

Trinity Coal Corporation
Summary of Terms and Conditions
Proposed Senior Secured, Super-Priority
Debtor-in-Possession Credit Facility

The terms and conditions (the “**DIP Term Sheet**”) summarized herein represent the material terms and conditions on which Credit Agricole Corporate and Investment Bank (“**CACIB**”) and/or certain other financial institutions (collectively with **CACIB**, the “**DIP Lenders**”) are committing to make a senior secured, super-priority debtor-in-possession credit facility (the “**DIP Facility**”) available to the Borrower (as defined below), pursuant to definitive documentation reflecting the terms hereof¹.

Borrower: Trinity Coal Corporation

Guarantor(s): All presently existing and hereafter created direct and indirect subsidiaries of Borrower, and Trinity Parent Corporation (the Borrower and the Guarantors are sometimes collectively referred to herein as the “**Debtors**”)

Amount and Type of Facility: After entry of the Final Order (as defined below), the DIP Facility will consist of (i) a revolving credit line (the “**DIP Revolving Facility**”) of up to \$15,000,000 at any one time outstanding (the “**DIP Revolving Commitment**”), and (ii) a roll up of the obligations in respect of issued and outstanding letters of credit under the Pre-Petition Credit Facility (hereinafter defined) as of the CRO Appointment Date (the “**Roll-up LC’s**”) in the aggregate maximum stated amount of approximately \$49.3 million (the “**LC Roll-up Facility**”). Any payments made on the DIP Facility shall first be applied to repay the outstanding obligations under the **DIP Revolving Commitment** before any repayment or cash collateralization of any obligations under the LC Roll-up Facility.

DIP Agent: CACIB shall act as administrative agent for the DIP Lenders (in such capacity, CACIB is herein referred to as the “**DIP Agent**”).

DIP Lenders: Lenders under the DIP Revolving Facility (“**Revolving DIP Lenders**”) shall be a syndicate of financial institutions, including CACIB, as determined by DIP Agent. The Lenders under the Pre-Petition Credit Facility will be the lenders under the LC Roll-up Facility (the “**Roll-up Lenders**”, and together with the Revolving DIP Lenders herein collectively referred to as the “**DIP Lenders**”). Each Roll-up Lender’s pro rata share of the LC Roll-up Facility shall be the same as its pro rata share of the Pre-Petition Credit Facility as of the CRO Appointment Date.

¹ Bracketed terms contained herein are subject to further discussion and negotiation of the parties, which negotiations the parties expect to complete prior to finalizing the definitive documentation.

Interim Borrowing Availability: \$5,000,000 of the DIP Revolving Commitment and the LC Roll-up Facility shall be made available to Borrower from the date of the entry of the Interim Order (as defined below) until the date of the entry of the Final Order.

Permanent Borrowing Availability: Borrowings under the DIP Revolving Facility shall be limited by a Budget. The Budget shall be delivered and approved by, and cover the time periods as more particularly described in the definition of such term below. The Budget may be further modified and amended from time to time only with the consent of the Required Revolving DIP Lenders and the Borrower. Subject to the terms and conditions contained herein, the Revolving DIP Lenders shall advance borrowings under the DIP Revolving Facility to fund expenditures identified in the Budget and any other expenses approved by the Required Revolving DIP Lenders.

The borrowings under the DIP Revolving Facility shall not exceed the DIP Revolving Commitment, in each case, less reserves as may be established by the Required Revolving DIP Lenders in their reasonable discretion from time to time to reflect, among other things, contingencies or risks that may materially affect the DIP Collateral, the liens of the DIP Lenders in such DIP Collateral or the business and operations of the Debtors (the “**DIP Availability**”), including, without limitation, a reserve in the amount of the Post-Termination Fee Carve Out.

Carve Out: The “**Carve Out**” means (i) fees and expenses incurred by bankruptcy professionals whose retention has been approved by the Bankruptcy Court which are unpaid as of the delivery of the Carve Out Trigger Notice (as defined below); (ii) fees and expenses in an amount not to exceed \$250,000 incurred from and after the delivery of the Carve Out Trigger Notice (as defined below) by bankruptcy professionals whose retention has been approved by the Bankruptcy Court (the “**Post-Termination Fee Carve Out**”); and (iii) fees pursuant to 28 U.S.C. § 1930 or to the clerk of the Bankruptcy Court.

“**Carve Out Trigger Notice**” means the written notice delivered by the DIP Agent (at the direction of the Required Revolving DIP Lenders) to the Debtors, their lead counsel, the U.S. Trustee and the lead counsel to the official committee of unsecured creditors, if any, appointed in the Chapter 11 Cases, which notice may be delivered following the occurrence and continuation of an Event of Default or the Termination Date.

For the avoidance of doubt, until the delivery of a Carve Out Trigger Notice, the Borrower shall be permitted to pay fees and expenses incurred by bankruptcy professionals whose retention has been approved by the Bankruptcy Court as the same shall

become due and payable, subject to the terms and conditions set forth in the DIP Loan Documents (the payment of which shall not reduce the Post-Termination Fee Carve Out).

The Carve Out shall be senior to all liens securing the DIP Facility.

Extension of Roll-up LC's:

Provided that no default under the DIP Facility then exists, the expiry date of any Roll-up LC may be extended from time to time provided that no such extension would result in the expiry date of such Roll-up LC being after the then applicable Maturity Date. The principal amount of any draws made under a Roll-up LC shall be due and payable on the Termination Date. In addition, on the Termination Date the Borrower shall deposit cash collateral with the DIP Agent (for the benefit of the Roll-up Lenders) in an amount equal to 105% of the aggregate stated amount of any Roll-up LC that remains outstanding. No other modifications or amendments to any Roll-up LC shall be permitted without the prior written consent of CACIB, in its capacity as issuer of the Roll-up LC's ("**Roll-up LC Issuer**") and the Required Roll-up Lenders (or, with respect to any modification or amendment that would extend any Roll-up LC beyond the Extended Maturity Date or increase the stated amount thereof, all of the Roll-up Lenders).

Budget and Variances:

[Subject to the Budget Variances (as defined below), the expenditures authorized in the Budget shall be adhered to on a period basis and a cumulative basis as described below; provided, however, that unused expenditures shall carry forward to successive weekly Budget periods on a line-by-line basis. Certain material line items of the Budget shall be tested on a weekly basis and a cumulative basis for that portion of the Budget period then ended; except for the line item entitled "Professional Fees" which shall only be tested weekly on a cumulative basis for that portion of the Budget period then ended.

Actual amounts for (i) certain material line items other than Professional Fees may not vary from the applicable Budget by more than twenty percent (20%) for each week during any Budget period or ten percent (10%) on a cumulative basis for that portion of the Budget period then ended, and (ii) with respect to Professional Fees, the Borrower may vary from the applicable Budget by no more than ten percent (10%) on a cumulative basis for that portion of the Budget period then ended (collectively, the "Budget Variances").]

Fees:

Borrower shall pay the fees and other charges payable in the amounts and at the times separately agreed upon between Borrower and the DIP Agent.

Borrower also agrees to pay DIP Agent, for the benefit of the Revolving DIP Lenders, a non-refundable, unused line fee equal to the unused portion of the DIP Revolving Commitment multiplied by 2.5% on a per annum basis, paid monthly in arrears,

Borrower also agrees to pay (i) DIP Agent, for the benefit of the Roll-up Lenders, a fee in the amount of 5.0% per annum on the maximum stated amount of each outstanding Roll-up LC (the “**LC Fee**”) and (ii) to the Roll-up LC Issuer, for its sole account, a fronting fee in the amount of 0.20% per annum on the maximum stated amount of each such Roll-up LC, all such fees to accrue monthly in arrears but shall not be payable until the Termination Date.

Borrower also agrees to pay the costs and expenses of the DIP Lenders and the DIP Agent as set forth in the Section titled “Fees and Expenses” below.

Termination Date:

The earliest to occur of: (a) the Maturity Date; (b) 15 days after the CRO Appointment Date if the Interim Order has not been entered; (c) 45 days after the CRO Appointment Date if the Final Order has not been entered; (d) acceleration of the obligations under the DIP Facility; (e) the effective date of a confirmed plan of reorganization or liquidation that provides for indefeasible payment in full, in cash of all obligations owing under the DIP Facility or is otherwise acceptable to DIP Agent and the Required DIP Lenders; (f) the date which is the closing date of any sale of all or substantially all of the Debtors’ assets; (g) the entry of an Order by the Bankruptcy Court granting (i) relief from the automatic stay permitting foreclosure of any assets of the Debtors with a value in excess of \$500,000 in the aggregate, or (ii) any motion by any Pre-Petition Lender to terminate the use of cash collateral or lift the stay or otherwise exercise remedies against any cash collateral; (h) the filing of a motion or other pleading requesting (or entry of an order approving) the appointment of a trustee or an estate fiduciary or an examiner with special powers which the Debtors fail to timely oppose without the prior written consent of the Required DIP Lenders; (i) the entry of an order by the Bankruptcy Court approving the dismissal or conversion of the Chapter 11 Cases; (j) the filing or support by any Debtor of a plan of reorganization that (i) does not provide for indefeasible payment in full, in cash of all obligations owing under the DIP Facility and (ii) is not otherwise acceptable to DIP Agent and the Required DIP Lenders in their sole discretion; and (k) such other date as is agreed to in the DIP Loan Documents. The date on which the earliest of clauses (a) through (k) above occurs being referred to hereinafter as the “**Termination Date**,” On the Termination Date, the DIP Revolving Commitment shall be deemed terminated, and DIP

Lenders shall have no further obligation to provide financing pursuant to the DIP Facility.

**Non-Default Interest Rate
and Payment Terms:**

Interest shall be paid monthly on all outstanding advances under the DIP Revolving Facility, accruing at a per annum floating rate equal to the sum of (a) the Base Rate (as defined below), plus (b) 8.0% (the "Non-Default Interest Rate"). Interest on any unreimbursed draws under any Roll-up LC shall accrue at the Non-Default Interest Rate and be added to the outstanding principal amount of such unreimbursed draws at the end of each month until the Termination Date, at which time all such accrued interest, together with the principal amount of any such unreimbursed draws, shall be due and payable in full and in cash. The "Base Rate" means the highest of (a) the Federal Funds Rate, as published by the Federal Reserve Bank of New York, plus 1/2 of 1%, (b) the reference or base commercial lending rate of the Agent, as established from time to time at its principal U.S. office (which rate is an index or base rate and will not necessarily be its lowest or best rate charged to its customers or other banks) and (c) 30-day LIBOR + 1.00%.

**Default Interest Rate
And Letter of Credit Fees:**

Effective immediately upon the occurrence of an Event of Default, (i) unless waived in writing by the Required Revolving DIP Lenders, interest on the outstanding loans under the DIP Revolving Facility shall accrue at a rate that is 2% per annum in excess of the Non-Default Interest Rate, and (ii) unless waived in writing by the Required Roll-up Lenders, the interest rate on any unreimbursed draws under the Roll-Up LC's and the LC Fee shall increase by 2% per annum.

Loan Payments:

All unpaid principal, interest, fees, costs and expenses on the DIP Facility shall be due and payable in full on the Termination Date, whether at maturity, upon acceleration or otherwise.

Mandatory Prepayments:

Principal payments shall be made by the Borrower under the DIP Revolving Facility such that the aggregate principal amount of the DIP Revolving Facility outstanding thereunder does not exceed the DIP Revolving Commitment at any time. Additionally, to the extent there are any borrowings outstanding under the DIP Revolving Facility, the Borrower shall make a wire transfer payment to DIP Agent for the benefit of the Revolving DIP Lenders daily in an amount equal to the lesser of (a) the total outstanding principal amount of such borrowings, or (b) the total amount of the Debtors' unrestricted cash in excess of \$1,500,000.

Upon (a) the sale of any assets of Borrower (other than inventory in the ordinary course of business), (b) any casualty event, or (c) the issuance of any post-petition debt or equity, 100% of any net

cash proceeds from such sale, casualty (subject to certain reinvestment rights) or issuance shall be paid to DIP Agent no later than 2 days after the date that such net cash proceeds are received by Borrower, and applied first, to unpaid costs and expenses of the Agent and the Revolving DIP Lenders, second, to accrued and unpaid interest under the DIP Revolving Facility, third, to repay outstanding principal under the DIP Revolving Facility, fourth, to cash collateralize any remaining DIP Revolving Commitment, fifth, to any unpaid costs and expenses of the Roll-up Lenders, sixth, to accrued and unpaid interest on any unreimbursed draws under letters of credit under the LC Roll-up Facility, seventh, to repay outstanding principal of any unreimbursed draws under letters of credit under the LC Roll-up Facility, eighth, to be held as cash collateral in the amount of 105% of the maximum stated amount of the outstanding letters of credit under the LC Roll-up Facility, and ninth, to the Borrower, subject to any liens in favor of the Pre-Petition Agent and the Pre-Petition Lenders or other holders of valid liens on such proceeds, to be distributed pursuant to further order of the Bankruptcy Court. All such mandatory prepayments described in the immediately preceding sentence shall result in a permanent reduction of the DIP Revolving Commitment; provided that (i) the Required Revolving DIP Lenders may agree to have up to an aggregate amount of \$5 million in any such mandatory prepayments not result in a permanent reduction of the DIP Revolving Commitment.

Use of Proceeds:

Proceeds of the DIP Revolving Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) to fund post-petition operating expenses and working capital needs of the Borrower and the Guarantors, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 959; (b) to pay interest, fees and expenses to the Revolving DIP Lenders in accordance with the DIP Facility; (c) to fund fees and expenses incurred in connection with the 363 Sale; (d) to pay permitted pre-petition claim payments and adequate protection payments, if any; (e) to pay professional fees and expenses and the Carve-Outs; and (f) to pay certain other costs and expenses of administration of the Chapter 11 Cases.

The DIP Loan Documents shall provide that the Debtors shall use all available cash collateral in excess of \$1,500,000 prior to (or contemporaneously with) making any drawing under the DIP Revolving Facility.

Proceeds of the DIP Revolving Facility shall not be used (a) to permit the Borrower, any Guarantor or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity,

perfection or priority of security interests in favor of any of the Pre-Petition Lenders or the DIP Lenders, or (ii) the enforceability of the obligations of the Borrower or any Guarantor under the Pre-Petition Credit Facility, or the DIP Facility, (b) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against any of the Pre-Petition Lenders or the DIP Lenders and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims, subordination claims or any claims attempting to invalidate any lock-up agreement, or (c) to fund acquisitions, capital expenditures, capital leases, or any other expenditure other than as set forth in the Budget.

Cash Management:

Borrower and Guarantors shall use a cash management system that is the same as or substantially similar to its pre-petition cash management system. Any material changes from such pre-petition cash management system must be acceptable to DIP Agent. The Interim Order and Final Order shall provide the DIP Lenders with a valid and enforceable first priority lien/security interest on the cash held in the Borrower's and each Guarantor's bank accounts.

Pre-Petition Obligations:

As of the date of this DIP Term Sheet, the Borrower and the Guarantors owe certain obligations (collectively, the "**Pre-Petition Loans**," and holders of the Pre-Petition Loans shall be referred to as the "**Pre-Petition Lenders**") under that certain Credit Agreement dated as of March 7, 2008, as amended and restated as of April, 2010 among Borrower, the lenders party thereto, certain agents and arrangers described therein, and CACIB in its capacity as Administrative Agent (in such capacity, herein referred to as the "**Pre-Petition Agent**") (as modified, amended or supplemented through the date hereof and as the same may be further amended, restated, supplemented or otherwise modified from time to time prior to the date on which the DIP Facility is closed, herein referred to as the "**Pre-Petition Credit Facility**"). The rights of the Pre-Petition Agent and the Pre-Petition Lenders under the Loan Documents (as defined in the Pre-Petition Credit Facility) with respect to the remaining Obligations (as defined in the Pre-Petition Credit Facility) after giving effect to the roll-up of the obligations in respect of the letters of credit issued under the Pre-Petition Credit Facility pursuant to the LC Roll-up Facility (the "**Remaining Pre-Petition Obligations**"), including without limitation, any rights of any Pre-Petition Lender to credit bid or withhold consent to a credit bid of all or any portion of its Remaining Pre-Petition Obligations pursuant to the 363 Asset Purchase Agreement or otherwise, or any rights of any Pre-Petition Lender under the Essar Global Guarantee or any Intercreditor and Subordination Agreement (as each of such terms are defined in the Pre-Petition Credit Facility) shall not be affected by the DIP Facility, the entry of the Interim Order or the Final Order, the execution and

delivery of the DIP Financing credit documents or application of any portion of the proceeds from Collateral against any of the outstanding amounts under the DIP Revolving Facility or the LC Roll-up Facility.

**Super-Priority
Administrative Claim:**

Amounts owed by Borrower to the DIP Lenders pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, but subject and subordinate to priority for payment of the Carve-Outs.

Collateral Security:

The DIP Facility (including accrued interest, fees, costs and expenses) shall be secured, subject and subordinate to the Carve-Outs and any valid, perfected prior liens and security interests existing as of the Petition Dates other than those in favor of the Pre-Petition Lenders, by first priority liens and security interests (the “**DIP Liens**”) in all of the Borrower’s and each Guarantor’s property, including, without limitation, all of Borrower’s and the Guarantors’ existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including without limitation coal reserves, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Borrower and the Guarantors (collectively, the “**DIP Collateral**”). The DIP Lenders are not seeking to take a lien on any avoidance actions available to the bankruptcy estate of any Debtor pursuant to the Bankruptcy Code (the “**Avoidance Actions**”).

**Lien Validation
and Perfection:**

All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Facility or with respect to adequate protection shall be deemed effective and perfected as of the applicable Petition Dates, and no further filing, notice or act will be required to effect such perfection.

Adequate Protection:

As adequate protection and in consideration for their respective consent to being primed by the DIP Lenders’ claims and liens, the Pre-Petition Lenders (a) shall receive a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, except

allowed claims paid under the Carve-Outs, subject, however, to the super-priority administrative claims of DIP Lenders under the DIP Facility and existing liens of the Pre-Petition Lenders on their respective pre-petition collateral; and (b) shall have valid, binding, enforceable and perfected liens in all DIP Collateral in each case equal to the sum of the aggregate diminution, if any, subsequent to the applicable Petition Dates, in the value of their respective pre-petition collateral (the “Adequate Protection Liens”).

Documentation:

The DIP Facility will be reflected in a definitive credit agreement and related loan documents, guarantees, pledges, security documents and other supporting instruments and agreements embodying the terms set forth herein which are reasonably satisfactory to the Debtors, DIP Agent and DIP Lenders, and each of the foregoing shall contain terms and conditions customary in debtor-in-possession financing agreements, consistent with the Debtors’ rights and obligations as debtors-in-possession and the terms and conditions of this DIP Term Sheet (the “**DIP Loan Documents**”).

Fees and Expenses:

Borrower shall promptly pay or reimburse DIP Agent when invoiced for all reasonable costs and expenses of the counsel (including, without limitation, local counsel) and financial advisors for DIP Agent and the Revolving DIP Lenders relating to the DIP Facility and the administration and interpretation of, and the enforcement of remedies under, the DIP Facility and including all due-diligence, including but not limited to environmental due-diligence, duplication or printing costs, consultation, travel, and attendance at court hearings, regardless of whether the DIP Facility is consummated. Failure to pay such fees and expenses within five business days of delivery of the applicable invoice shall be an Event of Default under the DIP Facility. Additionally, in the event the DIP Facility is not consummated, Borrower shall pay any accrued fees and expenses of the DIP Agent and the Revolving DIP Lenders within five business days of delivery of the applicable invoice as a condition to the continued use of cash collateral. Borrower shall also promptly pay or reimburse each Roll-up Lender for all reasonable costs and expenses of such Roll-up Lender (including, without limitation, reasonable costs and expenses of counsel to such Roll-up Lender) relating to the DIP Facility and the administration and interpretation of, and the enforcement of remedies under, the DIP Facility and including all due-diligence, including but not limited to environmental due-diligence, duplication or printing costs, consultation, travel, and attendance at court hearings, regardless of whether the DIP Facility is consummated. Such costs and expenses of the Roll-up Lenders shall be payable on the Termination Date or as provided under the terms set forth under “Mandatory Prepayments” above.

Conditions Precedent:

The closing of the DIP Facility shall be subject to conditions precedent customary and appropriate for financings of this type, including, but not limited to, (a) satisfaction of all conditions to be set forth in the DIP Loan Documents, (b) approval of the initial Budget by the DIP Agent and the DIP Lenders, together with all financial information and projections regarding the Borrower and the Guarantors reasonably requested by DIP Agent or any DIP Lender, all in form and substance satisfactory to DIP Agent and the DIP Lenders, (c) entry of an Interim Order and, if applicable, the Final Order approving the DIP Facility, its superpriority administrative claims and all first priority and other liens securing the DIP Facility, and containing such other orders and findings as DIP Agent or Required DIP Lenders may require, including automatic modification of the automatic stay upon the occurrence of an Event of Default enabling the DIP Agent to exercise certain rights and remedies against the DIP Collateral, which Interim Order or Final Order, as applicable, shall not have been modified or amended without reasonable approval of DIP Agent and Required DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to DIP Agent, (d) the satisfaction of DIP Agent and Required DIP Lenders with all adequate protection payments, critical vendor payments, and all other material motions and orders filed in the Chapter 11 Cases requiring the expenditure of cash, and (e) continuation of Borrower's and the Guarantors' present cash management system.

**Conditions
Subsequent:**

Entry of a Final Order by the Bankruptcy Court within 45 days of the CRO Appointment Date, which Final Order shall not have been modified or amended without approval of DIP Agent and Required DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, which Final Order shall be in form and substance satisfactory to DIP Agent and Required DIP Lenders.

**Affirmative and
Negative
Covenants:**

Affirmative and negative covenants customarily included in debtor-in-possession financing agreements or as otherwise agreed to by the DIP Lenders and the Debtors, including, but not limited to, (a) customary reporting requirements, (b) restrictions on sales of assets other than sales of inventory and worn-out or obsolete equipment in the ordinary course of business not to exceed \$100,000 during the term of the DIP Facility, (c) establishment and maintenance of a management/employee incentive plan acceptable to the DIP Agent and the Required Revolving DIP Lenders, and (d) compliance with Budget covenants consistent with the section titled "Budget and Variances," together with any additional covenants appropriate

in the context of the DIP Facility, all as required by DIP Agent and DIP Lenders in their sole discretion.

Bankruptcy Court Filings. As soon as practicable in advance of filing with the Bankruptcy Court, Borrower shall furnish to DIP Agent and each DIP Lender (i) the motion seeking approval of and proposed forms of the Interim Order and the Final Order, which motion shall be in form and substance satisfactory to the DIP Agent in its sole discretion, (ii) the motions seeking approval of the Bidding Procedures and the 363 Sale, and the proposed forms of the orders related thereto, (iii) all other proposed orders and pleadings related to the DIP Facility, which orders and pleadings shall be in form and substance reasonably satisfactory to the DIP Agent, (iv) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan (which plan or disclosure statement shall comply with the requirements set forth herein), (v) any motion and proposed form of order seeking to extend or otherwise modify the Debtors' exclusive periods set forth in section 1121 of the Bankruptcy Code, (vi) any motion seeking approval of any sale of the Debtors' assets and any proposed form of a related bidding procedures order and sale order (other than those with respect to the Bidding Procedures and the 363 Sale), and (vii) any motion and proposed form of order filed with the Bankruptcy Court relating to any management equity plan, incentive plan or severance plan, the assumption, rejection, modification or amendment of any material contract (each of which must be in form and substance satisfactory to the DIP Agent in its sole discretion).

CRO Report. Borrower shall provide or cause to be provided to DIP Agent and each DIP Lender a written report from the CRO (hereinafter defined) each month (or more frequently as reasonably requested by the DIP Agent) in form and substance reasonably satisfactory to, and addressing such items as are reasonably requested by, the DIP Agent and in any event addressing the status of the marketing and sale process of the Debtors. Borrower shall also cause the CRO to be made available to provide periodic telephonic updates of such reports to the DIP Agent and the DIP Lenders from time to time (but not less than weekly), as reasonably requested by the DIP Agent.

Sales Process Milestones. The Debtors shall be required to comply with the following (the "Milestones"):

(a) On or before April 30, 2013 or such later date as may be agreed to in writing by the DIP Agent and the Required Revolving DIP Lenders (the "**Initial Deadline**"), the Debtors shall file in the Chapter 11 Cases and properly serve (i) the Sale Procedures Motion seeking approval of the Sale Procedures

Order and (ii) an executed copy of the 363 Asset Purchase Agreement.

(b) On or before the date that is fourteen (14) days after the Initial Deadline, or such later date to which the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders consent in writing in their respective sole discretion, the Bankruptcy Court shall have held a hearing on the Sale Procedures Motion.

(c) On or before the date that is twenty-two (22) days after the Initial Deadline, or such later date to which the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders consent in writing in their respective sole discretion, the Bankruptcy Court shall have entered the Sale Procedures Order.

(d) On or before the date that is eighty-five (85) days after the Initial Deadline, or such later date to which the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders consent in writing in their respective sole discretion, the Debtors shall have held the Auction.

(e) Unless the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders shall have otherwise provided their prior written consent in their respective sole discretion, on or before the date that is eighty-eight (88) days after the Initial Deadline, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale, the results of the Auction and the winning bid received at the Auction.

(f) Unless the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders agree otherwise in their respective sole discretion, on or before the date that is (x) ninety-one (91) days after the Initial Deadline, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (y) one hundred and five (105) days after the Initial Deadline, if such a waiver is not obtained, the Debtors shall have consummated the 363 Sale, pursuant to the 363 Asset Purchase Agreement or pursuant to the Third-Party Asset Purchase Agreement with the Winning Bidder; provided, that the bid set forth by the Winning Bidder in the Third-Party Asset Purchase Agreement shall be acceptable to the Super-Majority DIP Lenders in their respective sole discretion; provided further, that if the Super-Majority DIP Lenders do not approve any of the available bids within a reasonable time, the Required Revolving DIP Lenders shall have the right to approve any available bid in their respective sole discretion.

Notwithstanding anything to the contrary herein, the Bankruptcy Court may set dates with respect to the Milestones beyond the outer dates specified above to accommodate its own schedule and to the extent the Bankruptcy Court makes such an extension, the Milestones hereunder shall be automatically extended by the same period as the Bankruptcy Court's extension.

**Representations and
Warranties:**

The DIP Loan Documents shall contain representations and warranties appropriate in the context of the proposed DIP Facility and acceptable to the DIP Agent and the DIP Lenders.

**Additional Conditions to Each
Borrowing Under the
Facility:**

There shall exist no Event of Default (or event that would constitute an Event of Default with the giving of notice or lapse of time) under any of the DIP Loan Documents, and the representations and warranties therein shall be true and correct in all material respects.

There shall have occurred no material adverse change in the Borrower's or any Guarantor's (financial, environmental, or otherwise), operations, performance, or properties (other than the commencement of the Chapter 11 Cases), since the date of this DIP Term Sheet, that in the reasonable judgment of DIP Agent and the Required Revolving DIP Lenders, has or can reasonably be expected to have a material adverse effect on the rights and remedies of DIP Agent or DIP Lenders or on the ability of the Borrower and the Guarantors to perform their obligations to them under the DIP Facility.

Remedies:

Upon the Termination Date, the DIP Agent and the DIP Lenders shall have customary remedies, including, without limitation, the right to realize on all DIP Collateral, the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court. Section 362 relief from the stay in favor of the DIP Agent and the DIP Lenders shall be embodied in any order approving the DIP Facility and the use of cash collateral.

**Additional Conditions To
Financing:**

Compliance with Bankruptcy Rule 4001 and any applicable Local Bankruptcy Rules, the entry of the Interim Order and the Final Order, together with any other order requested by DIP Agent authorizing and approving the DIP Facility in form, substance and amount and providing for the DIP Collateral, all acceptable to DIP Agent in its sole discretion.

Payment of all fees and expenses owing to DIP Agent and the Revolving DIP Lenders in connection with the DIP Facility.

The DIP Loan Documents and the Interim and Final Orders shall include such waivers, indemnities, and other provisions as are acceptable to the DIP Agent and the DIP Lenders in their respective sole discretion.

On or before the date of the Final Order, the Borrower shall have retained, and shall continue to employ for so long as the DIP Facility is outstanding, an investment banker acceptable to the Required DIP Lenders and the Borrower to advise with respect to the 363 Sale.

The Debtors shall, at all times, have a duly appointed and acting chief restructuring officer (the “**CRO**”) or any successor thereto or replacement thereof acceptable to the DIP Agent and the Required DIP Lenders in their respective sole discretion engaged pursuant to an order of the Bankruptcy Court satisfactory to the DIP Agent and the Required DIP Lenders in their respective sole discretion (the “**CRO Order**”). The CRO Order shall, among other things, delegate to the CRO substantially the same power and authority to manage the assets and operations of the Debtors as would be provided to a duly appointed and acting Chapter 11 trustee of the Debtors under the Bankruptcy Code. Without limiting the foregoing, the CRO shall (a) have direct and complete access to the Debtors’ managers, officers, advisors, employees and other representatives, and shall at all times be entitled to take all action necessary or appropriate to be fully informed with respect to the Debtors’ financial condition, operations, customers and business prospects; (b) oversee the 363 Sale on behalf of the Debtors, including all activities of any investment banker retained by the Debtors, (c) respond to all reasonable information requests or inquiries of the DIP Agent, the Pre-Petition Agent and the DIP Lenders and their respective representatives concerning any and all matters relating to the activities of such CRO.

Events of Default:

Defaults and Events of Default customarily included in debtor-in-possession financing agreements, including, without limitation:

- The Chapter 11 Cases shall be converted to cases under Chapter 7 of the Bankruptcy Code or be dismissed or a motion requesting such relief shall have been filed.
- Filing or support of a proposed plan of reorganization by any Debtor that does not provide for the indefeasible payment in full and in cash of Borrower’s obligations outstanding under the DIP Facility.
- Entry of an order confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization

that does not require the indefeasible repayment in full, in cash of the DIP Facility as of the effective date of the plan.

- Appointment of a trustee under Section 1104 of the Bankruptcy Code without the express written consent of the DIP Agent and the Required Revolving DIP Lenders, or the filing of any motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Appointment of an examiner with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code without the prior written consent of the DIP Agent and the Required Revolving DIP Lenders, or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Entry of an order by the Bankruptcy Court amending, supplementing, staying, vacating or otherwise modifying the DIP Facility, the Interim Order or Final Order approving the DIP Facility, or the CRO Order without the prior written consent of DIP Agent and the Required DIP Lenders or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Any attempt by any Debtor to obtain, or if any other party in interest obtains, an order of the Bankruptcy Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce or otherwise impair DIP Agent's or any DIP Lender's claims, or to subject any DIP Lender's collateral to a material surcharge pursuant to Section 506(c) of the Bankruptcy Code.
- Any Debtor shall apply for an order substituting any assets for all or any portion of the DIP Collateral, except as provided in the instruments evidencing and governing the DIP Facility.
- Any payment on, or application for authority to pay, any pre-petition claim owing to terminated employees, bond claims, principal on loans under the Pre-Petition Credit Facility or lease rejection damages, other than those required to be paid with the DIP Facility pursuant to the terms of the DIP Facility, without prior written consent of the DIP Agent and the Required Revolving DIP Lenders.
- A final order is entered granting any creditor with a claim in excess of \$500,000 relief from the automatic stay.
- Failure to make all payments under the DIP Facility when due, subject to any applicable grace period.
- Failure to pay any material indebtedness.

- Breach of any covenant of the DIP Facility, subject to any applicable grace periods.
- Any representation or warranty by any Debtor is incorrect or misleading in any material respect when made.
- Exclusivity shall have been terminated or the Borrower or any Guarantor shall have agreed to any such termination.
- After entry thereof, either of the Sale Procedures Order or the Sale Order shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended without the prior written consent of the DIP Agent and the Required DIP Lenders in their respective sole discretion; or
- Any termination or resignation of the CRO shall occur without the contemporaneous engagement (or, in the case of a resignation, engagement within 10 days of such resignation) of a replacement CRO satisfactory to the DIP Agent and the Required DIP Lenders or there shall occur any other failure to comply with the terms of the CRO's engagement letter or the CRO Order; or
- Other Events of Default as may be required by the DIP Lenders, including Events of Default with regard to substantive consolidation (other than substantive consolidation solely for purposes of voting and distributions under the Borrower's chapter 11 plan).

Indemnification:

The Borrower and the Guarantors shall indemnify and hold DIP Agent, and all DIP Lenders and their respective officers, directors, employees and agents (including all of their professionals) (each an "**Indemnified Party**") harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the Loan Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

Governing Law:

All documentation in connection with the DIP Facility shall be governed by the laws of the state of New York, subject to applicable federal bankruptcy laws.

**Assignments and
Participations:**

DIP Lenders shall be permitted to assign their rights and obligations with respect to the DIP Facility, or any part thereof, to any bank, financial institution or loan investment fund, subject to customary limitations. DIP Lenders shall be permitted to grant or sell participations in such rights and obligations, or any part thereof, to any person or entity other than a natural person, subject to customary limitations.

Waivers and Amendments:

Except as otherwise expressly provided in this DIP Term Sheet, amendments and waivers of the provisions of the definitive credit documentation for the DIP Facility will require the approval of the Required Revolving DIP Lenders, except that (i) the consent of each adversely affected Revolving DIP Lender shall be required with respect to (a) increases in the DIP Revolving Commitment of such Revolving Lender, (b) reductions of principal, interest or fees due to such Revolving Lender under the DIP Revolving Facility, or (c) extends the Maturity Date beyond the Initial Maturity Date, or otherwise postpones the time for payment of interest, fees or other amounts payable under the DIP Revolving Facility; (ii) the consent of each adversely affected Roll-up Lender shall be required if such amendment or waiver (a) increases the stated amount of any Roll-up LC or such Roll-up Lender's pro rata risk participation therein, reduces the applicable letter of credit fees payable to such Roll-up Lender with respect to any Roll-up LC or reduces the principal amount of any Roll-up Lender's participation in unreimbursed draws made under any Roll-up LC, or reduces the rate of interest payable to such Roll-up Lender with respect to its participation in any draws under any Roll-up LC, (b) extends the Maturity Date beyond the Extended Maturity Date or otherwise postpones the time for payment of interest, fees or other amounts payable under the LC Roll-up Facility, or (c) increases such Roll-up Lender's pro rata share of the LC Roll-up Facility; (iii) the consent of each adversely affected DIP Lender shall be required if such amendment or waiver (a) releases or subordinates the liens and security interests of the DIP Agent and the DIP Lenders on all or substantially all of the DIP Collateral or releases all or substantially all of the Guarantors, (b) modifies (i) the amount or application of any mandatory prepayment obligations, (ii) the application of payments from proceeds of DIP Collateral, or (iii) the amendment and waiver provisions under the DIP Facility, or (c) modifies the definition of "Required DIP Lenders", "Required Revolving DIP Lenders" or "Required Roll-up Lenders"; (iv) the consent of the DIP Agent shall be required if such amendment or waiver affects the rights, duties or obligations of the DIP Agent under the DIP Facility; and (v) the consent of the Issuing Lender shall be required if such amendment or waiver affects the rights, duties or obligations of the Issuing Lender under the DIP Facility.

Other Definitions:

“363 Asset Purchase Agreement” means, at the election of Borrower, either (i) an asset purchase agreement pursuant to which the Pre-Petition Agent (or its designee), on behalf of the Pre-Petition Lenders, agrees to “credit bid” all or a portion of their claims in respect of the Pre-Petition Credit Facility and assume certain obligations and indebtedness of the Debtors, including, without limitation, all outstanding indebtedness under the DIP Facility as consideration for the purchase of substantially all of the assets of the Debtors, or (ii) a Third-Party Asset Purchase Agreement, which asset purchase agreement in either of the foregoing clauses (i) and (ii) is otherwise in form and substance (and, in the case of clause (ii), entered into with a purchaser) satisfactory to the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders in their respective sole discretion.

“363 Sale” means the sale of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code.

“Auction” means an auction held in connection with the 363 Sale and in accordance with the provisions set forth in the Sales Procedures Order.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Kentucky.

“Budget” means the budget of Borrower and the Guarantors relative to the operations of Borrower and the Guarantors in the Chapter 11 Cases for any fiscal period, as delivered to DIP Agent and DIP Lenders in form and substance satisfactory to DIP Agent and the requisite DIP Lenders. A Budget for the first 13 weeks of the Chapter 11 Cases (the **“Interim Budget”**) must be approved by the DIP Agent and the DIP Lenders and must be attached to the Interim Order. [A Budget covering the period from the date of entry of the Final Order through the Initial Maturity Date (the **“Initial Budget”**) must be delivered by the Borrower to the DIP Agent and the DIP Lenders at least 7 business days before, and shall be approved by the DIP Agent and the Required Revolving DIP Lenders at least 2 business days before, any hearing related to final approval of the DIP Facility and must be attached to the Final Order. Within 5 business days before the end of each consecutive four week period included in the applicable Budget, Borrower shall deliver to the DIP Agent and the DIP Lenders an updated Budget for the remaining period covered by such Budget, which updated Budget must be approved by the DIP Agent and the Required Revolving DIP Lenders at least one business day before the end of such four

week Budget period. In the event that the Borrower requests an extension of the Maturity Date as described in the definition of Maturity Date below, a Budget covering the period from the Initial Maturity Date through the Extended Maturity Date (the “**Extension Budget**”) must be delivered by the Borrower to the DIP Agent and the DIP Lenders at the time of such request and approved by the DIP Agent and the Required Revolving DIP Lenders. The foregoing provisions with respect to the delivery and approval of periodic updates to the Initial Budget shall also apply to the Extension Budget.]

“**Chapter 11 Cases**” means the Involuntary Chapter 11 Case commenced against Frasure Creek Mining, LLC on February 14, 2013 (Chapter 11 Case No. 13-50335 (TNW)) and the Involuntary Chapter 11 Cases commenced against the other Debtors on February 19, 2013 under Chapter 11 of the Bankruptcy Code and administratively consolidated as Chapter 11 Case No. 13-50364 in the Bankruptcy Court.

“**CRO Appointment Date**” means the date that the CRO Order is entered by the Bankruptcy Court.

“**Final Order**” means a final, non-appealable order of the Bankruptcy Court, that, without limitation, approves the DIP Facility and grants the liens and security interests contained therein, on terms satisfactory to DIP Agent and the Required DIP Lenders.

“**Interim Order**” means an interim order of the Bankruptcy Court authorizing Borrower, among other things, to obtain interim financing and incur post-petition indebtedness on terms satisfactory to DIP Agent and the Required DIP Lenders.

“**Maturity Date**” means the date that is 180 days after the CRO Appointment Date (the “Initial Maturity Date”); provided that within 15 days prior to the Initial Maturity Date the Debtors may request that such Initial Maturity Date be extended to a date no later than 270 days after the CRO Appointment Date (the “Extended Maturity Date”) so long as (i) such extension has been approved and consented to by the DIP Agent, the Revolving DIP Lenders, and the Required Roll-up Lenders, in their respective sole discretion, (ii) the Termination Date has not sooner occurred, and no default or event of default then exists under the DIP Facility, (iii) the representations and warranties of the Debtors contained in the DIP Loan Documents are true and correct in all material respects, (iv) a Budget for the period from the Initial Maturity Date until the Extended Maturity Date shall have been delivered to and approved by the DIP Agent and the Revolving DIP Lenders, and (v) the Borrower shall have paid an extension fee to DIP Agent for the benefit of the Revolving DIP Lenders in an amount to be agreed upon among the Borrower,

the DIP Agent, and the Revolving DIP Lenders at the time of such request.

“Petition Date” means, with respect to any Debtor, the date on which the Chapter 11 Case for such Debtor was filed with the Bankruptcy Court.

“Required DIP Lenders” means the Required Revolving DIP Lenders and the Required Roll-up Lenders.

“Required Pre-Petition Lenders” means, with respect to any action to be taken by the Pre-Petition Agent and/or the Pre-Petition Lenders, those Pre-Petition Lenders required to approve, consent to or otherwise authorize and direct that such action be taken under the terms of the Pre-Petition Credit Facility.

“Required Revolving DIP Lenders” means (i) at any time when there are less than three Revolving DIP Lenders, all Revolving DIP Lenders, and (ii) at any time when there are three or more Revolving DIP Lenders, two or more DIP Lenders holding 51% or more of the DIP Revolving Commitment or, if the DIP Revolving Commitment has been terminated, 51% or more of the outstanding loans under the DIP Revolving Facility.

“Required Roll-up Lenders” means DIP Lenders holding 51% or more of the LC Roll-up Facility.

“Sale Order” means the order entered by the Bankruptcy Court in form and substance satisfactory to the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders in their respective sole discretion that, among other things, approves the 363 Sale, the results of the Auction and the Winning Bidder’s bid received at the Auction.

“Sale Procedures Motion” means a motion seeking entry of the Sales Purchase Order, which motion shall be in form and substance reasonably satisfactory to the DIP Agent, the Pre-Petition Agent, the Required DIP Lenders and the Required Pre-Petition Lenders.

“Sale Procedures Order” means an order approving (a) the Bidding Procedures to be applicable to the 363 Sale and (b) subject to higher and better bid, the 363 Asset Purchase Agreement.

“Super-Majority DIP Lenders” means (i) the Required Revolving DIP Lenders and (ii) DIP Lenders holding 66 2/3% or more of the LC Roll-up Facility.

“Third-Party Asset Purchase Agreement” means an asset purchase agreement by and among the Debtors and a third party

purchaser that provides for the purchase and sale of substantially all of the assets of the Debtors, which third party purchaser and asset purchase agreement are satisfactory to the DIP Agent, the Required DIP Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders in their respective sole discretion.

“**Winning Bidder**” means the bidder that (a) agrees at the Auction to purchase all or substantially all of the assets of the Debtors pursuant to a Third-Party Asset Purchase Agreement, and (b) is acceptable to the Super-Majority DIP Lenders in their respective sole discretion; provided that if the Super-Majority DIP Lenders do not approve any available bidder as the Winning Bidder within a reasonable time, the Required Revolving DIP Lenders, in their respective sole discretion, shall have the right to approve the Winning Bidder from among the available bidders.