaries, taken as a whole (other than as a result of the events leading up to and following commencement of the CCAA Proceedings).

"**Material Adverse Effect**" has the meaning provided in Section 20.

"**Maturity Date**" has the meaning provided in Section 6.

"**Maximum Amount**" has the meaning provided in Section 5.

"**Monitor**" has the meaning provided in Section 8.

"**Net Proceeds**" has the meaning provided in Section 19.

“**Offtake Agreement**” means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended.

“**Permitted Liens**” means (i) Permitted Priority Liens, (ii) the DIP Charge, (iii) validly perfected Liens existing prior to the date hereof as in effect on the date hereof; and (iv) inchoate statutory Liens arising after the date on which the Initial Order is obtained in respect of any accounts payable arising after the date on which the Initial Order is obtained in the ordinary course of business, subject to the obligation to pay all such amounts as and when due, (v) the Subordinate Transaction Fee Charge.

“**Permitted Priority Liens**” means the (i) the Admin Charge, (ii) D&O Charge, (ii) KERP Charge (if applicable), (iv) the Priority Transaction Fee Charge, (v) Liens in favour of secured parties that did not receive notice of the application for the Initial Order (to the extent the Majority DIP Lenders (or their counsel) agreed based on the service list that such secured parties would not be served), (vi) Liens in respect of claims that are individually and in the aggregate immaterial, solely to the extent such Liens are not registered under a personal property registry system and (vii) any amounts payable by a Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits), income tax and workers compensation

claims, in the case of this item (viii) solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Charge pursuant to the Court Orders; (ix) such other Liens existing as of the date of the Initial Order that have not been subordinated to the DIP Lender Charge pursuant to the Court Order; and (x) [the Cargill Margin Charge, ~~as defined in Initial Order~~].

"**Permitted Variance**" has the meaning provided in Section 8.

"**PIK Amounts**" has the meaning provided in Section 16.

"**PIK Interest**" has the meaning provided in Section 16.

"**PIK Mechanism**" has the meaning provided in Section 16.

"**Priority Transaction Fee Charge**" means a super priority charge that shall rank pari passu with the DIP Charge in favour of Greenhill & Co. Canada Ltd. in an aggregate amount up to the GLC Fees in respect of Greenhill & Co. Canada Ltd.'s transaction fees owing under its engagement letter with the Borrower dated January 23, 2023.

"**Proposed Amended Cash Flow Projection**" has the meaning provided in Section 8.

"**Pro Rata**" means, in respect of any DIP Lender at any time, the ratio of the DIP Obligations owing to such DIP Lender at such time to the aggregate DIP Obligations owing to all DIP Lenders which are not Defaulting Lenders at such time.

"**Required DIP Lenders**" means, at any time, DIP Lenders holding more than 66 2/3% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Sale Binding Bid**" has the meaning provided in Section 12.

"**Sale Transaction**" has the meaning provided in Section 12.

"**Second DIP Advance**" has the meaning provided in Section 10.

"**Solicitation Process**" has the meaning provided in Section 13.

"**Solicitation Process Milestone**" has the meaning provided in Section 12.

"**Solicitation Process Order**" has the meaning provided in Section 13.

"**Subordinate Transaction Fee Charge**" means a charge that shall rank pari passu with the Senior Priority Notes, and any other secured claim that ranks pari passu with the Senior Priority Notes, in favour of Greenhill & Co. Canada Ltd. for any transaction fees payable to Greenhill & Co. Canada Ltd. in excess of the quantum of the GLC Fees under its engagement letter with the Borrower dated January 23, 2023.

"Senior Priority Notes" means the Borrower's 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

"Taxes" has the meaning provided in Section 30.

"Technical Advisor" means a technical advisor engaged by the DIP Lenders or their legal or financial advisors.

"Third DIP Advance" has the meaning provided in Section 10.

"Tranche 1" has the meaning provided in Section 5.

"Tranche 2" has the meaning provided in Section 5.

"Tranche 3" has the meaning provided in Section 5.

**THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF THOMAS GRAY SWORN
THE 26TH DAY OF OCTOBER, 2023**

JOSHUA FOSTER
A Commissioner for taking affidavits, etc.

BINDING TERM SHEET
FOR TACORA RESOURCES IRON ORE CONCENTRATE DURING THE CCAA PROCEEDINGS

Section I: Iron Ore Offtake Agreement

Product:	Iron Ore Concentrate produced by the Producer and meeting the Specifications outlined in Appendix A
Producer/Seller:	Tacora Resources Inc.
Buyer:	Javelin Global Commodities
Quantity:	100% of the Product (being approximately 4,000,000 wmt per annum pro rata)
Delivery Period:	Forthwith upon approval of DIP through to 30 April 2024, subject to mutually agreed extension
Delivery Point:	Pointe Noire, Quebec, Canada
Incoterm:	FOB
Shipping terms:	Loadrate, shipment size, scheduling, laycans and demurrage/despatch as per existing offtake agreement
Price:	<p>Javelin will provide full price transparency to the international markets.</p> <p>Price payable by Javelin will be a pass through of the price paid by the end Customer ("Onward Sale Price"), net of costs, fees and expenses, calculated in accordance with the following formula.</p> <p>$A - B - C - (A * D)$</p> <p>Where:</p> <ul style="list-style-type: none"> (A) Onward Sales Price of sale to Customer, inclusive of any quality adjustments (B) Actual Freight (C) Ancillary Costs of Sale (D) REDACTED <p>By way of illustration:</p> <p>(A) REDACTED</p>

	<p align="center">(C) REDACTED</p> <p>Ancillary Costs include, by way of illustration only, demurrage, port costs, tug and pilot costs, sampling and analysis, insurance etc.</p> <p>Javelin will fund freight and other Ancillary Costs free of charge</p> <p>*Marketing Fees may be deferred until exit from CCAA subject to provision of a CCAA court-ordered charge to protect post-filing amounts owing hereunder.</p>
<p>Payment Terms:</p>	<p>Payment: to within 3 Business Days after receipt of payment from Customer under Onward Sale.</p>
<p>Final Sampling & Analysis:</p>	<p>Quality adjustments shall be based on discharge port results where the Product has been sampled in the manner customary at the discharge port and certified by an internationally recognised independent laboratory.</p>
<p>Other Terms:</p>	<p>All applicable documentation shall be negotiated in good faith between Seller and Offtaker's legal representatives.</p>
<p>Confidentiality:</p>	<p>These Heads of Terms are strictly confidential. Under no circumstances may it be disclosed to third parties, other than as provided herein. Parties may, however, disclose these Heads of Terms to the parties' respective representatives, affiliates, legal and other professional advisers, as well as FTI Consulting Canada Inc. in its capacity as monitor of Tacora, and its counsel, in connection with the evaluation of the this binding term sheet, provided that all recipients are informed of and agree to the confidential nature of such information.</p> <p>Such confidential information will not be used by the parties, or the parties' advisors for any purpose other than the parties' and the parties' advisors' evaluation of the indication of interest. The parties appreciate that strict adherence to this confidentiality provision is of fundamental importance.</p> <p>This document may however be disclosed by a party as required by applicable law or regulation, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, or in connection with any regulatory report, audit, inquiry or other request for information from a regulatory, self-regulatory or legislative body of competent jurisdiction, provided that in such case, the party shall, if lawfully permitted to do so, give prompt written notice of such disclosure to the other party.</p>
<p>Governing Law & Jurisdiction</p>	<p>These Heads of Terms are governed by and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein without reference to conflict of laws principles. Any disputes under this Agreement shall be brought in the CCAA Court, and the Parties hereby consent to the exclusive personal jurisdiction and venue of the CCAA Court.</p>

The Parties have executed this Term Sheet as of the first date written above.

Javelin Global Commodities

By: _____
Name:
Title:

Tacora Resources Inc.

By: _____
Name:
Title:

Appendix A

Specifications:	Dry		Typical	Guarantee	
	Fe	%		65.50	65.25
H ₂ O	%		2.10	3.50	max
SiO ₂	%		2.70	3.00	max
Al ₂ O ₃	%		0.15	0.50	max
TiO ₂	%			0.08	max
CaO	%				
MgO	%				
Na ₂ O	%			0.08	max
K ₂ O	%			0.06	max
Mn	%		1.810	1.900	max
P	%				
S	%				
<0.150mm	%		25%		

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF TACORA RESOURCES INC.**

(Applicant)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT
TORONTO

AFFIDAVIT OF THOMAS GRAY
(Sworn October 26, 2023)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Kevin Zych (LSO#33129T)
Richard Swan (LSO#32076A)
Sean Zweig (LSO#57307I)
Mike Shakra (LSO#64604K)
Thomas Gray (LSO#82473H)

Tel: 416.863.1200 / Fax: 416.863.1716

Lawyers for the Ad Hoc Group of Noteholders