



No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED AND THE *BUSINESS CORPORATIONS ACT*, S.N.B.  
1981, c. B-9.1, AS AMENDED**

**AND**

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK)  
LTD.**

**PETITIONERS**

**SEVENTEENTH REPORT OF THE MONITOR**

**July 5, 2024**

**SEVENTEENTH REPORT OF THE MONITOR**

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## INTRODUCTION

1. On August 19, 2022, Trevali Mining Corporation (“**Trevali Corp.**”) and Trevali Mining (New Brunswick) Ltd. (“**Trevali NB**” and collectively, “**Trevali**” or the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an order granted by this Honourable Court, which was subsequently amended and restated on August 29, 2022 (the “**ARIO**”).
2. The ARIO appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until October 6, 2022. The Stay of Proceedings has since been extended until and including October 31, 2024 in respect of Trevali Corp. The Stay of Proceedings in the CCAA Proceedings in respect of Trevali NB expired on January 24, 2023, however, the Receivership Order (as defined below) provided for a further stay of proceedings in the receivership proceedings.
3. On September 14, 2022, this Honourable Court granted an order approving procedures for a sales and investment solicitation process (the “**SISP**”) for the assets of Trevali. With respect to Trevali NB, and its operations at the Caribou mine, the SISP did not generate any bids prior to the October 7, 2022 LOI Deadline, as defined in the SISP. As a result of this outcome, Trevali, with the assistance of the Monitor, engaged with the secured lenders of Trevali and the Government of New Brunswick to consider next steps with respect to the Caribou mine.
4. On January 9, 2023, this Honourable Court granted an order (the “**Receivership Order**”) appointing FTI as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and property of Trevali NB, including all proceeds thereof, other than any real property, mineral claims, mining leases, or real property leases owned or held by Trevali NB (collectively, the “**Property**”) effective on January 24, 2023 at 11:59pm PST.

5. On June 28, 2023, this Honourable Court granted an order expanding the powers of the Monitor with respect to Trevali Corp. and its property (the “**EMP Order**”). The EMP Order authorizes the Monitor to, among other things, sell any remaining property of Trevali Corp., subject to approval of this Honourable Court as may be required pursuant to the ARIO.
6. On April 27, 2024, the Receiver and Bathurst Metallic Corp. (the “**Purchaser**” or “**BMC**”) entered into an asset purchase agreement (the “**TNB APA**”) to sell and assign to the Purchaser all of Trevali NB’s right, title and interest to the Assets (as defined in the TNB APA) subject to an expansion of the definition of Property in the Receivership Order to include all of the assets, undertakings and property of Trevali NB, without any limitations.
7. Concurrently on April 27th, the Purchaser also agreed to purchase substantially all of the assets of Trevali Mining (Maritimes) Ltd. (“**TMM**”) as set out in an asset purchase agreement (the “**TMM APA**”) among TMM and the Purchaser.
8. On July 1, 2024, an agreement (the “**Settlement and Support Agreement**”) was reached between TMC, TMM, the Receiver and His Majesty the King in Right of the Province of New Brunswick (“**GNB**”) as represented by the Department of Natural Resources and Energy Development (“**DNRED**”) whereby GNB has agreed to support the granting of the approval and vesting orders with respect to the TNB APA and the TMM APA subject to the payment of the Settlement Amount (as subsequently defined).
9. On July 5, 2024, the Monitor, along with the Receiver, served a Notice of Application for, among other things, an approval and vesting order (the “**TMM AVO and Expanding EMP Order**”) which includes:
  - a. adding TMM as a Petitioner to this proceeding and expanding the appointment of the Monitor thereto; and

- b. approving the TMM APA and vesting the purchased assets in the Purchaser, free and clear of any encumbrances.
10. The Monitor and the Receiver seek an order approving the Settlement and Support Agreement (the “**Settlement Order**”).
11. The Receiver also seeks orders that provide for, among other things, the following:
- a. an order approving the TNB APA and vesting the purchased assets in the Purchaser, free and clear of any encumbrances.

## **PURPOSE**

12. This Seventeenth Report of the Monitor is a special purpose report to provide this Honourable Court and Trevali’s stakeholders with information with respect to the Monitor’s application for the TMM AVO and Expanding EMP Order.
13. This report should be read in conjunction with the Third Report of the Receiver served on July 5, 2024 (the “**Receiver’s Third Report**”), which addresses, among other things:
- a. the Receiver’s application for the approval of the sale of the assets of Trevali NB pursuant to the TNB APA; and
  - b. approval of the Settlement and Support Agreement.

## **TERMS OF REFERENCE**

14. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including the Applicants’ unaudited financial information, books and records and discussions with former senior management of Trevali Corp. (“**Management**”).
15. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that

would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

16. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
17. Future-oriented financial information reported to be relied on in preparing this report is based on assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## **BACKGROUND**

19. The Applicants, in conjunction with National Bank Financial Inc., as Sales Agent, and in consultation with the Monitor, undertook the SISP to market all of the assets, undertakings and properties of Trevali Corp. and Trevali NB. Although not a specific focus of the SISP, the shares of TMM were subject to the SISP through Trevali Corp. as the sole shareholder of TMM. The SISP did not generate any bids for the TMM shares.
20. As detailed in the Receiver's Third Report, a tender process was commenced in June 2023 with respect to the assets of Trevali NB subject to the receivership proceedings.
21. The Receiver received four offers from auctioneers and three expressions of interest from parties wishing to pursue an acquisition of the Caribou mine with a goal of restarting mining operations (the "**Going Concern Parties**") prior to the bid deadline of July 14, 2023.
22. The Receiver delayed advancing an offer with an auctioneer to allow the Going Concern Parties an opportunity to engage with the DNRED regarding issues related to the

continued operation of the Caribou mine, and the assets related to the Restigouche and Halfmile mines, primarily regarding all mining licenses, mineral claims (the “**Claims**”), mining leases (the “**Mining Leases**”) and real property leases in New Brunswick (collectively, the “**Real Property Assets**”) and the care and maintenance and environmental remediation obligations related to the mines.

23. After several weeks of negotiations and discussions, Eagle Pass Mining Corp. (“**EPMC**”) submitted a non-binding offer in September 2023 (the “**September 2023 Offer**”) that included substantially all of the assets of Trevali NB and TMM, including the Real Property Assets. At the suggestion of the Monitor, the September 2023 Offer was converted into a term sheet that was finalized and signed on November 6, 2023 (the “**Term Sheet**”).
24. Pursuant to the Term Sheet, EPMC’s obligation to complete the purchase of the assets is subject to the following conditions precedent:
  - a. entering into a memorandum of understanding regarding the intended terms of a Limited Environmental Liability Agreement (“**LELA**”) and the process and timing of hand over of care and maintenance from GNB to EPMC;
  - b. EPMC completing legal and financial due diligence;
  - c. negotiating the terms of the TMM APA with the Monitor;
  - d. negotiating and settling the terms of the LELA;
  - e. negotiating and settling the terms of the process and timing of the handover of care and maintenance responsibilities from GNB to EPMC; and
  - f. obtaining the TMM AVO.

25. At the request of EPMC and with the consent of the Receiver and the Monitor, in early January 2024 the Term Sheet was assigned to Bathurst Metals Corp. which subsequently changed its name to Bathurst Metallic Corp. (defined herein as “BMC”).
26. On April 27, 2024, the TMM APA was finalized, a copy of which is attached as Appendix “A” to this report.

#### **TMM APA**

27. The key commercial terms of the TMM APA are as follows:
  - a. the purchase price for all of the Assets (as defined in the TMM APA) of TMM is \$1.0 million (the “**Purchase Price**”);
  - b. at the time of signing the TMM APA, the target closing date was set as June 7, 2024, however by mutual agreement among the parties it has been extended to July 18, 2024;
  - c. the Purchaser will promptly and in a timely manner provide written requests, execute and deliver all required documents and materials and perform all necessary and required actions to obtain the approvals needed for the transfer to the Purchaser of the Claims, the Mining Leases, and the Crown land leases;
  - d. the Purchaser will assume all environmental liabilities associated with the TMM assets; and
  - e. the Purchaser’s obligation to close the TMM APA is subject to the Monitor obtaining an order of this Honourable Court adding TMM as a Petitioner in the CCAA Proceedings and approving the TMM APA.
28. The Monitor’s high-level comments with respect to the TMM APA are as follows:



- a. the shares of TMM were indirectly included in the SISP which did not generate any bids;
- b. the Purchase Price and other terms of the TMM APA are reasonable and fair in the circumstances;
- c. the TMM APA provides an incremental \$1.0 million in value for stakeholders that would otherwise be unrealizable without significant costs and marketing efforts;
- d. the BMC offer is a package deal for the assets of both TMM and Trevali NB;
- e. the timelines, conditions and other key terms of the TMM APA are commercially reasonable in the circumstances, based on the Monitor's experience with similar transactions in the context of insolvency and restructuring proceedings; and
- f. the Monitor is satisfied that BMC has the wherewithal to complete the transactions contemplated by the TMM APA.

29. Overall, the TMM APA will result in reasonable recoveries to the stakeholders of Trevali Corp. in a timely manner and is in the best interests of TMM's stakeholders.

#### **ADDING TMM AS A PETITIONER**

30. TMM is a subsidiary of Trevali Corp. that is not a Petitioner in the CCAA Proceedings. In order to facilitate the TMM APA, the Monitor is seeking to add TMM as a Petitioner.

31. TMM is incorporated under the laws of Ontario and is insolvent with total claims of more than \$5 million, including an intercompany claim from Trevali Corp. in excess of \$36 million. The Monitor is not aware of any third-party claims against TMM greater than \$1,000, other than that of GNB in respect of environmental obligations (as detailed in paragraph 37 below).

32. As it is as condition precedent to the closing of the TMM APA, the addition of TMM as a Petitioner will facilitate the completion of the transaction for the benefit of stakeholders and will result in incremental recoveries to the stakeholders of Trevali Corp. in a timely manner with minimal additional costs.

## SETTLEMENT AND SUPPORT AGREEMENT

33. At the time of the September 2023 Offer, DNRED advised the Receiver that the Claims were currently held in a “protected” state so that they could not be transferred to a third party and this transaction could progress. DNRED further advised that the Claims would need to be returned to an unprotected status in order to transfer them from GNB to a new purchaser and that GNB’s consent would be required to transfer the Mining Leases to a new purchaser.
34. DNRED indicated its intention to work co-operatively with the Receiver and Monitor to effect a transfer of the Real Property Assets, and that it would re-address GNB’s position as to its rights to the sale proceeds if the September 2023 Offer progressed.
35. As detailed previously, the September 2023 Offer was converted into a Term Sheet and by December 2023 significant progress had been made toward satisfying the conditions precedent in the Term Sheet.
36. At this time, DNRED expressed its desire to re-engage with the Receiver and Monitor regarding an allocation of the purchase price to the GNB in respect of its various claims and rights, and the environmental obligations related to the mines.
37. The DNRED provided the Receiver with a schedule summarizing its claims with respect to TMM, which as of February 2024, were as follows:
  - a. \$18,000 for unpaid Crown land leases;
  - b. \$5,000 for Mining Leases;
  - c. \$23,000 for unpaid mineral claims; and
  - d. \$53,000 for unpaid property taxes with respect to leases on real property.

38. The Receiver consulted with its legal counsel and was advised that GNB's consent is required for the transfer of the Mining Leases and Crown land leases, and to alter the protected status of the mineral claims so that the Claims can be transferred from GNB to a purchaser.
39. DNRED estimated the market value of the Claims, which would need to be transferred under the TMM APA, based on its own research, to be in the range of \$750,000.
40. After several meetings between the Receiver, the Monitor and DNRED, GNB made it clear to the Receiver and the Monitor, GNB receive a minimum of \$4.75 million from the closing proceeds of the TNB APA and the TMM APA (the "**Settlement Amount**"), of which GNB considered \$750,000 as related to the Claims given the estimated market value of those claims.
41. After considering its options, the Receiver agreed to seek approval of the Settlement Amount for the following reasons:
  - a. the TMM APA results in an unanticipated recovery due to the absence of any interested parties identified through prior sale processes;
  - b. the TMM APA could not close without the consent of GNB in transferring the Claims, the Mining Leases and the Crown land leases;
  - c. the TMM APA and the TNB APA are linked, and the TNB APA further requires the support of GNB, in particular in relation to a new Limited Environmental Liability Agreement and Funding Agreement; and
  - d. closing the TMM APA would benefit other stakeholders such as future employment at the mine, tax revenues for the local economy and renewed business for local suppliers.

42. As a result, the Receiver, the Monitor and GNB entered into a Settlement and Support Agreement, the principal terms of which are:

- a. upon closing the TNB APA, \$4 million will be paid by the Receiver to GNB from the TNB APA closing proceeds and \$750,000 will be paid by the Monitor, on behalf of TMM, to GNB from the TMM APA closing proceeds;
- b. the Receiver and the Monitor will seek the approval of this Honourable Court of the Settlement Amount pursuant to the Settlement and Support Agreement;
- c. upon the granting of the Settlement Approval Order and the payment of the Settlement Amount by the Receiver and the Monitor, on behalf of TMM, GNB will release all claims against the residual closing proceeds from the TNB APA and the TMM APA; and
- d. GNB will consent to and support the Receiver's and the Monitor's application with respect to the approval of the TNB APA and TMM APA.

#### **CONCLUSION AND RECOMMENDATION**

43. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the TMM AVO and Expanding EMP Order and the Settlement Order.

\*\*\*\*\*

All of which is respectfully submitted this July 5, 2024.

FTI Consulting Canada Inc.  
in its capacity as Monitor of Trevali Corp.



Tom Powell  
Senior Managing Director



Craig Munro  
Managing Director

# **APPENDIX A**

**TREVALI MINING (MARITIMES) LTD.**

**AND**

**BATHURST METALLIC CORP.**

**ASSET PURCHASE AGREEMENT**

**DATED AS OF APRIL 27, 2024**

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**EXHIBITS**

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Schedule 4.2 – Asset Allocation Schedule

## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** dated for reference the 27 day of April, 2024

### **BETWEEN:**

**TREVALI MINING (MARITIMES) LTD.**, a corporation incorporated under the laws of Ontario, by **FTI CONSULTING CANADA INC** (“**FTI**”), solely in its capacity as court-appointed monitor and not in any other capacity

(the “**Vendor**”)

### **AND:**

**BATHURST METALLIC CORP.**, a New Brunswick corporation, having an address located at 58 Rue Du Moulin, Nigadoo, New Brunswick, E8K 3R8

(the “**Purchaser**”)

### **WHEREAS:**

- A. On August 19, 2022, the Supreme Court of British Columbia (the “**Court**”) made an order, as amended and restated on August 29, 2022 (as amended and restated and as may be further amended from time to time, the “**CCAA Order**”) appointing FTI as the monitor (FTI in such capacity, the “**Monitor**”) of Trevali Mining Corporation (“**TMC**”) and Trevali Mining (New Brunswick) Ltd. (“**TNB**”) under the *Companies’ Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) (the proceedings associated with the CCAA Order are referred to herein as the “**CCAA Proceedings**”);
- B. On January 9, 2023, the Court made an order (as amended from time to time, the “**Receivership Order**”) appointing FTI as the receiver (FTI in such capacity, the “**Receiver**”), without security, over certain assets, undertakings and property of TNB, including all proceeds thereof, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the “**BIA**”) (the proceedings associated with the Receivership Order are referred to herein as the “**Receivership Proceedings**”), which took effect January 25, 2023;
- C. TMC is the sole, direct shareholder of Trevali Mining (Maritimes) Ltd. (“**TMM**”);
- D. On November 6, 2023, the Receiver and the Monitor entered into a term sheet (the “**Term Sheet**”) with Eagle Pass Mining Corp. (“**Eagle Pass**”), specifying that Eagle Pass would: purchase certain assets, undertaking and property of TNB, pursuant to a tender process conducted by the Receiver; and purchase all of the assets, undertaking and property of TMM pursuant to a process facilitated by the Monitor;
- E. On January 30, 2024, at the request of Eagle Pass, the Receiver and the Monitor agreed to amend the Term Sheet by assigning it to the Purchaser;
- F. In connection with a sale of the assets, undertaking and property of TMM in accordance with the Term Sheet, the parties will seek or have sought the Approval and Vesting Order (as defined herein) from the Court, to, among other things, approve the transactions set out herein and add TMM as petitioner to the CCAA Proceedings;

G. The Vendor has agreed to transfer to the Purchaser, and the Purchaser has agreed to purchase and acquire the Assets, and assume all liabilities and obligations of the Vendor in respect of the Assumed Liabilities (as such terms are defined herein), upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the respective covenants, agreements, representations, warranties, indemnities herein contained, and of the mutual benefits to be derived hereby (the receipt and sufficiency of which are acknowledged), the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

**“Accounts Receivable”** means all of TMM’s debts receivable, accounts receivable, claims, demands, monies and choses in action which now are, or which at any time hereafter may be, due or owing to or owned by TMM, and all books, records, documents, papers, and electronically recorded data recording, evidencing or relating to the said debts, accounts, claims, demand, monies and choses in action or any part thereof.

**“Action”** means any litigation, action, suit, binding arbitration or other legal, administrative or judicial proceeding.

**“Affiliate”** means, as to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

**“Agreement”** means this Asset Purchase Agreement, including the Exhibits and the Disclosure Schedules attached hereto and thereto and all amendments hereto and thereto made in accordance with Section 13.5.

**“Ancillary Agreements”** means, in each case in a form reasonably acceptable to the Vendor and the Purchaser: (i) a Bill of Sale for the assignment and conveyance of the Assets from the Vendor to the Purchaser; (ii) an Assignment and Assumption Agreement for the assignment and assumption of the Contracts and the Assumed Liabilities from the Vendor to the Purchaser; (iii) the Funding Agreement; and (iv) the instruments of assignment of the Patents, Trademarks, Copyrights, and any other assignments or instruments with respect to the Assets for which an assignment or instrument is required to assign, transfer, convey and deliver such Assets to the Purchaser or to record such assignment, transfer or conveyance with the appropriate government offices, domain name registrars or other similar authorities.

**“Approval and Vesting Order”** means an Order of the Court in the CCAA Proceedings, substantially in the form attached hereto as Exhibit A, containing, among other things, orders approving this Agreement, adding TMM as a petitioner to the CCAA Proceedings, and authorizing the Monitor to execute this Agreement and any related or ancillary documents and agreements on behalf of TMM, and, subject to the payment of the Purchase Price, providing for the vesting in the Purchaser of the right, title and interest, if any, of the Vendor in and to the Assets, free and clear of all liens, charges and encumbrances; and authorizing and directing the Vendor to

execute such deeds, bills of sale and other instruments of sale and transfers as the Vendor may deem necessary or desirable in order to transfer to the Purchaser all of the Vendor's interest in and to the Assets.

**"Asset Allocation Schedule"** has the meaning set forth in Section 4.2.

**"Assets"** has the meaning set forth in Section 3.1.

**"Assumed Liabilities"** has the meaning set forth in Section 3.3.

**"Bonds"** has the meaning set forth in Section 7.4.

**"Business"** means TMM's business of operating and maintaining the Mine and its interests in connection with Ruttan, in addition to other zinc and mineral mines, the exploration for zinc and other minerals, the development and exploitation of mining properties, water and environmental remediation activities and all activities incidental thereto.

**"Business Day"** means a day on which the banks are open for business (Saturdays, Sundays, statutory and civic holidays excluded) in Vancouver, British Columbia, Canada.

**"Business Information"** means those books, records, files, documentation and sales literature in the possession or under control of the Vendor as of the Closing Date that, in the sole opinion of the Vendor, are specifically used or held for use in connection with the other categories of Assets to be acquired by the Purchaser herein, including information, policies and procedures, Equipment and Machinery manuals, materials and procurement documentation used in the Business, but excluding (i) any such materials relating to Accounts Receivable; and (ii) any records of former employees of TMM.

**"Cash Payment"** has the meaning set forth in Section 4.1.1.

**"Certificate"** means the certificate, substantially in the form attached as Schedule B to the Approval and Vesting Order, to be delivered by the Monitor to the Vendor and the Purchaser on Closing and thereafter filed by the Monitor with the Court.

**"CCA"** has the meaning set out in Recital A to this Agreement.

**"CCA Order"** has the meaning set out in Recital A to this Agreement.

**"CCA Proceedings"** has the meaning set out in Recital A to this Agreement.

**"Closing"** means completion of the transactions in accordance with the provisions of this Agreement.

**"Closing Date"** has the meaning set out in Section 10.1.

**"Contracts"** means those TMM contracts, agreements, obligations, licenses, undertakings, instruments, Leases, commitments or other arrangements, whether written or oral, associated with the Business and listed in Section A.6 of Schedule A.

**“Control”**, including, with its correlative meanings, “Controlled by” and “under common Control with”, means, in connection with a given Person, the possession, directly or indirectly, of the power to either (i) elect more than 50% of the directors of such Person; or (ii) direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, Contract or otherwise.

**“Copyrights”** means all Canadian and foreign copyrights and copyrightable subject matter, whether registered or unregistered, including all Canadian copyright registrations and applications for registration and foreign equivalents, all moral rights and rights of attribution and integrity, all common law copyright rights, and all rights to register and obtain renewals and extensions of copyright registrations, together with all other copyright interests accruing by reason of any international copyright convention or treaty.

**“Court”** has the meaning set forth in Recital A to this Agreement.

**“CRA”** means the Canada Revenue Agency.

**“DELG”** means New Brunswick Department of Environment and Local Government.

**“Dentons”** means Dentons Canada LLP, as counsel to the Receiver, the Monitor and the Vendor.

**“Disclosure Schedules”** means the disclosure schedules which form part of this Agreement pursuant to Section 2.7.

**“DNRED”** means New Brunswick’s Department of Natural Resources and Energy Development.

**“Encumbrance”** means any lien, mortgage, pledge or security interest, hypothec (including legal hypothecs), encumbrance, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, real property licence, other real rights in favor of Third Parties, charge, prior claim, lease, occupancy agreement, leasing agreement, statutory or deemed trust or conditional sale arrangement, on the Assets, including any charges on the Assets created by or pursuant to any Order of the Court in the CCAA Proceedings.

**“Environmental Law”** means any applicable Law relating to contamination, pollution or protection of the environment (including ambient air, surface water, ground water, subsurface or subsurface strata), plant life, animal and fish or other natural resources or human health, including without limitation, Laws relating to the exposure to, or Releases or threatened Releases of, Hazardous Materials or otherwise relating to the manufacture, presence, processing, distribution, use, treatment, storage, Release, transport, disposal, transfer, discharge, control, recycling, production, generation or handling of Hazardous Materials and all Laws with regard to monitoring, recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials, each as amended and as now in effect.

**“Environmental Liabilities”** will mean any and all liability arising out of, based on or resulting from: (i) the presence, Release, threatened Release, discharge or emission into the environment of any Hazardous Materials or substances existing or arising on, beneath or above the TMM Property and/or emanating or migrating and/or threatening to emanate or migrate from the TMM Property to other properties; (ii) storage, disposal or treatment of or the arrangement for the storage, disposal or treatment of Hazardous Materials originating or transported from the TMM Property to an off-site treatment, storage or disposal facility; (iii) physical disturbance of the environment on or from the

TMM Property; or (iv) the violation or alleged violation of any Environmental Laws relating to the TMM Property.

**“Equipment and Machinery”** means all of TMM's equipment, machinery and vehicles used in connection with the Business, including those items specifically listed in Section A.5 of Schedule A.

**“ETA”** means the *Excise Tax Act* (Canada), including regulations thereunder.

**“Excluded Assets”** has the meaning set forth in Section 3.2.

**“FTI”** has the meaning set forth in the parties to this Agreement.

**“Funding Agreement”** means the funding agreement to be entered into between the GNB and the Purchaser, relating to the management of, among other things, the Mine, in the form attached hereto as Exhibit B.

**“GNB”** means the Government of New Brunswick, Canada.

**“Government Entity”** means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing having jurisdiction with respect to TMM, the Assets, the Business or any other matter that is the subject of this Agreement, including without limitation, the DNRED, the DELG, and the Canadian Environmental Assessment Agency.

**“GST/HST”** means the goods and services tax/harmonized sales tax imposed under Part IX of the ETA.

**“Hazardous Materials”** means (i) petroleum, petroleum products, asbestos in any form, mold, urea formaldehyde foam insulation, lead based paints, polychlorinated biphenyls or any other material or substance regulated pursuant to any Environmental Law; and (ii) any chemical, material or other substance, contaminant or pollutant which is regulated, defined or listed, alone or in any combination as “hazardous”, “hazardous waste”, “solid waste”, “radioactive”, “deleterious”, “effluent”, “toxic”, “caustic”, “dangerous”, a contaminant, a pollutant, a “waste”, a “special waste”, a “source of contamination” or “source of pollution”, under any Environmental Law.

**“Insolvency Laws”** means the CCAA, the BIA, the *Law and Equity Act*, R.C.B.C., 1996, c. 253, and the other applicable Insolvency Laws of any jurisdiction where Insolvency Proceedings are instituted.

**“Insolvency Proceedings”** means the CCAA Proceedings and/or the Receivership Proceedings and any other proceedings thereunder, as well as any other voluntary or involuntary bankruptcy, insolvency, administration or similar judicial proceedings concerning TMM, TNB or TMC that are instituted from time to time.

**“Intellectual Property”** means all Canadian and foreign intellectual and industrial property rights of any kind, including all: (i) Trademarks; (ii) Patents; (iii) inventions, novel devices, processes, compositions of matter, methods, techniques, improvements, observations, discoveries,

apparatuses, machines, designs, expressions, theories and ideas, whether or not patentable and whether or not a patent has been issued or a patent application has been made therefor; (iv) Copyrights; (v) mask works; (vi) Trade Secrets, Know-How, and other proprietary, confidential, technical or Business Information; (vii) Software and technology; (viii) rights of privacy and rights to personal information; (ix) all telephone, telex, and facsimile numbers and Internet protocol addresses; (x) the corporate name of TMM; and (xi) all rights in the foregoing and in other similar intangible assets, and all rights and remedies (including the right to sue for and recover damages, profits and any other remedy) for past, present, or future infringement, misappropriation, or other violation relating to any of the foregoing.

**“Inventory”** means TMM’s inventories of raw materials, ore and refined ore at any stage of the refining process and all other inventory of the Business, including, without limiting the generality of the foregoing, all building materials, furnishings, appliances and other goods, relating to or acquired, used or held in connection with the ownership, development, construction or operation of the Business, in each case held by TMM, including any of the above items which is owned by TMM but which remain in transit to or in the possession or control of a Third Party.

**“Know-How”** means scientific, engineering, mechanical, electrical, financial, marketing, practical and other similar knowledge or experience useful in the operation of the Business.

**“Law”** means any Canadian, foreign, domestic, federal, territorial, provincial, local, regional or municipal statute, law, common law, ordinance, rule, regulation, order, writ, injunction, directive, judgment, decree or policy or guideline having the force of law.

**“Leased Real Property”** means all Leases (or other property interests) for real and immovable property in connection with the Mine under which TMM is a lessee, licensee or occupant.

**“Leases”** means all unexpired leases, licences or other occupancy agreements.

**“Liabilities”** means debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or undeterminable, including those arising under any Law or Action and those arising under any Contract or otherwise, including without limitation any Tax liability, Environmental Liabilities, or any other liabilities or obligations under Environmental Laws that are required to be assumed or accepted in order to effectuate or achieve the Transfer Approvals in respect of the Permits and Licences.

**“Material Adverse Effect”** means any fact, condition, change, violation, inaccuracy, circumstance or event, individually or in the aggregate that: (i) has, or is reasonably likely to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Business; (ii) materially and adversely impairs the Assets or the Business (excluding the Excluded Assets), taken as a whole; or (iii) materially and adversely delays or impedes the consummation of the transactions contemplated by this Agreement (except for those matters that are addressed and accomplished by invoking and meeting the terms of Article 12 hereto), but in each case, excluding any such fact, condition, change, violation, inaccuracy, circumstance or event results from or arises out of (a) changes in general economic conditions or changes affecting the industries and markets in which the Business operates (except to the extent that such changes have a disproportionate effect on the Assets or the Business); (b) macroeconomic factors, interest rates, currency exchange rates, general financial market conditions, acts of God, war, terrorism or hostilities; (c) the

transactions contemplated hereby or any announcement hereof or the identity of the Purchaser; or (d) the pendency of the Insolvency Proceedings.

**"Mine"** means the zinc mine, processing and other ancillary facilities located in the Bathurst Mining Camp of New Brunswick, Canada, commonly known as the Halfmile Mine and advanced exploration stage Stratmat project and any related mine workings or mining-related infrastructure on the Halfmile Mine site, or otherwise owned by TMM in connection with the mine.

**"Mineral Titles"** has the meaning set forth in Section 3.1(b).

**"Monitor"** has the meaning set forth in Recital A to this Agreement.

**"Non-Assignable Contracts"** has the meaning set forth in Section 3.4.

**"Order"** means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of the Court or other court or of a Government Entity.

**"Ordinary Course"** means the ordinary course of the Business consistent with recent past practice, as such practice is, or may have been, modified as a result of the Insolvency Proceedings.

**"Outside Date"** means the date by which the transactions contemplated by this Agreement are to be completed, being July 8, 2024 or such other date as the Parties may mutually agree upon in writing.

**"Party"** or **"Parties"** means individually or together, as the case may be, the Vendor and the Purchaser and includes, if applicable, any permitted assignee of either.

**"Patents"** means all Canadian and foreign (whether national or multinational) statutory invention registrations, patents (including certificates of invention and other patent equivalents), patent applications, provisional patent applications and patents issuing therefrom, industrial designs, and industrial models, as well as all reissues, divisions, substitutions, continuations, continuations-in-part, patent disclosures, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions.

**"Periodic Taxes"** has the meaning set forth in Section 8.5.

**"Permits and Licences"** means those permits, approvals, licences, certificates or other authorization required under any applicable Law (including Environmental Laws) to conduct the Business, which are listed in Section A.4 of Schedule A.

**"Person"** means an individual, a partnership, a corporation, an association, a limited or unlimited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization or other legal entity or Government Entity.

**"Post Closing"** means the period after the Closing.

**"Post-Closing Tax Period"** has the meaning set forth in Section 8.5.

**"Pre-Closing Tax Period"** has the meaning set forth in Section 8.5.



**“Purchase Price”** has the meaning set forth in Section 4.1.1.

**“Purchased Deposits”** means those deposits (including customer deposits and security deposits for rent, electricity and otherwise) and prepaid charges and expenses provided by TMM, including the right to receive any refund of any unutilized amounts thereof which are paid, but only in connection with the other Assets acquired by the Purchaser herein, but excluding any Bonds.

**“Purchaser”** has the meaning set forth in the parties to this Agreement.

**“Real Property”** has the meaning set forth in Section 3.1(c).

**“Receiver”** has the meaning set forth in Recital B to this Agreement.

**“Receivership Order”** has the meaning set forth in Recital B to this Agreement.

**“Receivership Proceedings”** has the meaning set forth in Recital B to this Agreement.

**“Release”** means any release, spill, emission, discharge, leaking, pouring, emptying, escaping, dumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property.

**“Ruttan”** means the copper-zinc massive sulphide deposit located approximately 21 kilometres east of the village of Leaf Rapids, Manitoba.

**“Software”** means all computer software programs (whether in source code, object code, or other form) and software systems, including all websites, algorithms, databases, compilations and data, tool sets, compilers, higher level or “proprietary” languages, related documentation and technology, technical manuals and materials, and any rights relating to the foregoing.

**“Straddle Period”** has the meaning set forth in Section 8.5.

**“Subsidiary”** of a Person means any Person controlled by such first Person.

**“Target Closing Date”** means the date that is on or before June 7, 2024 or such other date as may be agreed by the Parties in writing, provided that such date may not be later than the Outside Date.

**“Tax”** means any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by any Government Entity, including Transfer Taxes and the following taxes and impositions: net income, gross income, capital, value added, goods and services, capital gains, alternative, net worth, harmonized sales, gross receipts, sales, use, ad valorem, business rates, transfer, franchise, profits, business, environmental, real or immovable property, municipal, school, Canada Pension Plan, withholding, workers’ compensation levies, payroll, employment, unemployment, employer health, occupation, social security, excise, stamp, customs, and all other taxes, fees, duties, assessments, deductions, contributions, withholdings or charges of the same or of a similar nature, however denominated, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

**“Tax Act”** means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, as amended from time to time.

**“Tax Authority”** means any local, municipal, governmental, state, provincial, territorial, federal, including any Canadian or other fiscal, customs or excise authority, body or officials anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of Tax.

**“Tax Returns”** means all returns, reports (including elections, declarations, disclosures, statements, schedules, estimates and information returns) and other information filed or required to be filed with any Tax Authority relating to Taxes.

**“Third Party”** means any Person that is neither a Party nor an Affiliate of a Party.

**“TMM”** has the meaning set forth in Recital **Error! Reference source not found.** to this Agreement.

**“TMM Property”** means, collectively, any real property associated with the Mine, Ruttan, Permits and Licences and the Leased Real Property.

**“Trade Secrets”** means trade secrets and other confidential or proprietary ideas, concepts, methods, processes, formulae, models, methodologies, algorithms, reports, data, customer lists, mailing lists, business plans, market surveys, market research studies, information contained on drawings and other documents and information (including with respect to research, development and testing).

**“Trademarks”** means, together with the goodwill associated therewith, all Canadian, provincial and foreign trademarks, service marks, trade dress, logos, slogans, distinguishing guises and indicia, trade names (including all assumed or fictitious names under which the Business has been conducted), corporate names, business names, domain names, and any other indicia of source or sponsorship of goods or services, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including all marks registered in the Canadian Intellectual Property Office or any trademark offices of other states or nations throughout the world and all rights therein, including those provided by multinational treaties or conventions.

**“Transaction Documents”** means this Agreement, the Ancillary Agreements and all other ancillary documents to be entered into, or documentation delivered by, any Party pursuant to this Agreement.

**“Transfer Approvals”** has the meaning set forth in Section 7.3.5.

**“Transfer Taxes”** means all goods and services, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, GST/HST, and all other similar taxes, duties or other like charges, however denominated (specifically including property transfer taxes and harmonized sales taxes), in each case including interest, penalties or additions attributable thereto whether or not disputed, arising out of or in connection with the transaction, regardless of whether the Government Entity seeks to collect the Transfer Tax from the Vendor, the Receiver, the Monitor or the Purchaser.

**“Transferred Intellectual Property”** means the following Intellectual Property owned, used, or held for use by or on behalf of TMM in the Business (or in any product, service, technology or process

currently or formerly manufactured, produced, marketed, distributed or offered for sale by or on behalf of TMM or any Subsidiary or currently under development by or on behalf of TMM or any Subsidiary), (i) the Patents (ii) the Trademarks; and (iii) any other Intellectual Property set forth in Section A.7 of Schedule A.

“**Vendor**” has the meaning set forth in the parties to this Agreement.

## **ARTICLE 2 INTERPRETATION**

### **2.1 Gender and Number**

Any reference in this Agreement to gender includes all genders and words importing the singular include the plural and vice versa.

### **2.2 Certain Phrases**

In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (ii) the terms “hereof”, “herein”, “hereunder” and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified; and (iii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

### **2.3 Calculation of Time**

When calculating the period of time “within” which, “prior to” or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

### **2.4 Headings**

The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and are not to affect or be used in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

### **2.5 Currency**

All monetary amounts in this Agreement, unless otherwise specifically indicated, are stated in Canadian currency. All calculations and estimates to be performed or undertaken, unless otherwise specifically indicated, are to be expressed in Canadian currency. All payments required under this Agreement will be paid in Canadian currency in immediately available funds, unless otherwise specifically

indicated herein. Where another currency is to be converted into Canadian currency it will be converted on the basis of the average exchange rate published by the Bank of Canada for the day in question.

## 2.6 Statutory References

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and to the regulations made under that statute as in force from time to time.

## 2.7 Exhibits and Disclosure Schedules

The Exhibits and the Disclosure Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set in full herein. Any capitalized terms used in any Exhibit or Disclosure Schedule but not otherwise defined therein will be defined as set forth in this Agreement.

# ARTICLE 3 PURCHASE AND SALE OF ASSETS

## 3.1 Purchase and Sale

Subject to the terms and conditions of this Agreement (including for greater certainty, the categories of Excluded Assets listed in Section 3.2) and the Approval and Vesting Order, at the Closing, the Purchaser agrees to purchase or be assigned and assume from the Vendor, and the Vendor will sell, transfer, assign, convey and deliver to the Purchaser all of the Vendor's right, title and interest in and to the following assets of the Vendor wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business:

- (a) the Leased Real Property, together with the buildings, structures, improvements and appurtenances thereon, including those listed in Section A.1 of Schedule A (but specifically excluding any buildings, structures, improvements and appurtenances which are not owned by TMM);
- (b) the mineral titles, mining leases, mineral claims (whether patented or unpatented), placer claims or other claims to exploration or mineral rights enumerated in Section A.2 of Schedule A (collectively, the "**Mineral Titles**");
- (c) the Real Property, including the freehold parcel of real estate identified in Section A.3 of Schedule A;
- (d) the Permits and Licences, to the extent that such Permits and Licences are assignable or transferable through either providing the required notification to or obtaining the Transfer Approval from a Government Entity in New Brunswick or federally in Canada, or a Third Party;
- (e) the Equipment and Machinery;
- (f) the Inventory;
- (g) the Contracts;

- (h) the Business Information;
- (i) the Transferred Intellectual Property;
- (j) all rights, claims or causes of action of TMM against Third Parties arising out of events occurring prior to the Closing, and including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to TMM, but only to the extent such rights, claims or causes of action are connected to the Assets to be acquired by the Purchaser herein;
- (k) any proprietary rights in Internet protocol addresses, ideas, concepts, methods, processes, formulae, models, methodologies, algorithms, reports, data, customer lists, mailing lists, business plans, market surveys, market research studies, websites, information contained on drawings and other documents, information relating to research, development or testing, and documentation and media constituting, describing or relating to the Transferred Intellectual Property, including memoranda, manuals, technical specifications and other records wherever created throughout the world;
- (l) all pre-paid expenses of the Business, including any deposits, but not including any rights to any Bonds, or amounts in respect of Taxes described in Section 8.5;
- (m) all telephone, telex and telephone facsimile numbers and other directory listings and e-mail and website addresses used in connection with the Business;
- (n) the Purchased Deposits;
- (o) all goodwill associated with the Business and the Assets, other than: (i) the right to carry on the Business under the name "Trevali Maritimes"; and (ii) all domain names of TMM;
- (p) all customer lists, files, data and information relating to past and present customers and prospective customers of the Business;
- (q) copies of Tax records related to the Assets and the Business; and
- (r) all financial and corporate books and records of TMM.

(collectively, the "**Assets**").

### **3.2 Excluded Assets**

Notwithstanding anything in Section 3.1, in this Section 3.2, elsewhere in this Agreement, or in any of the Transaction Documents to the contrary, except for the Assets, the Purchaser will not acquire and will

have no rights with respect to any other assets of the Vendor, including, but not limited to, the Vendor's right, title and interest in and to, the Excluded Assets Listed in Schedule 3.2.

### 3.3 Assumed Liabilities

On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser will assume and become responsible for, and perform, discharge and pay when due, the following Liabilities (the "**Assumed Liabilities**"), from and after the Closing Date:

- (a) all Liabilities of the Vendor under the Contracts;
- (b) all Environmental Liabilities associated with the Assets, provided however that the Parties acknowledge that such assumption does not relieve TMM of the Environmental Liabilities that accrued pursuant to Environmental Law prior to Closing;
- (c) all Liabilities for, or related to any obligation for, any Tax that the Purchaser bears under Article 8 (including, for the avoidance of doubt, Transfer Taxes imposed in connection with this Agreement and the transactions contemplated hereunder or any other Transaction Document and the transactions contemplated thereunder);
- (d) all Liabilities in respect of the Permits and Licences, including filing and other fees related thereto, provided however that the Parties acknowledge that such assumption does not relieve TMM of the Environmental Liabilities that accrued pursuant to Environmental Law prior to Closing; and
- (e) all Liabilities associated with, or in regard to any Transfer Approvals.

### 3.4 Non-Assignable Contracts

To the extent that any Contract is not capable of being assigned pursuant to other applicable Laws or the terms of such Contract to the Purchaser on the Closing Date without the consent of the issuer thereof or the counter-party thereto or any Third Party (including a Government Entity), and such consent has not been obtained (collectively, the "**Non-Assignable Contracts**"), this Agreement will not constitute an assignment thereof, or an attempted assignment, unless any such consent is obtained. Any payment to be made in order to obtain any consent required by the terms of any Non-Assignable Contract will be the sole responsibility of the Purchaser. If such consent is required but not obtained, the Vendor will, at the Purchaser's sole cost and expense, cooperate with the Purchaser in any reasonable arrangement, including the Purchaser's provision of credit support, designed to provide for the Purchaser the benefits and obligations of or under any such Contract, including enforcement for the benefit of the Purchaser of any and all rights of the Vendor against a third party thereto arising out of the breach or cancellation thereof by such third party; provided, that nothing in this Section 3.4 will (i) require the Vendor to make any significant expenditure or incur any significant obligation on its own or on the Purchaser's behalf; or (ii) prohibit the Vendor from ceasing operations or winding up its affairs following the Closing. Any assignment to the Purchaser of any Contract that will require the consent of any Third Party for such assignment as aforesaid will be made subject to such consent being obtained or further order of the Court approving such assignment. Any contract that would be an Contract but is not assigned in accordance with the terms of this Section 3.4 will not be considered an "Contract" for purposes hereof unless and until such contract is assigned to the Purchaser following the Closing Date or such order has been granted by the Court approving such assignment.

## ARTICLE 4 PURCHASE PRICE AND ALLOCATION

### 4.1 Purchase Price

4.1.1 Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Assets pursuant to the terms hereof, the Purchaser will (i) pay to the Vendor an amount equal to **\$1,000,000.00** which the Purchaser will pay and deliver at the Closing in accordance with Section 10.2 (the “**Cash Payment**”); and (ii) assume from the Vendor, and become obligated to pay, perform and discharge, when due, the Assumed Liabilities (the amounts referred to in (i) and (ii), are collectively, the “**Purchase Price**”).

### 4.2 Purchase Price Allocation

Schedule 4.2 (the “**Asset Allocation Schedule**”) allocates the Purchase Price (including specific allocation of the Assumed Liabilities that are liabilities for federal income Tax purposes) on a dollar basis among the Assets. The Asset Allocation Schedule will be commercially reasonable based on fair market value of the Assets and the Purchaser, and the Vendor will each file all applicable Tax Returns, if any, in accordance with the Asset Allocation Schedule. To the extent applicable, the Purchaser, on the one hand, and the Vendor, on the other hand, each agrees to provide the other promptly with any other information reasonably required to complete any Tax Returns.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Vendor, as follows:

### 5.1 Organization

The Purchaser is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. The Purchaser has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

### 5.2 Corporate Power

The Purchaser is qualified to do business as contemplated by this Agreement and the other Transaction Documents and to own or lease and operate its properties and assets, including the Assets, except to the extent that the failure to be so qualified would not materially hinder, delay or impair the Purchaser’s ability to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the Ancillary Agreements to which it is or will become a party.

### 5.3 Authorization

The execution, delivery and performance of each Transaction Document to which the Purchaser is a party will have been duly authorized by the Purchaser at the time of its execution and delivery. Assuming due authorization, execution and delivery by the Vendor, each Transaction Document to which the Purchaser is a party constitutes, or upon execution thereof will constitute, a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its respective terms, except as such

enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of public policy.

#### **5.4 No Breach**

The execution, delivery and performance by the Purchaser of each of the Transaction Documents to which the Purchaser is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any consent (other than the Transfer Approvals) or other action by or declaration or notice to any Government Entity pursuant to (i) the constating documents of the Purchaser; (ii) any Contract or other document to which the Purchaser is a party or to which any of its assets is subject; or (iii) any Laws to which the Purchaser or any of its assets is subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not individually or in the aggregate materially hinder, delay or impair the performance by the Purchaser of any of its obligations under any Transaction Document.

#### **5.5 Acknowledgement of Scope of Vendor's Representations and Warranties**

Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any other Person, is making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Vendor in Article 6 (as may be modified by the Disclosure Schedules), or with respect to any other information provided to the Purchaser in connection with the transactions contemplated hereby, including without limitation as to the probable success or profitability of the ownership, use or operation of the Business and the Assets after the Closing. The Purchaser further acknowledges that neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding TMM, the Assets, the Business, the Mine, Ruttan, or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any other Person will have or be subject to liability to the Purchaser or any other Person resulting from the distribution to the Purchaser or its representatives or the Purchaser's use of, any such information, including data room information provided to the Purchaser, or its representatives, in connection with the sale of the Assets. The Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation and due diligence of the Assets, the Business, the Mine, and, in making the determination to proceed with the transactions contemplated by this Agreement, the Purchaser has relied on the results of its own independent investigation.

#### **5.6 As-Is Where-is Transaction**

The Purchaser hereby acknowledges and agrees that: (i) the Purchaser is solely responsible for carrying out its own due diligence investigations of the Assets and Assumed Liabilities; (ii) by deciding to proceed with the transactions contemplated herein the Purchaser has relied on and is satisfied with all the results of its investigations; and (iii) except as otherwise expressly provided in Article 6 of this Agreement, neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any other Person is making any representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assets, the Business, the Mine, Ruttan, and the Vendor's ownership and operation thereof or any Encumbrances or Liabilities (including Environmental Liabilities) associated therewith, and the quantity, quality, suitability for mining or costs of mining of any mineral reserves included in the Assets. Without in any way limiting the foregoing, the Purchaser acknowledges that neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any Person has given, will not be



deemed to have given, and hereby disclaims any warranty, express or implied, of merchantability of fitness for any particular purpose as to any portion of the Assets, the Business, the Mine or Ruttan. Accordingly, the Purchaser agrees to accept the Assets at the Closing “As is” “Where is” and “With All Faults”.

#### **5.7 Brokers**

Except for fees and commissions that will be paid by the Purchaser, no broker, finder or investment banker is entitled to any brokerage, finder’s or similar fee or commission in connection with the transactions contemplated by this Agreement and the other Transaction Documents based upon arrangements made by or on behalf of the Purchaser or any of its Affiliates.

#### **5.8 GST/HST Registration**

The Purchaser will be duly registered as of the Closing under Subdivision D of Division V of Part IX of the ETA and will provide to the Vendor its registration number no later than 10 days prior to Closing.

#### **5.9 Financing**

The Purchaser has, and at all times from the date hereof through the Closing and any Post Closing period pursuant to Article 12 will have, sufficient funds available to pay the Purchase Price and all other amounts payable under the Transaction Documents and to otherwise consummate the transactions contemplated hereby and thereby, and to pay all fees and expenses related thereto. The Purchaser acknowledges that its obligations under this Agreement and the other Transaction Documents are not subject to any conditions regarding its ability to obtain financing for any portion of the foregoing amounts.

#### **5.10 Transfer and Other Approvals**

The Purchaser acknowledges and agrees that time is of the essence in effecting the Closing and otherwise consummate the transactions contemplated herein, and that it will promptly and in a timely manner provide written requests, execute and deliver all required documents and materials and perform all necessary and required actions to obtain Transfer Approvals for the Assets listed in Schedule A from appropriate Government Entities. Except for the filing of the Certificate in accordance with the Approval and Vesting Order, and Transfer Approvals, to the best of the Purchaser’s knowledge, no notice, filing, authorization, approval, order or consent is required to be given, filed or obtained by the Purchaser to or from any Government Entity or third party in connection with the execution, delivery and performance by the Purchaser of this Agreement or the transactions contemplated hereby.

#### **5.11 Purchaser’s Qualifications to Obtain Transfer Approvals and Hold Permits and Licences**

The Purchaser is aware of no facts that would prevent the issuance of Transfer Approvals from any Government Entities for the transfer of the Permits and Licences to the Purchaser or for the obtaining of replacement Permits and Licences by the Purchaser for those Permits and Licences presently held by TMM that are not transferable.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

**6.1 Representations and Warranties of Vendor**

The Vendor hereby represents and warrants to the Purchaser as follows:

- (a) the Monitor has been appointed as the Monitor of TMM pursuant to the Approval and Vesting Order, and such order is in full force and effect as of the date hereof; and
- (b) the Vendor is not and will not be at the Closing, a non-resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada).

**6.2 No Other Representations and Warranties of the Vendor or Monitor**

Except for the representations and warranties of the Vendor contained in this Article 6, neither the Vendor, the Monitor, the Receiver, TMC, TNB, their representatives and their agents, nor any other Person nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Vendor, the Receiver, the Monitor, TMC or TNB, whether in respect of the Assets, the Business, the Mine, Ruttan or otherwise, including any representation or warranty as to the accuracy or completeness of any information regarding TMM furnished or made available to Purchaser and its representatives or as to the future revenue, profitability or success of TMM, the Assets, the Business, the Mine, or Ruttan, or any representation or warranty arising from statute or otherwise at Law.

**ARTICLE 7**  
**COVENANTS AND OTHER AGREEMENTS**

**7.1 Approval of the Court**

7.1.1 The Purchaser acknowledges that this Agreement and the transactions contemplated hereby are subject to the approval of the Court and the terms of the Approval and Vesting Order.

**7.2 Co-operation**

7.2.1 Upon the terms and subject to the conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, and to effect the Closing on the Target Closing Date, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, making witnesses available in the Court or by declaration, as necessary, in complying with the Approval and Vesting Order, and the taking of such actions as are necessary to obtain any requisite consent from a Government Entity in New Brunswick or federally in Canada or other Third Party; provided, however, at no time will the Vendor be obligated to make any payment or deliver anything of value to any Third Party (other than filing with and payment of any application fees to Government Entities in New Brunswick or federally in Canada, all of which will be paid or reimbursed by the Purchaser) in order to obtain any consent.

7.2.2 Each of the Vendor and the Purchaser will promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that

would reasonably be expected to result in (i) any of the conditions set forth in Article 9 not being satisfied; or (ii) any of the representations and warranties in Article 5 or Article 6 not being true and correct.

### **7.3 Transfer Approvals**

7.3.1 To the extent required by applicable Laws, each Party agrees to prepare and file as promptly as practicable and in any event, within 7 Business Days from the execution of this Agreement: (i) all filings and applications required and desirable to obtain; and (ii) all other necessary documents, registrations, statements, petitions, filings and applications for, or to obtain, any required Transfer Approvals and any other consent of any other Government Entities in New Brunswick or federally in Canada required to satisfy the condition set forth in Section 9.1(d)

7.3.2 Each Party will use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Party informed in all material respects of any material communication received by such Party from, or given by such Party to, any Government Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby; and (iii) permit the other Party to review any material communication given to it by, and consult with each other in advance of any meeting or conference with any Government Entity, including in connection with any proceeding by a private party. The foregoing obligations in this Section 7.3.2 will be subject to any solicitor-client, work product or other privilege, and each Party hereto will coordinate and cooperate fully with the other Party hereto in exchanging such information and providing such assistance as such other Party may reasonably request in connection with the foregoing. The Parties will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required authorizations, consents, Orders or approvals. Fees incurred in connection with complying with any Law pursuant to this Section 7.3.2, and any filing or other administrative fees or costs incurred in connection with obtaining the Transfer Approvals will be borne solely by the Purchaser.

7.3.3 If any objections are asserted with respect to the transactions contemplated hereby under any Law or if any suit is instituted by any Government Entity or any private party challenging any of the transactions contemplated hereby as being in violation of any Law or if the filing pursuant to this Section 7.3 is reasonably likely to be rejected or conditioned by a federal, provincial or territorial Government Entity, each Party will use commercially reasonable efforts to resolve such objections or challenge as such Government Entity or private party may have to such transactions, including to vacate, lift, reverse or overturn any Action, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement.

7.3.4 The Purchaser will use its commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to the Purchaser's obligations associated with the Closing hereunder as set forth in Section 9.1 and Section 9.3 to the extent the same is within its control and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to consummate the transactions contemplated by this Agreement, including using its commercially reasonable efforts to obtain all the Transfer Approvals in accordance with Section 7.3.5, and any other Third Party consents required to be obtained, in order for the Parties to consummate the transactions contemplated by this Agreement.

7.3.5 No later than 3 Business Days after the execution of this Agreement, the Purchaser agrees to contact applicable Government Entities and use its commercially reasonable efforts to understand the

requirements associated with the timely transfer of the Assets listed in Schedule A from the Vendor to the Purchaser including in order to obtain, as of the Closing Date, replacement Permits and Licences for those Permits and Licences presently held by TMM that are not transferable. Prior to the Closing, the Purchaser: (i) will file with DNRED or other appropriate Government Entities in New Brunswick or federally in Canada, all applications, requests for consent, and other instruments required to transfer those Permits and Licences which are subject to approval or other processing by such Government Entities, from the Vendor to the Purchaser (including the posting and acceptance of whatever fees or financial assurance instruments that may be required in connection with such approval or other processing); (ii) will file with DNRED or other appropriate Government Entities in New Brunswick or federally in Canada all applications, instruments or notices for approval or other processing by such Government Entities, as may be necessary to obtain replacement Permits and Licences as of the Closing Date for those Permits and Licences presently held by TMM that are not transferable (including the posting and acceptance by the appropriate Government Entity of whatever fees or financial assurance instruments are required in connection with such approval or other processing); and (iii) obtain the consent from DNRED or other appropriate Government Entities in New Brunswick or federally in Canada to transfer those Assets from TMM and the Vendor to the Purchaser described in (i), and the issuance from the appropriate Government Entities of new Permits and Licences that are not transferrable to the Purchaser described in (ii); with those items referenced in sub-clauses (i), (ii), and (iii) above collectively referred to as the “**Transfer Approvals**”.

7.3.6 The Purchaser will diligently pursue on a commercially reasonable efforts basis all Transfer Approvals necessary to complete the transfer of such Permits and Licences from TMM and the Vendor to the Purchaser or obtain new Permits and Licences in the Purchaser’s own name as of the Closing Date (acknowledging that all such Transfer Approvals will be contingent on the consummation of the Closing unless the terms of this Agreement provide otherwise), and will keep the Vendor apprised of the status of its efforts to secure such Transfer Approvals.

7.3.7 All of the Transfer Approvals must be in place and effective as of the Closing Date, and the Purchaser will have no right to conduct any activities under any of the Permits and Licences or Contracts that has not been assigned, transferred or re-issued to the Purchaser.

#### **7.4 Replacement of Bonds**

Prior to the Closing, in order to meet certain financial assurance requirements in obtaining the Transfer Approvals (including new Permits and Licences in the name of the Purchaser), the Purchaser will provide to the appropriate Government Entities or other applicable party a firm undertaking (including submission of evidence of financial assurance in a form acceptable to the Government Entities or other party), and (subject only to the payment of required premiums by the Purchaser and the Closing) will post, effective as of the Closing Date, the requisite bonds (including any reclamation bond) and any other financial assurance instruments (collectively, the “**Bonds**”) that may be required, in a form and amount acceptable to the Government Entities and other applicable Third Party. The Purchaser agrees to cooperate and work with the Government Entities or other parties to ensure that the required bonds and other financial assurance instruments become effective promptly after the applications to transfer are accepted by the Government Entities or other applicable parties and bond determinations are provided and to ensure the posting and acceptance by the Government Entities of the required bond and other financial assurance instruments, thereby allowing the complete, immediate and unrestricted release of the financial assurance instruments currently provided by TMM to the Government Entities.

## **7.5 Pre-Closing Access to Information**

Prior to the Closing, the Vendor will (a) give the Purchaser and its authorized representatives, upon advance notice and during regular business hours, access to all books, records, reports, plans, certificates, files, documents and information related to the Assets, personnel, officers and other facilities and properties of the Business; and (b) permit the Purchaser to make such copies and inspections thereof, upon advance notice and during regular business hours, as the Purchaser may reasonably request; provided, however, that (i) any such access will be conducted at Purchaser's expense, in accordance with applicable Laws, under the supervision of the Vendor's personnel and in such a manner as to maintain confidentiality and not to interfere with the normal operations of the businesses of the Vendor and its Affiliates; and (ii) the Vendor will not be required to provide to the Purchaser access to or copies of any records of former employees.

## **7.6 Public Announcements**

Except as necessary for the Party to make any filing with the Court to obtain approval of the transactions contemplated by this Agreement and upon 24 hours' advance notice of such public announcement or press release, no Party will issue any press release or public announcement concerning this Agreement or the transactions contemplated by this Agreement without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the Purchaser or the Vendor, disclosure is otherwise required by applicable Law, or the Court with respect to filings to be made with the Court in connection with this Agreement, provided that the Party intending to make such release will use its reasonable best efforts consistent with such applicable Law or the Court's or other regulatory requirements, to consult with the other Party with respect to the text thereof.

## **7.7 Further Actions**

From and after the Closing Date, each Party will execute and deliver such documents and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and give effect to the transactions contemplated herein, including the execution and delivery of such assignments, deeds and other documents as may be necessary to transfer any Assets as provided in this Agreement; provided that, the Vendor will not be obligated to make any payment or deliver anything of value to any Third Party (other than filing with and payment of any application fees to Government Entities, all of which will be paid or reimbursed by the Purchaser) in order to obtain any consent to the transfer of Assets or the assumption of Assumed Liabilities.

## **7.8 [Intentionally reserved]**

## **7.9 Transaction Expenses**

Except as otherwise provided in this Agreement or the Ancillary Agreements (including, without limitation, Section 11.2), each of the Purchaser and the Vendor will bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby.

### **7.10 Certain Payments or Instruments Received from Third Parties**

To the extent that, after the Closing Date: (a) the Purchaser receives any payment or instrument that is for the account of the Vendor according to the terms of this Agreement, the Purchaser will promptly deliver such amount or instrument to the Vendor; and (b) the Vendor receives any payment that is for the account of the Purchaser according to the terms of this Agreement or relates primarily to the Business, the Vendor will promptly deliver such amount or instrument to the Purchaser. All amounts due and payable under this Section 7.10 will be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use reasonable commercial efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

### **7.11 Deemed Consent**

For the purposes of this Agreement, the Purchaser will be deemed to have obtained all required consents in respect of the assignment of any Contract if, and to the extent that, pursuant to the Approval and Vesting Order, the Vendor is authorized to assign to the Purchaser such Contract pursuant to the provisions of applicable Insolvency Laws.

### **7.12 Notification of Certain Matters**

The Vendor will give written notice to the Purchaser and the Purchaser will give written notice to the Vendor, as applicable, promptly after becoming aware of: (a) the occurrence of any event, which would be likely to cause any condition set forth in Article 9 to be unsatisfied in any material respect at any time from the date hereof to the Closing Date; or (b) any notice or other communication from: (i) any Person alleging that the consent of such Person is or may be required in connection with any of the transactions contemplated by this Agreement; or (ii) any Government Entity in connection with any of the transactions contemplated by this Agreement; provided, however, that the delivery of any notice pursuant to this Section 7.12 will not limit or otherwise affect the remedies available hereunder to the Vendor or to the Purchaser.

### **7.13 Casualty Loss**

Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, all or any portion of the Assets is: (a) condemned or taken by eminent domain; or (b) a material portion is damaged or destroyed by fire or other casualty; then the Vendor will notify the Purchaser promptly in writing of such fact, and (i) in the case of condemnation or taking, the Vendor will assign or pay, as the case may be, any proceeds thereof to the Purchaser at the Closing; and (ii) in the case of fire or other casualty, the Vendor will, at its option, either restore such damage or assign the insurance proceeds therefrom to the Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 7.13 will not in any way modify the Purchaser's other rights under this Agreement.

## **ARTICLE 8 TAX MATTERS**

### **8.1 Transfer Taxes**

8.1.1 The Parties agree that the Purchase Price is exclusive of any Transfer Taxes. Subject to Section 8.2, the Purchaser shall, on Closing, pay any and all Transfer Taxes including GST/HST that are

properly payable to the Vendor under applicable Law in connection with this Agreement and the transactions contemplated herein and the other Transaction Documents and the transactions contemplated therein. Furthermore, the Purchaser shall promptly pay directly to the appropriate Governmental Authority any and all Transfer Taxes that are properly payable under applicable Law in connection with this Agreement directly to the appropriate Governmental Authority, and promptly provide to the Vendor proof of such payment.

8.1.2 If the Purchaser wishes to claim any exemption relating to, or a reduced rate of, Transfer Taxes, in connection with this Agreement or the transactions contemplated herein or the other Transaction Documents and the transactions contemplated therein, the Purchaser will be solely responsible for ensuring that such exemption or election applies and, in that regard, will provide the Vendor prior to the Closing with its permit number, GST/HST number, or other similar registration numbers and/or any appropriate certificate of exemption, election and/or other document or evidence to support the claimed entitlement to such exemption or reduced rate by the Purchaser. The Vendor will make reasonable efforts to cooperate to the extent necessary to obtain any such exemption or reduced rate.

## **8.2 Tax Election**

8.2.1 Notwithstanding the foregoing, the Vendor and the Purchaser agree that, on the Closing Date, they shall jointly execute elections under section 167 of the ETA with respect to the sale, assignment and transfer of the Assets by the Vendor. The Vendor and the Purchaser shall make the election on the prescribed form containing the prescribed information and such election form shall be filed by the Purchaser in accordance with the requirements of the ETA, and promptly thereafter, the Purchaser shall confirm to the Vendor in writing that such election form has been so filed. The Purchaser shall indemnify and hold the Vendor, as well as its shareholders, directors and employees, harmless in respect of any (i) GST/HST under the ETA that may be assessed against, or incurred by, the Vendor in relation to the sale, assignment and transfer of the Assets, and (ii) any penalties, interests and/or costs, including reasonable professional fees which may become payable by or assessed against the Vendor as a result of the transaction set forth in this Agreement not being eligible for such election, notably as a consequence of the Purchaser's failure to file the election form within the prescribed time, or any failure in acceptance by any Governmental Authority of this election. This covenant to indemnify shall survive the Closing and shall continue in full force and effect for the benefit of the Vendor until the expiration of the time during which the relevant Governmental Authority may assess the Vendor in respect of the sale, assignment and transfer of the Assets (as extended pursuant to any waivers, including extensions).

## **8.3 Tax Characterization of Payments under this Agreement**

The Vendor and the Purchaser agree to treat all payments made either to or for the benefit of the other Party under this Agreement as adjustments to the Purchase Price for Tax purposes and that such treatment will govern for purposes hereof to the extent permitted under applicable Tax Law.

## **8.4 Records**

After the Closing Date, the Purchaser and the Vendor, will each make available to the other, as reasonably requested, and to any Tax Authority, all information, records or documents relating to liability for Taxes with respect to the Assets, the Assumed Liabilities, the Business for all periods prior to or including the Closing Date, and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof. In the event that one Party needs access to records in the possession of the other Party relating to any of the Assets, the Assumed Liabilities, or the Business for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or other



investigative demand by any Tax Authority, or for any other legitimate Tax-related purpose not injurious to the second Party, the other Party will allow representatives of the other Party access to such records during regular business hours at the other Party's place of business for the sole purpose of obtaining information for use as aforesaid and will permit such other Party to make extracts and copies thereof as may be necessary or convenient. The obligation to cooperate pursuant to this paragraph will terminate at the time the relevant applicable statute of limitations expires (giving effect to any extension thereof).

## **8.5 Tax Allocation**

For purposes of Section 3.3(c) all real and personal property Taxes and similar ad valorem obligations levied with respect to the Assets, whether imposed or assessed before or after the Closing Date ("**Periodic Taxes**") for a taxable period that includes (but does not end on) the Closing Date (a "**Straddle Period**"), will be apportioned between the Vendor and the Purchaser as of the Closing Date based on the number of days of such taxable period included in the period ending with and including the Closing Date (together with periods ending before the Closing Date, the "**Pre-Closing Tax Period**"), and the number of days of such taxable period beginning after the Closing Date (together with any periods beginning after the Closing Date, the "**Post-Closing Tax Period**"). At the Closing, Periodic Taxes with respect to each Asset for the applicable Tax period will be prorated in accordance with the foregoing provisions based on the Tax assessment for such Asset for the applicable Tax period, if available, or otherwise, based on the last available Tax assessment with respect to such Asset. The Vendor will be responsible for such Periodic Taxes attributable to Pre-Closing Tax Periods and the Purchaser will be responsible for such Periodic Taxes attributable to Post-Closing Tax Periods. At the Closing, (x) the Vendor will pay to the Purchaser an amount equal to the excess, if any, of the (i) unpaid Periodic Taxes attributable to Pre-Closing Tax Periods over (ii) Periodic Taxes paid by the Vendor but apportioned hereunder to the Purchaser for Straddle Periods (each determined in accordance with the foregoing principles); or (y) the Purchaser will pay to the Vendor an amount equal to the excess, if any, of (i) Periodic Taxes apportioned to the Purchaser with respect to Straddle Periods but previously paid by the Vendor, over (ii) unpaid Periodic Taxes contributable to Pre-Closing Tax Periods, as applicable. The Purchaser will also be responsible for preparing and filing all Periodic Tax returns required to be filed after the Closing Date.

## **ARTICLE 9 CONDITIONS OF CLOSING**

### **9.1 Conditions to Each Party's Obligation**

The Parties' obligation to effect the Closing and carry out the transactions contemplated hereby and by the Transaction Documents is subject to the satisfaction or the express written waiver of the Parties, at or prior to the Closing, of the following conditions:

- (a) receipt of an executed copy of this Agreement and the other Transaction Documents;
- (b) there will be in effect no Law or Order prohibiting the consummation of the transactions contemplated hereby that has not been withdrawn or terminated;
- (c) the Approval and Vesting Order having been granted by the Court, in a form satisfactory to both Parties;
- (d) all required Transfer Approvals will have been granted, in a form satisfactory to both Parties;



- (e) all required Third Party consents associated with the assignment of the Contracts (or waivers thereof) will have been obtained;
- (f) there will be in effect no Law or Order prohibiting the consummation of the transactions contemplated hereby that has not been withdrawn or terminated; and
- (g) no action or proceeding (including the appeal of, motion to vary, stay or vacate, or, motion for leave to appeal the Approval and Vesting Order) will be outstanding, pending or threatened by any Person, government, governmental authority, regulatory body or agency to challenge the Approval and Vesting Order or enjoin, restrict or to prohibit the sale and purchase of the Assets contemplated hereby.

## **9.2 Conditions to Vendor's Obligation**

The Vendor's obligation to effect the Closing and carry out the transactions contemplated hereby and by the Transaction Documents will be subject to the fulfillment (or express written waiver by the Vendor), at or prior to the Closing, of each of the following additional conditions:

- (a) each representation and warranty of the Purchaser contained in Article 5 will be true and correct: (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date. The Vendor will have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof;
- (b) the covenants, obligations, and agreements contained in this Agreement to be complied with by the Purchaser on or before the Closing will have been complied with and not been breached in any material respect as determined in the sole discretion of the Vendor. The Vendor will have received a certificate of Purchaser to such effect signed by a duly authorized officer thereof; and
- (c) each of the deliveries required to be made to the Vendor pursuant to Section 10.2 will have been so delivered.

## **9.3 Conditions to Purchaser's Obligation**

The Purchaser's obligation to effect the Closing and carry out the transactions contemplated hereby and by the Transaction Documents will be subject to the fulfillment (or express written waiver by the Purchaser), at or prior to the Closing, of each of the following additional conditions:

- (a) each of the representations and warranties of the Vendor set forth in Article 6 will be true and correct: (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date, except in each case for any failure to be true and correct that has not had a Material Adverse Effect. The Purchaser will have received a certificate of the Vendor to such effect signed by a duly authorized officer thereof;
- (b) the covenants, obligations and agreements contained in this Agreement to be complied with by the Vendor on or before the Closing will have been complied with and not been breached in any material respect. The Purchaser will have received a certificate of the Vendor to such effect signed by a duly authorized officer thereof;

- (c) there will not have occurred any changes, effects or circumstances constituting, or which would be reasonably likely to result in, individually or in the aggregate, a Material Adverse Effect; and
- (d) each of the deliveries required to be made to the Purchaser pursuant to Section 10.2 will have been so delivered.

## **ARTICLE 10 CLOSING**

### **10.1 Closing Date and Time**

The Closing will take place at the offices of Dentons, 20<sup>th</sup> Floor, 250 Howe Street Vancouver, British Columbia, commencing at 10:00 am local time on a date that is on or before the Target Closing Date, subject to the conditions set forth in Article 9 (other than conditions to be satisfied at the Closing, but subject to the waiver or fulfilment of those conditions) having been satisfied or, if permissible, waived by the Vendor or Purchaser, as applicable or at such other place, date and time as will be mutually agreed upon in writing by the Purchaser and the Vendor (the “**Closing Date**”). At the Closing, legal title and equitable title with respect to the Assets will transfer to the Purchaser.

### **10.2 Closing Deliveries**

At the Closing, each Party shall deliver or cause to be delivered the following:

- (a) The Vendor and the Purchaser will each execute and deliver duly executed copies of each of the Ancillary Agreements to which it is a party.
- (b) The Vendor and the Purchaser will deliver the officer’s certificates required to be delivered pursuant to Article 9, as applicable.
- (c) The Vendor will deliver an entered copy of the Approval and Vesting Order.
- (d) Each Party will deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein or otherwise provided for under this Agreement.
- (e) The Purchaser will pay to, or cause to be paid to, as directed by the Vendor, in cash, the Cash Payment, by wire transfer of immediately available funds to an account or accounts designated by the Vendor.
- (f) Each Party will deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein or otherwise provided for under this Agreement.

### **10.3 Filing of Certificate**

As soon as reasonably practical following the Closing, the Monitor will file the Certificate, confirming that the Closing has completed, provided that the Purchaser is not, at that time, in breach of any of its obligations pursuant to this Agreement or any other Agreement between the Vendor and the Purchaser or

any agreement between a Government Entity and the Purchaser, the Approval and Vesting Order or any other Order of the Court.

## **ARTICLE 11 TERMINATION**

### **11.1 Termination**

This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of the Vendor and the Purchaser;
- (b) by the Vendor, in its sole discretion, if any of the conditions set in Section 9.1 or Section 9.2 are incapable of being satisfied by the Outside Date and the Vendor has not waived such condition at or prior to Closing;
- (c) by the Purchaser if any of the conditions set in Section 9.1 or Section 9.3 are incapable of being satisfied by the Outside Date and the Purchaser has not waived such condition at or prior to Closing; or
- (d) by either Party, upon written notice to the other:
  - (i) if an Order is made prohibiting or otherwise precluding the consummation of the transactions contemplated hereby; or
  - (ii) if the Closing does not take place by the Outside Date;

provided, however, that the right to terminate this Agreement pursuant to Section 11.1(d) will not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in, the event or condition purportedly giving rise to a right to terminate this Agreement under such clause.

### **11.2 Effects of Termination**

If this Agreement is terminated pursuant to Section 11.1, all further obligations of the Parties under or pursuant to this Agreement will terminate without further liability of any Party to the other except for the provisions of (a) Section 7.6 (Public Announcements); (b) Section 7.9 (Transaction Expenses); (c) Section 11.2 (Effects of Termination); (d) Section 13.6 (Successors and Assigns); (e) Section 13.7 (Governing Law; Submission to Jurisdiction); and (f) Section 13.8 (Notices).

## **ARTICLE 12 POST CLOSING ACTIVITIES AND AGREEMENTS**

### **12.1 Responsibility for Services to the Mine**

All charges for water, electricity, natural gas, telephone, sewer, trash disposal and other recurring services provided to the Mine which relate to such services provided prior to the Closing Date will be for the account of GNB, and all charges for such services provided on and after the Closing Date will be for the account of Purchaser, regardless of the date on which the invoice or other statement for such services

is rendered. The Purchaser acknowledges and agrees that as of the date of this Agreement and prior to the Closing, the Province has stepped in as regulator to perform legally required care and maintenance activities to mitigate environmental consequences to the Property and will continue to do so until Closing.

## **12.2 General Post-Closing Access to the Assets**

In addition to the other provisions hereof granting to the Vendor access to the Mine after the Closing Date for certain specified purposes, the Parties agree that upon reasonable prior notice to Purchaser, the Vendor and the Monitor will be given reasonable access to the other Assets, including, without limitation, all financial and corporate books and records of TMM and copies of Tax records related to the Assets and the Business, as necessary to enable the Vendor and the Monitor to carry out or respond to day-to-day operational requirements, reporting requirements of Government Entities, removal of Excluded Assets from the Mine, ongoing tax and accounting functions and obligations, and other activities of the Vendor with respect to the sale of the Assets and the winding down of TMM's responsibilities with respect thereto. All such activities of TMM and the Monitor will be conducted in a manner which complies with Purchaser's safety and operating procedures and in a manner which will not interfere unreasonably with the activities of Purchaser. The Purchaser will retain all financial and corporate books and records of TMM, including, without limitation, copies of Tax records related to the Assets and the Business, for the statutory periods required by any Law.

## **ARTICLE 13 MISCELLANEOUS**

### **13.1 No Survival of Representations and Warranties or Covenants**

No representations or warranties, covenants or agreements in this Agreement or in any instrument delivered pursuant to this Agreement will survive beyond the Closing Date. Accordingly, no claim of any nature whatsoever for breach of such representations, warranties, covenants or agreements may be made, or Action instituted, after the Closing Date. Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date will survive until satisfied in accordance with their terms.

### **13.2 Supplement to Disclosure Schedules**

From time to time prior to the Closing, the Vendor will supplement or amend the Disclosure Schedules with respect to any matter that, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedules. The Disclosure Schedules will be deemed amended by all such supplements and amendments for all purposes (except for purposes of determining whether the conditions set forth in Article 9 of the Agreement have been satisfied).

### **13.3 Remedies**

No failure to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement by any Party will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise of such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege.

### **13.4 No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

### **13.5 Consent to Amendments; Waivers**

No Party will be deemed to have waived any provision of this Agreement or any of the other Transaction Documents unless such waiver is in writing, and then such waiver will be limited to the circumstances set forth in such written waiver. The Transaction Documents will not be amended, altered or qualified except by an instrument in writing signed by all the Parties hereto or thereto, as the case may be.

### **13.6 Successors and Assigns**

Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements set forth in this Agreement or any of the Ancillary Agreements by or on behalf of the Parties thereto will be binding upon and enure to the benefit of such Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Party, which consent may be withheld in such Party's sole discretion, except for (i) assignment to an Affiliate of a Party (provided that such Party remains liable jointly and severally with its assignee Affiliate for the assigned obligations to the other Party); and (ii) assignment by the Vendor pursuant to an order of Court, which will not require the consent of the Purchaser.

### **13.7 Governing Law; Submission to Jurisdiction**

13.7.1 Any questions, claims, disputes, remedies or Actions arising from or related to this Agreement, and any relief or remedies sought by any Parties, will be governed exclusively by the Laws of the Province of British Columbia and Environmental Law without regard to the rules of conflict of laws applied therein or any other jurisdiction.

13.7.2 To the fullest extent permitted by applicable Law, each Party (i) agrees that any claim, action or proceeding by such Party seeking any relief whatsoever arising out of, or in connection with, this Agreement or the transactions contemplated hereby will be brought only in the Court, if brought prior to the entry of a final order closing the CCAA Proceedings; (ii) agrees to submit to the exclusive jurisdiction of the Court, for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such Action brought in such court or any claim that any such Action brought in such court has been brought in an inconvenient forum; (iv) agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 13.8 or any other manner as may be permitted by Law will be valid and sufficient service thereof; and (v) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

### **13.8 Notices**

All demands, notices, communications and reports provided for in this Agreement will be deemed given if in writing and delivered, if sent by telecopy, electronic mail, courier or sent by reputable overnight courier service (delivery charges prepaid) to any Party at the address specified below, or at such other

address, to the attention of such other Person, and with such other copy, as the recipient Party has specified by prior written notice to the sending Party pursuant to the provisions of this Section 13.8.

- (a) If to the Purchaser, to:

**BATHURST METALLIC CORP.**

58 Rue Du Moulin  
Nigadoo, NB, E8K 3R8  
Attention: Kevin Vienneau  
Email: [vienneau.kevin@gmail.com](mailto:vienneau.kevin@gmail.com)

With copies to:

Fogler, Rubinoff LLP  
77 King Street West, Suite 3000  
Toronto, ON M5K 1G8  
Attention: Rick Moscone  
Email: [rmoscone@foglers.com](mailto:rmoscone@foglers.com)

- (b) If to the Vendor to:

**FTI Consulting Canada Inc.**

Suite 1450 – 701 West Georgia Street  
Vancouver, BC, V7Y 1B6  
Attention:  
Email:

With copies to the Vendor's counsel:

**Dentons Canada LLP**

250 Howe Street, 20<sup>th</sup> Floor  
Vancouver, BC, V6C 3R1  
Attention: John R. Sandrelli  
Email: [john.sandrelli@dentons.com](mailto:john.sandrelli@dentons.com)

Any such demand, notice, communication or report will be deemed to have been given pursuant to this Agreement when delivered personally, when confirmed if by facsimile transmission or electronic mail, or on the calendar day after deposit with a reputable overnight courier service, as applicable.

### **13.9 Exhibits, Disclosure Schedules**

The Disclosure Schedules and the Exhibits attached hereto constitute a part of this Agreement and are incorporated into this Agreement for all purposes as if fully set forth herein.

### **13.10 Counterparts**

The Parties may execute this Agreement in two or more counterparts (no one of which need contain the signatures of all Parties) and deliver the Agreement by facsimile or other form of electronic transmission, each of which will be deemed an original and all of which together will constitute one and the same instrument.

### **13.11 No Presumption**

The Parties agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party represents and warrants that it has sought and received experienced legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties agree that this Agreement will be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed either for or against a Party on the grounds that such Party drafted or was more responsible for drafting the provisions.

### **13.12 Severability**

If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or incapable of being enforced in any jurisdiction, (i) as to such jurisdiction, the remainder of this Agreement or the application of such provision, clause or part under other circumstances; and (ii) as for any other jurisdiction, any provision of this Agreement, will not be affected and will remain in full force and effect, unless, in each case, such invalidity, illegality or unenforceability in such jurisdiction materially impairs the ability of the Parties to consummate the transactions contemplated by this Agreement. Upon such determination that any clause or other provision is invalid, illegal or incapable of being enforced in such jurisdiction, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible even in such jurisdiction.

### **13.13 Specific Performance**

13.13.1 The Purchaser acknowledges and agrees that any breach of the terms of this Agreement by Purchaser would give rise to irreparable harm for which money damages would not be an adequate remedy, and, accordingly agrees that, in addition to any other remedies, the Vendor will be entitled to enforce the terms of this Agreement, including, for the avoidance of doubt, Purchaser's obligation to fund the Purchase Price, by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting a bond.

13.13.2 The Purchaser agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law; or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. In the event the Vendor seeks an injunction or injunctions to prevent breaches of this Agreement when expressly available pursuant to the terms of this Agreement and to enforce specifically the terms and provisions of this Agreement when expressly available pursuant to the terms of this Agreement, it will not be required to provide any bond or other security in connection with any such order or injunction.

**13.14 Entire Agreement**

This Agreement and the Ancillary Agreements set forth the entire understanding of the Parties relating to the subject matter thereof, and all prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by this Agreement and the Ancillary Agreements, and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated. In the event of any irreconcilable conflict between this Agreement and any of the Ancillary Agreements, the provisions of this Agreement will prevail.

**13.15 Damages**

Under no circumstances will any Party be liable for punitive damages or indirect, special, incidental, or consequential damages arising out of or in connection with this Agreement or the transactions contemplated hereby or any breach or alleged breach of any of the terms hereof, including damages alleged as a result of tortious conduct.

*[signature page follows]*



**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the date first written above.

**TREVALI MINING (MARITIMES) LTD., by FTI CONSULTING CANADA INC., solely in its capacity as court-appointed monitor and not in any other capacity**

By: \_\_\_\_\_

Name:

Title:

**BATHURST METALLIC CORP.**

By: Kevin Vienneau \_\_\_\_\_

Name: Kevin Vienneau

Title: President

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the date first written above.

**TREVALI MINING (MARITIMES) LTD., by FTI CONSULTING CANADA INC., solely in its capacity as court-appointed monitor and not in any other capacity**

By: \_\_\_\_\_

Name:

Title:

**BATHURST METALLIC CORP.**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A  
FORM OF APPROVAL AND VESTING ORDER**

*[see attached]*

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS  
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

**ORDER MADE AFTER APPLICATION  
(SALE APPROVAL AND VESTING ORDER)**

BEFORE ) )  
 ) THE HONOURABLE MADAM ) [DD]/[MMM]/2024  
 ) JUSTICE FITZPATRICK )  
 ) )

ON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of Trevali Mining Corporation ("**TMC**"), coming on for hearing at Vancouver, British Columbia, on the [-] day of [MONTH], 2024; AND ON HEARING John Sandrelli, counsel for the Monitor, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the [Seventeenth] Report of the Monitor dated [-], 2024 (the "**Report**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. Effective as of the date of this Order, Trevali Mining (Maritimes) Ltd. (“**TMM**”) is hereby added as a Petitioner in this proceeding, and, for greater certainty:

- (a) the Amended and Restated Initial Order granted August 29, 2022 (the “**ARIO**”), is amended such that TMM shall for all purposes be deemed to be one of the Petitioners as set out in the ARIO;
- (b) TMM is hereby granted all of the rights and protections afforded to the Petitioners by the ARIO, as may be amended, including without limitation any extension of the Stay of Proceedings (as defined in the ARIO);
- (c) the Monitor, in addition to its prescribed rights and obligations under the CCAA, subject to the dispensation of certain requirements as provided for by this Order, is hereby directed and empowered to perform such duties with respect to TMM as the Monitor is required to perform with respect to the Petitioners pursuant to the ARIO or by further order of this Court from time to time;
- (d) the Charges as defined in and created by the ARIO shall constitute a charge on the Property (as defined in the ARIO) of TMM with such priorities and protections as are provided to the Charges in the ARIO in connection with the Property;
- (e) the Enhanced Monitor’s Powers Order granted June 28, 2023 (the “**EMP Order**”), shall be amended such that TMM shall for all purposes be deemed to be the Petitioner, along with TMC, as set out in the EMP Order, and the Monitor’s enhanced powers under the EMP Order shall also apply with respect to TMM, including, but not limited to, executing the Asset Purchase Agreement dated April 27, 2024 (the “**Sale Agreement**”) between the Monitor and Bathurst Metallic Corp. (the “**Purchaser**”), a copy of which is attached as Appendix “A” to the Report; and
- (f) without limiting the generality of the above, all of the protections afforded to the Monitor under the ARIO, the EMP Order, under the CCAA and as an officer this Court, extend to TMM, its Property (as defined in the ARIO) and any actions taking in respect of TMM.

2. The Monitor’s obligation to publish the notice prescribed by section 23(1)(a)(i) of the CCAA with respect to TMM is hereby dispensed with.

3. The sale transaction (the “**Transaction**”) contemplated by the Sale Agreement is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Monitor is hereby authorized and approved, with such minor amendments to the Sale Agreement as the Monitor and the Purchaser may agree to, and the Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the “**Assets**”).

4. This Order shall constitute the only authorization required by the Monitor to proceed with the Transaction, and that no shareholder or other approval shall be required in connection therewith, save for those authorizations contemplated in the Sale Agreement.

5. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule “B”** hereto (the “**Monitor’s Certificate**”), all of the TMM’s right, title and interest in and to the Assets described in the Sale Agreement and listed on **Schedule “C”** hereto shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, debentures or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of this Court, including, but not limited to, the ARIO; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia, the *Personal Property Security Act* of New Brunswick or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

6. Upon presentation for registration in the Land Registry of New Brunswick of a certified copy of this Order, together with a letter from the Monitor’s counsel authorizing registration of this Order, the New Brunswick Registrar General of Land Titles is hereby directed to:

- (a) enter the Purchaser as the owner of the Real Property, as identified in Section A.3 of **Schedule “C”** hereto (the “**Real Property**”), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants,

restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Real Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Real Property is a good, safe holding and marketable title and directs the New Brunswick Registrar General of Land Titles to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Real Property all of the registered Encumbrances.

7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

8. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

9. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Monitor is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the TMM's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by TMM.

10. Subject to the terms of the Sale Agreement, vacant possession of the Assets, including any real property, shall be delivered by the Monitor to the Purchaser at 10:00 am PST on the Closing Date (as defined in the Sale Agreement).

11. The Monitor, with the consent of the Purchaser, shall be at liberty to extend the Target Closing Date and the Outside Date (as defined in the Sale Agreement) to such later date as those parties may agree without the necessity of a further Order of this Court.

12. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of TMM now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of TMM,

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of TMM and shall not be void or voidable by creditors of TMM, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **General**

13. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, Namibia and South Africa to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to TMM and 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 TMM and the TMM and their respective agents in carrying out the terms of this Order.

14. The Monitor or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

15. Endorsement of this Order by counsel appearing on this application other than counsel for the Monitor is hereby dispensed with.



THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of John Sandrelli  
Lawyer for the Monitor

By the Court.

\_\_\_\_\_  
Registrar

**SCHEDULE "A"**

**LIST OF COUNSEL**

<b>Counsel Name</b>	<b>Party Represented</b>
John Sandrelli	FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Trevali Mining Corporation

**SCHEDULE "B"**

**FORM OF MONITOR'S CERTIFICATE**

No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS  
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

**MONITOR'S CERTIFICATE**

**RECITALS:**

A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated August 19, 2022, as amended and restated by an Order of the Court dated August 29, 2022, as further amended by an Order of the Court dated [-], 2024, FTI Consulting Canada Inc. was appointed as the "**Monitor**" of Trevali Mining Corporation ("**TMC**") and Trevali Mining (Maritimes) Ltd. ("**TMM**"), pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended.

B. Pursuant to an Order of the Court dated June 28, 2023, as amended by an Order of the Court dated [-], 2024, the powers of the Monitor with respect to TMC and TMM were expanded.

C. Unless otherwise stated herein, all capitalized terms in this Monitor's Certificate shall have the meaning ascribed to them in the Asset Purchase Agreement dated April 27, 2024 (the "**Sale Agreement**") among the Monitor and Bathurst Metallic Corp. (the "**Purchaser**"). All references to Purchaser herein shall include any permitted assignee, if any, of the Purchaser.

D. Pursuant to an Order, dated [-], 2024 (the “**Sale Approval Order**”), among other things, the Court approved the Sale Agreement, and provided for the vesting in the Purchaser of all of the rights, title, and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the Monitor filing a certificate confirming that the Closing has completed.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser has paid the Purchase Price in full in accordance with the Sale Agreement.
2. Each of the conditions to Closing as set out in the Sale Agreement has been satisfied or waived by the Vendor and/or the Purchaser, as applicable.
3. The Closing has completed.

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

FTI Consulting Canada Inc., solely in its capacity as the Court-appointed Monitor of Trevali Mining Corporation and Trevali Mining (Maritimes) Ltd., and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

## **SCHEDULE "C"**

### **ASSETS**

#### Section A.1 – Leased Real Property

- a. Industrial Surface Lease No. SIML ##### (also referred to as Crown Lands Lease #415060072).

#### Section A.2 – Mineral Titles

- a. Mining Lease No. ML-261.
- b. All New Brunswick mineral claims owned by Trevali Mining (Maritimes) Ltd. including: 1522 (Heath East), 1681 (Halfmile Lake Central), 3885 (Murray Brook), 4341 (California Lake), 4525 (Restigouche South), 6049 (Stratmat), 8160 (Mount Fronsac North)
- c. All Manitoba mineral claims owned by Trevali Mining (Maritimes) Ltd.

#### Section A.3 – Real Property

Nil

#### Section A.4 – Permits and Licences

- a. Approval to Operate I-12101
- b. Petroleum Storage Site Licence #7940

#### Section A.5 - Equipment & Machinery

Nil

#### Section A.6 – Contracts

Nil

#### Section A.7 – Transferred Intellectual Property

Nil

**SCHEDULE "D"**

**LISTED CLAIMS**

[To be completed.]

No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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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 THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS CORPORATIONS*  
*ACT*, S.N.B. 1981,  
C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
TREVALI MINING CORPORATION AND TREVALI MINING (NEW  
BRUNSWICK) LTD.

PETITIONERS

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**ORDER MADE AFTER APPLICATION  
(APPROVAL AND VESTING ORDER)**

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DENTONS CANADA LLP  
BARRISTERS & SOLICITORS  
250 Howe Street, 20<sup>th</sup> Floor  
Vancouver, BC V6C 3R8  
Phone No.: (604) 687-4460  
Attention: Eamonn Watson

File No.  
584476-8

**EXHIBIT B  
FUNDING AGREEMENT**

[see attached]

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**FUNDING AGREEMENT**

---

This Agreement dated as of [MONTH] \_\_\_\_, 2024.

BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK**, as represented by the Minister of Natural Resources and Energy Development (the “**Minister**”)

- and -

**BATHURST METALLIC CORP.**, a corporation under the laws of the Province of New Brunswick, maintaining its registered office at 58 Rue Du Moulin, Nigadoo, NB E8K 3R8 (“**Bathurst Metallic**”)

(each, a “**Party**”, and together, the “**Parties**”)

**BACKGROUND**

- A. As a result of the insolvency of Trevali Mining (New Brunswick) Ltd. and Trevali Mining (Maritimes) Ltd., the Minister, since January 25, 2023, has undertaken care and maintenance activities at the Caribou mine and mill complex (the “**Caribou Mine**”), the Restigouche Mine (the “**Restigouche Mine**”), and the Halfmile Mine (the “**Halfmile Mine**”), all located near Bathurst, New Brunswick.
- B. Bathurst Metallic has acquired ownership of Caribou Mine, Restigouche Mine and Halfmile Mine, including those mining assets and claims described in Schedule “**A**” hereto, as a result of the proceedings commenced by Trevali Mining (New Brunswick) Ltd. under the *Companies’ Creditors Arrangement Act* (Canada);
- C. The Minister is committed to the responsible management of mines and minerals within the Province of New Brunswick and recognizes the importance of an orderly hand off of care and maintenance responsibilities at Caribou Mine, Restigouche Mine and Halfmile Mine, as well as the continued development of those resources;
- D. Bathurst Metallic acknowledges its responsibility for the care and maintenance of Caribou Mine, Restigouche Mine and Halfmile Mine and welcomes the Government’s support in achieving the common goal of an orderly hand off and responsible resource management;
- E. The Parties have resolved to enter into this Agreement to formalize the terms and conditions governing the Minister’s interim funding of Bathurst Metallic’s



care and maintenance activities at Caribou Mine, Restigouche Mine and Halfmile Mine; and

F. The Minister is duly authorized by Order-in-Council \_\_\_\_\_ dated \_\_\_\_\_, 2024 made pursuant to section 6 of the Mining Act to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations contained below and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1.0 DEFINITIONS

1.1 **Defined Terms:** In this Agreement, unless otherwise specified, the following terms shall have the following meaning:

- i. **"Agreement"** means this Agreement, as may be amended in writing from time to time.
- ii. **"Applicable Law"** means all applicable federal, provincial and municipal laws, statutes, codes, ordinances, orders, decrees, by-laws, rules, regulations, permits, licenses, authorizations and directives.
- iii. **"Assets"** means those mining assets and claims described in Schedule "A".
- iv. **"Business Day"** means any day other than a Saturday, Sunday or statutory holiday under the applicable laws of Canada or New Brunswick.
- v. **"Care and Maintenance Activities"** means the work, tasks and procedures undertaken to preserve, safeguard, and sustain mining infrastructure, equipment, facilities, and the environment during a period when active production has been temporarily halted, including those activities described in Schedule "B".
- vi. **"Care and Maintenance Account"** means the bank account established by Bathurst Metallic in accordance with section 4.1.
- vii. **"Confidential Information"** means all information relating to the disclosing Party which is supplied by or on behalf of the disclosing Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the Recipient or which is obtained through observations made by the Recipient. "Confidential Information" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.
- viii. **"Dispute"** means any dispute, controversy or claim of any kind whatsoever arising from, connected with or relating to this Agreement, including the interpretation of the terms hereof or any applicable law that affects this Agreement, or the transactions contemplated herein, or the breach, termination or validity hereof.
- ix. **"Financial Assistance"** means the funding provided to Bathurst Metallic by the Minister in accordance with section 3.0 of this Agreement.
- x. **"Milestone"** means any of the eight (8) milestones described in the Milestone Schedule.
- xi. **"Milestone Payment Certificate"** means a certificate in the form attached hereto as Schedule "D" which identifies the Milestone in respect of which it is being submitted, and requests payment of the applicable Milestone Payment.
- xii. **"Milestone Payment Date"** means, with respect to any Milestone, the day which is fifteen (15) Business Days after the later of (i) the day upon which the Milestone Payment Certificate in respect thereof is received by the Minister and (ii) the day all conditions for payment of the applicable Milestone Payment have been satisfied.

- xiii. **"Milestone Payments"** means the instalment payments, set out in the Milestone Schedule, which are to be paid to Bathurst Metallic following achievement of each Milestone and the satisfaction of the conditions of payment therefor, and **"Milestone Payment"** means any one of them.
- xiv. **"Milestone Period"** means the period of time between a particular Milestone and the subsequent Milestone as outlined in the Milestone Schedule.
- xv. **"Milestone Schedule"** means Schedule **"C"** attached to and forming part of this Agreement.
- xvi. **"Mining Leases"** means, collectively, the mining leases identified as ML-246 (Caribou Mine), ML-255 (Restigouche Mine), and ML-261 (Halfmile Mine) issued under the provisions of the Mining Act, SNB 1985, c M-14.1.
- xvii. **"Uncontrollable Circumstance"** means any circumstance, act or event beyond the reasonable control of a Party, including an act of God or public enemy, blockade, civil commotion, war, fire, pandemic, epidemic, and stop work order or injunction issued by a court or public authority having jurisdiction, which despite the reasonable efforts of the Party claiming relief to prevent its occurrence or moderate its effects, causes a delay or disruption in the performance of any obligation under this Agreement.

## 2.0 OBLIGATIONS OF BATHURST METALLIC

- 2.1 **Assistance Period:** Bathurst Metallic agrees to assume responsibility for Care and Maintenance Activities for Caribou Mine, Restigouche Mine and Halfmile Mine from the Minister starting on **June 1, 2024**, or upon the date a court order is issued vesting ownership of the Assets in Bathurst Metallic, whichever occurs later (the **"Handover Date"**). Immediately following the Handover Date, the Minister will provide assistance to Bathurst Metallic for a period of ten (10) Calendar Days (the **"Assistance Period"**), including the transfer of relevant information, knowledge transfer sessions, and on-site support to ensure a smooth transition. Both Parties agree to cooperate and collaborate in good faith during the Assistance Period to facilitate an orderly and effective handover.
- 2.2 **Care and Maintenance Activities:** Immediately following the Assistance Period, Bathurst Metallic shall be solely responsible for, and will proceed diligently and continuously with, the Care and Maintenance Activities.
- 2.3 **Milestone Schedule:** Bathurst Metallic shall carry out the Care and Maintenance Activities in strict compliance with Applicable Law and will diligently pursue and complete the Milestones described in the Milestone Schedule. Bathurst Metallic shall immediately notify the Minister of any circumstance that could result in significant delays to the Milestone Schedule.
- 2.4 **Taxes:** Bathurst Metallic shall pay from the Care and Maintenance Account all federal, provincial and local taxes, duties, utilities, charges, rates, fees and levies due with respect to Caribou Mine, Restigouche Mine and Halfmile Mine and the Care and Maintenance Activities.
- 2.5 **GAAP:** Bathurst Metallic shall adhere to generally accepted accounting principles with respect to all activities and transactions under this Agreement.
- 2.6 **Access to Records:** Bathurst Metallic authorizes the Minister and its authorized representatives to inspect, upon reasonable prior notice, its books, registers and records, wherever they may be located, in order to verify that such accounts and documents reflect all undertakings, agreements and projects related to this Agreement.
- 2.7 **Commitments:** Without limiting any of the obligations of Bathurst Metallic under this Agreement:
  - i. Bathurst Metallic shall carry out the Care and Maintenance Activities; and
  - ii. where possible in terms of cost, quality and availability, Bathurst Metallic shall use New Brunswick goods and services in relation to the Care and Maintenance Activities where such Care and Maintenance Activities are paid for from the funds provided by the Minister to Bathurst Metallic pursuant to **Section 3.0**.
- 2.8 **Financial Affairs:** Bathurst Metallic authorizes the Minister and the Minister's representatives to discuss the affairs of Bathurst Metallic as they relate to the Care and Maintenance Activities and

the Financial Assistance provided by the Minister with Bathurst Metallic's auditors, lawyers, insurers or bankers.

- 2.9 **Indemnity:** Bathurst Metallic shall forever release, discharge, indemnify and save harmless the Minister and the Minister's representatives, contractors, servants and employees, and each of them, and each of their respective heirs, executors, administrators, successors and assigns, of, from and against any and all action or actions, cause or causes of action, claims, demands, causes, suits, debts, liabilities, damages, losses, expenses, obligations or commitments of whatsoever nature or kind arising out of, from, as result of, or in any way connected with the Care and Maintenance Activities and the Financial Assistance provided by the Minister under this Agreement.
- 2.10 **Reporting Obligations:** In addition to the Milestone Payment Certificates required under section 3.2 of this Agreement, Bathurst Metallic shall provide the Minister, concomitant with the submission of each Milestone Payment Certificate (or more frequently if requested by Minister), a written report in a format approved by the Minister setting forth:
- i. planning and progress data, including Milestone Schedule considerations throughout the term of this Agreement;
  - ii. a description of work performed in the Milestone Period, including any significant achievements or developments;
  - iii. summary of costs incurred in the applicable Milestone Period and in total for the Care and Maintenance Activities under this Agreement;
  - iv. a work plan and spending estimate for the following Milestone Period;
  - v. a copy of any correspondence with, or report issued to, the Department of Environment and Local Government;
  - vi. any occurrences, omissions or developments that could have a material adverse effect on Bathurst Metallic or its interests in the development of Caribou Mine, Restigouche Mine, and Halfmile Mine, or in the Care and Maintenance Activities; and
  - vii. such additional information as the Minister may request.

### 3.0 OBLIGATIONS OF THE MINISTER

- 3.1 **Financial Assistance:** Subject to the terms and conditions of this Agreement, the Minister will provide the Milestone Payments to Bathurst Metallic in accordance with the Milestone Schedule attached hereto as Schedule "C".
- 3.2 **Payment Certificates:** When Bathurst Metallic believes it has achieved a Milestone, Bathurst Metallic shall submit the applicable Milestone Payment Certificate (in the form attached as Schedule "D") to the Minister. The Minister shall have fifteen (15) Business Days following receipt of a Milestone Payment Certificate to provide written notice (a "**Milestone Deficiency Notice**") to Bathurst Metallic detailing any matters that are required to be performed by Bathurst Metallic in order to achieve the applicable Milestone or satisfy any conditions of payment with respect thereto. In the event the Minister issues a Milestone Deficiency Notice, Bathurst Metallic shall proceed to rectify the deficiencies described therein. Following such rectification, Bathurst Metallic shall re-submit a Milestone Payment Certificate in respect of the applicable Milestone and this section 3.2 shall apply again, *mutatis mutandis*. In the event the Minister does not issue a Milestone Deficiency Notice, the Minister shall, subject to the provisions of this Agreement, make the applicable Milestone Payment to Bathurst Metallic on the Milestone Payment Date.
- 3.3 **Invoice:** Concomitant with the submission of each Milestone Payment Certificate, Bathurst Metallic will submit an invoice to Service New Brunswick for the applicable Milestone Payment (the "**Invoice**"). Invoices must be submitted in strict adherence to the requirements specified in Service New Brunswick's invoicing guidelines. Both parties agree that invoices shall be paid as soon as possible, once required conditions of payment have been verified, in accordance with Section 3.2.
- 3.4 **Conditions for Milestone Payments:** The obligation of the Minister to make any Milestone Payment hereunder is subject to the following conditions:

- i. the Minister shall have received a Milestone Payment Certificate and Invoice within the time limit provided therefor;
- ii. the Minister shall have undertaken the review contemplated by Section 3.2, the applicable time period shall have elapsed, and the Minister shall not have issued a Milestone Deficiency Notice;
- iii. the Minister shall have received any information or documentation it may have requested from Bathurst Metallic in accordance with the terms and conditions of this Agreement; and
- iv. Bathurst Metallic is not otherwise in default of any covenant or obligation contained in this Agreement, or under any other agreement which Bathurst Metallic may have entered into with or granted to the Minister, including the Limited Environmental Liability Agreements executed for Caribou Mine and Restigouche Mine.

**3.5 Acknowledgements of Bathurst Metallic – Milestone Payments:** Bathurst Metallic acknowledges and agrees as follows with respect to the Milestone Payments:

- i. the Minister will have no obligation to make a Milestone Payment:
  - (i) until this Agreement and each of the other documents and agreements required by the Minister in connection with this Agreement have been duly signed, sealed and delivered;
  - (ii) unless all work required to achieve the Milestone in respect of which Milestone Payment is sought has been totally completed; and
  - (iii) while Bathurst Metallic is in default under this agreement or under any other agreement which Bathurst Metallic may have entered into with or granted to the Minister, including the Limited Environmental Liability Agreements executed for Caribou Mine and Restigouche Mine.
- ii. the Minister shall have no obligation to make any partial Milestone Payments;
- iii. without limiting anything else herein contained, neither the failure of the Minister to issue any Milestone Deficiency Notice nor the making of any Milestone Payment by the Minister shall constitute a waiver of any condition precedent or be regarded as a representation or acknowledgement by or on behalf of the Minister that there has been or will be compliance by Bathurst Metallic with the terms and conditions of this Agreement or applicable law; and
- iv. payment of any Milestone Payment is without prejudice to the rights of the Minister in connection with this Agreement.

**4.0 ADMINISTRATION OF FUNDS**

**4.1 Care and Maintenance Account:** Bathurst Metallic shall establish and continue to maintain an account (the “**Care and Maintenance Account**”) at a branch of a Schedule I Canadian chartered bank in Bathurst, New Brunswick, which shall be used solely to hold the Financial Assistance provided by the Minister, and to pay the costs of Care and Maintenance Activities, as provided in this Agreement.

**4.2 Use of Funds:** Bathurst Metallic covenants and agrees that the Financial Assistance, and all advances made by the Minister in respect thereof, shall be exclusively utilized by Bathurst Metallic for the explicit purpose of covering expenses directly associated with the Care and Maintenance Activities. Any diversion or application of said funds for purposes other than those delineated herein is strictly prohibited.

**5.0 REPRESENTATIONS AND WARRANTIES**

**5.1** Bathurst Metallic represents and warrants to and covenants with the Minister that:

- i. it is incorporated under the laws of New Brunswick, and is and throughout the term of this Agreement will remain a duly organized and validly existing corporation;

- ii. it has, and will at all relevant times have, the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- iii. it has duly authorized this Agreement by all necessary corporate action and has legally and properly executed this Agreement, which constitutes a valid, subsisting and legally binding obligation upon it which is enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- iv. it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
- v. the observance and performance of the terms and conditions of this Agreement do not and will not constitute a breach by it of or a default by it under:
  - (i) to its knowledge, having made due and diligent inquiry, any law applicable to or binding upon it;
  - (ii) its articles, by-laws or other constating documents; or
  - (iii) any contract or agreement to which it is a party;
- vi. it is not a party to and has no knowledge of any claim or proceeding against it that would materially affect its undertaking or financial condition or its ability to perform its obligations under this Agreement; and
- vii. it holds, and will throughout the term of this Agreement hold and maintain in good standing, all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government, or an agency of any of them, and has given all notices, that are necessary in connection with its operations and the performance of its obligations under this Agreement, including the Care and Maintenance Activities, and completion of the Milestones.

## 6.0 TERM AND TERMINATION

- 6.1 **Term:** The term of this Agreement commences on the Effective Date and will terminate upon the first to occur of:
- i. termination by mutual written agreement of the Parties;
  - ii. complete performance and discharge of all obligations and responsibilities of the Parties under this Agreement; or
  - iii. termination pursuant to **Section 6.2**.
- 6.2 **Termination by Minister:** The Minister may terminate this Agreement immediately upon notice to Bathurst Metallic upon the occurrence any of the following events:
- i. if Bathurst Metallic fails to perform or observe any covenant or obligation contained in this Agreement, including failure to complete the Milestones described in the Milestone Schedule by the prescribed dates, and does not cure such failure within fifteen (15) Business Days after receipt of notice of the failure from the Minister;
  - ii. if Bathurst Metallic fails to make payment when due of any undisputed amount owing to employees, consultants, lessors, licensors, service providers or other third parties in connection with the Care and Maintenance Activities;
  - iii. if Bathurst Metallic ceases or threatens to cease to carry on or to continue to carry on Care and Maintenance Activities at Caribou Mine, Restigouche Mine, or Halfmile Mine;
  - iv. if any information, representation, warranty, certificate, statement or report given or made by or on behalf of Bathurst Metallic to the Minister or to any of its representatives in or in

connection with this Agreement is false, erroneous or misleading in any material respect;

- v. if Bathurst Metallic becomes insolvent or bankrupt or subject to the provisions of the *Winding-Up Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada) or equivalent legislation or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction or makes a general assignment for the benefit of its creditors or otherwise acknowledges itself insolvent;
- vi. if Bathurst Metallic abandons all or any part of its undertaking and property and assets or threatens to commit any act of bankruptcy;
- vii. if the Minister, in good faith, believe that the ability of Bathurst Metallic to pay any of its obligations or to perform any of the covenants contained in this Agreement is impaired;
- viii. if Bathurst Metallic shall permit any amount which has been admitted as due by it or is not disputed to be due by it and forms or is capable of being made a charge on any of the property and assets of Bathurst Metallic to remain unpaid for ten (10) days after the amounts are due; or
- ix. if any order for seizure or sale, execution, or any other process of any court becomes enforceable against Bathurst Metallic or if a distress or analogous process is levied on the property and assets of Bathurst Metallic.

**6.3 Obligations on Termination:** Upon termination of this Agreement pursuant to section 6.1 or 6.2:

- i. all costs incurred by Bathurst Metallic on and after the effective date of termination in respect of the Care and Maintenance Activities will be for the sole account of Bathurst Metallic;
- ii. without limiting any other remedies the Minister may have, Bathurst Metallic shall refund to the Minister any unexpended funds provided by the Minister and remaining in the Care and Maintenance Account at the time of termination, except that such funds may be used to pay incurred amounts approved by the Minister and payable for goods and services received by Bathurst Metallic prior to the effective date of termination for which payment has not yet been made.

**6.4 Surrender of Mining Leases:** Upon termination of this Agreement pursuant to section 6.2:

- i. Bathurst Metallic will surrender the Mining Leases in accordance with the provisions of the *Mining Act*, SNB 1985, c M-14.1, as amended from time to time. Concomitant with the execution of this Agreement, Bathurst Metallic will execute and deliver to the Minister an Irrevocable Power of Attorney appointing the Minister as Bathurst Metallic's Attorney with full authority to execute any and all documents required to surrender the Mining Leases in the event of termination of this Agreement pursuant to section 6.2. The Power of Attorney will be in a form satisfactory to the Minister's solicitor, and a determination of whether any of the events listed in section 6.2 have occurred will be in the sole discretion of the Minister and will be binding on Bathurst Metallic.

**7.0 CONFIDENTIALITY**

**7.1 Confidence:** Each Party (the "**Recipient**") will hold in confidence any Confidential Information, provided that the provisions of this Section 7.0 will not restrict any Party from passing such information to its professional advisors, provided such advisors are subject to similar confidentiality obligations, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Recipient may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to its contractors documents and other information which are necessary for the Recipient's performance of this Agreement.

**7.2** The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- i. which the disclosing Party confirms in writing is not required to be treated as Confidential Information;

- ii. which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- iii. to the extent either party is required to disclose such Confidential Information by Applicable Law, provided that such Party will take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information.

7.3 **Right to Information and Protection of Privacy Act:** Bathurst Metallic acknowledges that all information relating to this Agreement that is in the custody or control of the Minister is subject to the *Right to Information and Protection of Privacy Act* (New Brunswick), under which the Minister may be required to disclose certain information.

## 8.0 UNCONTROLLABLE CIRCUMSTANCE

8.1 **Uncontrollable Circumstance:** Despite any other provision of this Agreement, if, because of an Uncontrollable Circumstance, either Party (the "**Affected Party**") is prevented from fulfilling its obligations under this Agreement (the "**Affected Obligations**"), it will be relieved of the Affected Obligations to the extent, and for the duration, of the Uncontrollable Circumstance if the Affected Party:

- i. within five (5) Business Days of becoming aware of the Uncontrollable Circumstance gives written notice to the other Party describing the Affected Obligations and nature and expected duration of the Uncontrollable Circumstance; and
- ii. takes commercially reasonable steps to mitigate the consequences of the Uncontrollable Circumstance and continues to perform the Affected Obligations to the extent possible.

8.2 **Termination:** the Affected Party will use commercially reasonable efforts to resume as soon as possible the performance of any obligation affected by an Uncontrollable Circumstance. The Minister may terminate the Agreement if the event of an Uncontrollable Circumstance is expected to exceed a period of thirty (30) days.

## 9.0 DISPUTE RESOLUTION

9.1 **Informal Dispute Resolution:** The Parties will attempt in good faith to resolve any Dispute relating to this Agreement informally. Upon the request of any Party, a Dispute will immediately be referred to the following representatives of the Parties for resolution by them:

- i. the President of Bathurst Metallic Corp.
- ii. The Deputy Minister of Natural Resources and Energy Development

9.2 **Arbitration:** If, for any reason, the Dispute has not been resolved as provided in Section 9.1 either Party may provide written notice to the other Party that the Dispute will be resolved by referral to a final and binding arbitration between the Parties pursuant to the *Arbitration Act* (New Brunswick). The arbitration will be conducted by a single arbitrator, the place of arbitration will be Fredericton, New Brunswick, and the language of the arbitration will be English. If the parties cannot agree upon the appointment of the single arbitrator within ten (10) Business Days of receipt of the notice to arbitrate, either Party may apply to the Court of King's Bench of New Brunswick, to appoint same. The arbitration will be completed within forty-five (45) calendar days after the appointment of the arbitrator. The decision and any award of the arbitrator, including their decision as to the costs of the arbitration and who will bear same, will be final and binding on the Parties and there will be no appeal therefrom.

9.3 **Time:** The time limits referred to in this Section 9.0 may be abridged or extended by mutual agreement of the Parties.

9.4 **Without Prejudice Negotiations:** Any discussions and negotiations related to the attempted resolution of a Dispute pursuant to this Section 9.0 shall be confidential and treated as compromise and settlement negotiations for the purposes of evidentiary rules.

9.5 **Settlement Agreements:** No agreement achieved under this Section 9.0 will be binding on either Party unless set forth in a written agreement duly executed by both Parties.

9.6 **Care and Maintenance:** Notwithstanding any Dispute between the Parties, the Care and Maintenance Activities will continue and Bathurst Metallic will continue complying with its obligations under this Agreement until the dispute has been resolved or arbitrated.

## 10.0 MISCELLANEOUS

10.1 **Publicity:** Except as required by law or as permitted by this Section 10.1, neither Party shall make, or directly or indirectly authorize any of their respective employees or representatives to make, any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding a possible transaction between the Parties or any of the terms, conditions or other aspects of this Agreement, in each case without the prior written approval of the other Party, with the exception that Bathurst Metallic may reveal the existence and contents of this Agreement to potential investors who have previously signed a non-disclosure agreement in favour of Bathurst Metallic and for the benefit of the Minister. Notwithstanding anything in this Section 10.1, the Minister may make a public announcement of the signing of this Agreement. The Minister, as the case may be, will make reasonable efforts to give Bathurst Metallic the opportunity to comment on the text of the announcement before publishing it. Except as permitted above, neither Party shall make this Agreement public except to the extent required by law, in which case the Parties shall cooperate reasonably to limit any such disclosure to the extent permitted by law.

10.2 **Relationship of the Parties:** The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. This Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

10.3 **Appropriation:** No payment is to be made by the Minister under this Agreement in any fiscal year unless an appropriation against which the payment is to be charged is made in the same fiscal year.

10.4 **Regulatory Authority:** Nothing in this Agreement is intended to prohibit, restrict or affect the right or power of, or compel, the Legislative Assembly of *New Brunswick* to enact any laws or its cabinet to enact regulations and orders in council with respect to any area of law for which they have respective legislative jurisdiction. Furthermore, this Agreement does not operate as a permit, licence, approval or other statutory authority that Bathurst Metallic requires in order to perform any of its obligations under this Agreement to undertaken Care and Maintenance Activities of Caribou Mine, Restigouche Mine and Halfmile Mine. Nothing in this Agreement shall be construed as interfering with the exercise by the Minister, the Department of Environment and Local Government, the Province of New Brunswick or any of its agencies of any statutory power or duty.

10.5 **Issue Management:** Bathurst Metallic will immediately inform the Minister of any significant occurrences or situations arising with respect to the Care and Maintenance Activities, including significant accidents, incidents, environmental spills or contamination, failure to implement mitigation measures, failure of mitigation measures, or any occurrence or situation likely to generate significant public interest.

10.6 **Further Assurances:** Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

10.7 **Severability:** Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions of this Agreement which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.

10.8 **Waiver:** No condonation, forgiveness, waiver or forbearance by the Minister of any non-observance or non-performance by Bathurst Metallic of any of the terms or conditions of this Agreement will operate as a waiver or estoppel by or against the Minister in respect of any term or condition or any subsequent non-observance or non-performance by Bathurst Metallic of any term or condition of this Agreement.



- 10.9 **Survival:** All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.
- 10.10 **No Third-Party Beneficiaries:** Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any person not a party to this Agreement, and no person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.
- 10.11 **Assignment:** Neither this Agreement nor any of the rights, entitlements, duties or obligations arising from it may be assigned in whole or in part by any Party without the prior written consent of the other Parties.
- 10.12 **Notices:** Any notice given by a Party to another Party or the other Parties shall be in writing and (a) delivered personally, or (b) sent by facsimile or other similar means of electronic communication to the other Party or Parties at the following respective address:

If to the Province:

Department of Natural Resources and Energy Development  
Hugh John Flemming Forestry Centre  
1350 Regent Street  
Fredericton, NB E3C 2G6  
Attention: Jennifer Welles, Director of Resource Development Branch  
Email: [jennifer.welles@gnb.ca](mailto:jennifer.welles@gnb.ca)

If to Bathurst Metallic:

Bathurst Metallic Corp.  
58 Rue Du Moulin  
Nigadoo, NB, E8K 3R8  
Attention: Kevin Vienneau, Founder, President, and Director  
Email: [vienneau.kevin@gmail.com](mailto:vienneau.kevin@gmail.com)

Any such notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by facsimile or other electronic communication. A Party may from time to time change its address hereinbefore set forth by notice to the other Parties in accordance with this Section.

- 10.13 **Certain Rules of Interpretation:** In this Agreement, (i) words importing the singular include the plural and vice versa (ii) headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement, (iii) unless otherwise indicated, references to a section or Schedule followed by a number or letter refer to the specified section or Schedule of this Agreement, (iv) the terms "hereof", "hereunder", "herein" and similar expressions refer to this Agreement taken as a whole and not to any particular Section or other portion of this Agreement, (v) the word "including" means "including without limitation", and (vi) amounts are in Canadian dollars.
- 10.14 **No Drafting Presumption:** The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- 10.15 **Entire Agreement/Amendment:** This Agreement is the entire agreement between the Parties and this Agreement supersedes all prior communications, understandings, negotiations and agreements, whether oral or written, express or implied, with respect to the subject matter hereof. This Agreement may not be modified, varied or amended except as agreed in writing signed by the Parties.

- 10.16 **Governing Law:** This Agreement is governed by and shall be construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein, without regard to conflict of laws rules.
- 10.17 **Successors and Assigns:** This Agreement is binding upon and enures to the benefit of the Parties and their respective successors and permitted assigns.
- 10.18 **Counterparts and Electronic Delivery:** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one in the same instrument. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.
- 10.19 **Lieutenant-Governor in Council Approval:** This Agreement will be effective only when it has been signed by all of the authorized signatories of the Parties and the Lieutenant-Governor in Council has approved the Minister's execution and delivery of this Agreement (the "**Effective Date**").

*[The remainder of this page is left intentionally blank. Signature page to follow.]*

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be duly executed.

**HIS MAJESTY THE KING IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK,**  
as represented by the Minister of Natural  
Resources and Energy Development

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Hon. Mike Holland  
Minister of Natural Resources and Energy  
Development

**BATHURST METALLIC CORP.**

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Mr. Kevin Vienneau, B. Eng.  
President, Bathurst Metallic Corp.

- I have authority to bind the  
corporation.

PROVINCE OF NEW BRUNSWICK

**AFFIDAVIT OF CORPORATE EXECUTION**

I, \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_ and Province of \_\_\_\_\_, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I am the \_\_\_\_\_ of **BATHURST METALLIC CORP.** (the "Corporation"), one of the Parties named in the foregoing instrument and as such have personal knowledge of the matters herein deposed to.
  
2. That the seal affixed to the foregoing instrument purporting to be the seal of the corporation is the seal of the corporation and was so affixed by order of the Corporation's board of directors.
  
3. That the signature " \_\_\_\_\_ " subscribed to the foregoing instrument is the signature of \_\_\_\_\_, the \_\_\_\_\_ of the Corporation and the signature " \_\_\_\_\_ " subscribed thereto is my signature.
  
4. That the \_\_\_\_\_ and the \_\_\_\_\_ are the officers of the Corporation duly authorized to execute the foregoing instrument.

**SWORN TO BEFORE ME** at \_\_\_\_\_ )  
in the County of \_\_\_\_\_ )  
and Province of \_\_\_\_\_ )  
this \_\_\_\_ day of \_\_\_\_\_, 2024. )  
  
\_\_\_\_\_) )  
Notary Public \_\_\_\_\_ )  
in and for the Province of New Brunswick )

## Schedule A

### Assets and Claims of Bathurst Metallic Corp.

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Bathurst Metallic Corp. holds one hundred percent (100%) right, title and interest in all agreements, licences, permits, approvals, consents, regulations, certificates and other authorizations in connection with the mining and milling operations related to the Caribou Mine, Restigouche Mine and Halfmile Mine, including:

#### Caribou Mine

1. Mining Lease No. ML-246;
2. Industrial Surface Lease No. SIML 2271 (also referred to as Crown Lands Lease #415060027);
3. The freehold parcel of real estate identified by Property Identification Number 50072032;
4. All mineral claims owned by Trevali Mining (New Brunswick) Ltd. including Mining Claims 334950 to 334969, 334972 to 334977, 334980 to 34986, also known as mineral claim 1773 (Woodside Brook) representing some thirty-three (33) mining claims;
5. All agreements, licenses, permits, approvals, consents, registrations, certificates and other authorizations issued or held by Trevali Mining (New Brunswick) Ltd. in connection with the milling operations currently or formerly carried out at or relating to the mining lease, leasehold and real property listed above in 1 through 4 above, to the extent assignable.

#### Restigouche Mine

1. Mining Lease No. ML-255 (or any replacement mining lease thereof);
2. Industrial Surface Lease No. SIML 2473 (also referred to as Crown Lands Lease #415040158) (or any replacement surface lease/crown lands lease thereof).

#### Halfmile Mine

1. Mining Lease No. ML-261;
2. Crown Lands Lease #415060072;
3. all New Brunswick mineral claims that were owned by Trevali Mining (Maritimes) Ltd. including:
  - o 1522 (Heath East)
  - o 1681 (Halfmile Lake Central)
  - o 3886 (Murray Brook)
  - o 4341 (California Lake)
  - o 4525 (Restigouche South)
  - o 6049 (Stratmat)
  - o 8160 (Mount Fronsac North)

## **Schedule B**

### **Care and Maintenance Activities**

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In accordance with section 2.2 Bathurst Metallic will be solely responsible for and will proceed diligently and continuously with the care and maintenance activities at Caribou Mine, Restigouche Mine and Halfmile Mine, including, but not limited to the following activities:

- Maintain all program(s) for environmental protection, including water management, water treatment and all environmental monitoring and reporting, as set out in the Approval to Operate for each mine and as otherwise required by Applicable Law.
- Ensure site security is maintained at all times.
- Ensure access to each site is maintained to the degree required to conduct care and maintenance activities, including maintenance of roads.
- Continue to maintain the underground pumping of Caribou Mine in a dewatered state, with water elevations not exceeding bypass to north limb between 1860-4E and 1960-1E.
- Conduct all other activities required to maintain compliance with Applicable Law.

**Schedule C**

**Milestone Schedule**

The disbursement of Milestone Payments to Bathurst Metallic is contingent upon the successful completion of each designated Milestone and fulfillment of the specified payment conditions outlined in the Agreement. Milestone Payments will be processed on the applicable Milestone Payment Date, subject to the satisfactory completion of the applicable Milestones as stipulated below:

<b>Milestone Number and Description</b>	<b>Completion criteria for the Milestone (all must be met for payment eligibility)</b>	<b>Milestone Payment</b>
(1) Asset purchase complete	<ul style="list-style-type: none"><li><input type="checkbox"/> Bathurst Metallic takes possession of Caribou Mine, Restigouche Mine, and Halfmile Mine.</li><li><input type="checkbox"/> <b>All Mine leases, Crown Land Leases, Approvals to Operate, and Petroleum Storage Tank licences are transferred to Bathurst Metallic, and other regulatory bodies are informed of the change in responsibility for these sites. This includes, but may not be limited to WorkSafe NB, Environment and Climate Change Canada, and the Canadian Nuclear Safety Commission.</b></li></ul>	n/a
(2) Plan for sludge management upgrades, design contract for South Tributary Tailings Pond ("STTP") upgrades and efficiency improvements for the Caribou water treatment plant ("WTP")	<ul style="list-style-type: none"><li><input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities from Handover Date to September 30, 2024.</b></li><li><input type="checkbox"/> <b>Plan to upgrade the sludge management system at the Caribou Mine, proof that all required environmental approvals have been received for this work, and a binding contract established with an engineer approved to practice in New Brunswick and qualified for this work, submitted on or before September 30, 2024.</b></li><li><input type="checkbox"/> <b>Proof of signed contract for design of the Caribou Mine STTP upgrades, including the main dam raise, the South dam, and associated work, submitted on or before September 30, 2024.</b></li><li><input type="checkbox"/> <b>Performance of the current WTP at the Caribou mine reviewed and steps identified to maximize its efficiency and ensure reliability until a new WTP is commissioned. Steps include all required permits / approvals and are documented in a refurbishment plan submitted on or before September 30, 2024.</b></li></ul>	\$1,270,436

Milestone Number and Description	Completion criteria for the Milestone (all must be met for payment eligibility)	Milestone Payment
(3) Sludge management upgrades and WTP refurbishment work complete, STTP upgrade preparations progress, <u>and</u> planning for WTP upgrades begins	<input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities up to December 31, 2024.</b> <input type="checkbox"/> <b>Proof of 100% completion of sludge management upgrades, in the form of a signed and stamped letter from an engineer approved to practice in New Brunswick, and proof that all payments to suppliers have been paid, not including holdbacks or disputes, submitted on or before December 31, 2024.</b> <input type="checkbox"/> <b>Proof of completed implementation of the refurbishment plan for the current WTP at the Caribou mine, submitted on or before December 31, 2024.</b> <input type="checkbox"/> <b>Design package for STTP upgrades, including the STTP dam and the South dam, completed and submitted to DNRED, on or before December 31, 2024.</b> <input type="checkbox"/> South Dam engineering design and any modifications to the previously approved main dam design submitted to DNRED and ELG for approval, on or before December 31, 2024. <input type="checkbox"/> <b>Proof of binding contract with an engineering consultant or design/build company for WTP upgrades, submitted on or before December 31, 2024. Required dates in the contract align with the Milestones in this agreement.</b>	\$1,270,436
(4) Tender issued for STTP upgrades, and WTP design finalized	<input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities up to March 31, 2025</b> <input type="checkbox"/> <b>Proof of construction tender issued for STTP upgrades, and copy of Tender Package submitted to DNRED, on or before March 31, 2025.</b> <input type="checkbox"/> <b>WTP design package complete and submitted to DNRED and ELG, on or before March 31, 2025.</b>	\$1,270,436



Milestone Number and Description	Completion criteria for the Milestone (all must be met for payment eligibility)	Milestone Payment
(5) Construction progresses for STTP upgrades, and construction contract issued for WTP upgrades	<input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities up to June 30, 2025.</b> <input type="checkbox"/> <b>Proof of 10% completion of planned construction schedule for STTP upgrades, in the form of a signed and stamped letter from a design engineer approved to practice in New Brunswick, submitted on or before June 30, 2025.</b> <input type="checkbox"/> <b>Proof of binding contract established with a design/build company or contractor, which aligns with the construction schedule set out in these milestones, for construction of the WTP upgrades, submitted on or before June 30, 2025.</b>	\$1,270,436
(6) Construction progresses for STTP upgrades, and construction begins for WTP	<input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities up to September 30, 2025.</b> <input type="checkbox"/> <b>Proof of 75% completion of planned construction schedule for STTP upgrades, in the form of a signed and stamped letter from a design engineer approved to practice in New Brunswick, submitted on or before September 30, 2025.</b> <input type="checkbox"/> <b>Proof of construction commencement for WTP upgrades, in the form of a signed and stamped letter from an engineer approved to practice in New Brunswick, submitted on or before September 30, 2025.</b>	\$1,270,436
(7) STTP upgrades complete and WTP construction progresses	<input type="checkbox"/> <b>Successful completion of Care and Maintenance Activities up to December 31, 2025</b> <input type="checkbox"/> <b>Proof of 100% completion of STTP upgrades, in the form of a signed and stamped letter from an engineer approved to practice in New Brunswick, and proof that all payments to suppliers have been paid, not including holdbacks or disputes, submitted on or before December 31, 2025.</b> <input type="checkbox"/> <b>Proof of 70% completion of planned construction schedule for WTP upgrades, submitted on or before December 31, 2025, in the form of a signed and stamped letter from a design engineer approved to practice in New Brunswick with the intention to complete and commission the WTP in accordance with the milestones established in this agreement.</b>	\$1,270,435

Milestone Number and Description	Completion criteria for the Milestone (all must be met for payment eligibility)	Milestone Payment
(8) WTP construction complete	<input type="checkbox"/> <b>Proof of 100% completion of WTP upgrades in the form of a signed and stamped letter from an engineer approved to practice in New Brunswick, and proof that all payments to suppliers have been paid, not including holdbacks or disputes, submitted on or before March 31, 2026.</b>	<b>\$1.00</b>

Schedule D

**MILESTONE PAYMENT CERTIFICATE**

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**To:** His Majesty the King in Right of the Province of New Brunswick, as represented by the Minister of Natural Resources and Energy Development (the "**Minister**")

**RE:** Funding Agreement dated ●, 2024 between the Minister and Bathurst Metallic Corp. (the "**Bathurst Metallic**") as amended or updated from time to time (the "**Agreement**").

**MILESTONE:** Milestone number ● (the "**Milestone**") as identified in **Schedule "C"** to the Funding Agreement (the "**Milestone Payment**")

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This certificate is delivered pursuant to **Section 3.2** of the Agreement.

The undersigned hereby requests payment of the Milestone Payment to which this certificate relates and, in respect thereof, certifies as follows:

1. I am the President and am authorized to deliver this certificate for and on behalf of Bathurst Metallic;
2. the work required to be completed as part of the Milestone to which this certificate relates is complete;
3. all such work is in strict compliance with applicable industry standards and all applicable federal, provincial and municipal laws, statutes, codes, ordinances, orders, decrees, by-laws, rules, regulations, permits, licenses, authorizations and directives.
4. there are no outstanding Milestone Deficiency Notices in respect of or relating to the current or any previous Milestone Payment;
5. all conditions to the making of the Milestone Payment to which this certificate relates as set out in the Agreement have been satisfied;
6. all contractors, subcontractors, and service providers who have supplied work, labour, equipment, materials, goods, services or supplies in connection with the work have been paid in full and there are no claims relating thereto; and
7. no default under this Agreement with respect to Bathurst Metallic has occurred and is continuing and no such default would result from the making of such Milestone Payment.

DATED this ● day of ●, 20●

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Mr. Kevin Vienneau, B. Eng.  
President, Bathurst Metallic Corp.

## **SCHEDULE A**

### ***Section A.1 – Leased Real Property***

- a. Industrial Surface Lease No. SIML ##### (also referred to as Crown Lands Lease #415060072).

### ***Section A.2 – Mineral Titles***

- a. Mining Lease No. ML-261.
- b. All New Brunswick mineral claims owned by Trevali Mining (Maritimes) Ltd. including: 1522 (Heath East), 1681 (Halfmile Lake Central), 3885 (Murray Brook), 4341 (California Lake), 4525 (Restigouche South), 6049 (Stratmat), 8160 (Mount Fronsac North)
- c. All Manitoba mineral claims owned by Trevali Mining (Maritimes) Ltd.

### ***Section A.3 – Real Property***

Nil

### ***Section A.4 – Permits and Licences***

- a. Approval to Operate I-12101
- b. Petroleum Storage Site Licence #7940

### ***Section A.5 - Equipment & Machinery***

Nil

### ***Section A.6 – Contracts***

Nil

### ***Section A.7 – Transferred Intellectual Property***

Nil

**Schedule 3.2 – Excluded Assets**

means all rights, interests and assets of the Vendor, other than the Assets, including, without limiting the generality of the foregoing: (a) all contracts of the Vendor that are not listed in Schedule A; (b) all cash, amounts on deposit or in possession of any bank or other depository institution, term deposits, and similar cash property of the Vendor; (c) amounts due to the Vendor; (d) all of the Vendor's correspondence and file material, including, without limitation, correspondence to and from the Vendor's legal counsel; (e) accounts, valuations and any other records or reports generated by the Vendor as a result or in the context of the administration of the CCAA Proceedings; and (f) the right to use the term "Trevali Maritimes" and all domain names of TMM.

**Schedule 4.2 – Asset Allocation Schedule**

Halfmile Mine Lease - \$649,999

Halfmile Mine Surface assets and any equipment (water treatment, etc.) - \$100,000

All of the mineral claims - \$250,000

Ruttan – \$1.