

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION**

In re:

Coking Coal, LLC,

Debtor.

Chapter 11

Case No. 24-70529

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING; (II) AUTHORIZING THE DEBTOR'S USE OF CASH COLLATERAL; (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon the Motion ("Motion")¹ of the Debtor for entry of an interim order (the "Interim DIP Order"): (i) authorizing the Debtor to obtain post-petition financing on the terms described in the Motion, including, without limitation, a non-revolving credit facility (the "DIP Non-Revolver Facility," and advances thereunder, the "Non-Revolver Facility Draws") for up to \$4,500,000.00 in principal, and, upon entry of the Final DIP Order (as defined below), the roll up of the outstanding pre-petition obligations of the Debtor to the DIP Lender (as defined in the DIP Facility Loan Documents) in respect of the Pre-Petition Loan Documents (defined below) in the amount of not less than \$41,837,445.46 (the "Roll-Up Facility," the DIP Non-Revolver Facility and the Roll-Up Facility collectively referred to as the "DIP Facility") pursuant to this Interim DIP Order, the Post-Petition Loan and Security Agreement, and Promissory Note and related and ancillary documents as between the Debtor and Tacora Capital LP (the "DIP Lender") dated as of the December 16, 2024 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms and the terms of the Interim DIP Order (collectively,

¹ Capitalized terms not otherwise defined in this Interim DIP Order shall have the meanings ascribed to them in the Motion and the DIP Facility Loan Documents.

the “DIP Facility Loan Documents”); (ii) authorizing the Debtor to use cash collateral; (iii) granting adequate protection to the DIP Lender; (iv) scheduling a final hearing with respect to the relief requested herein (the “Final Hearing”); and (v) granting related relief; and upon the *Declaration of Lloyd Hill in Support of First Day Motions of Debtor and Debtor-in-Possession* (“First Day Declaration”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter this Interim DIP Order consistent with Article III of the United States Constitution; and this Court having found that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (“Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief the Motion requested; and objections, if any, having been withdrawn, resolved, or overruled by the Court, **THE COURT HEREBY FINDS THAT**²:

A. On December 16, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor has retained possession of its property and continues to operate its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

B. As of the date hereof, no official committee of unsecured creditors (the “Committee”) has been appointed in the Chapter 11 Case.

² This Order shall constitute findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and shall take effect and be fully enforceable as of the Petition Date.

C. This Court has core jurisdiction over the Chapter 11 Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Chapter 11 Case and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and the Local Rules.

D. Subject to Paragraph 8(a) of this Interim DIP Order, the Debtor admits, stipulates, and agrees that:

- a. The Pre-Petition Loan Documents evidence and govern the Pre-Petition Obligations, the liens and security interests created and granted pursuant to the Pre-Petition Loan Documents in favor of the DIP Lender (the “Pre-Petition Liens and Security Interests”), and the prepetition financing relationship among the Debtor and the DIP Lender;
- b. The Pre-Petition Obligations constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the Pre-Petition Loan Documents, all of which are deemed to be reaffirmed by the parties thereto;
- c. As of the Petition Date, the Debtor is liable for the payment and performance of the Pre-Petition Obligations, and the Pre-Petition Obligations shall be an allowed claim in an amount not less than \$41,837,445.46.
- d. No offsets, reductions, defenses, claims, or counterclaims to the Pre-Petition Obligations exist, and no portion of the Pre-Petition Obligations is subject to contest, objection, recoupment, defense, counterclaim, offset, avoidance, recharacterization, subordination, or any other claim, cause of action or

challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law, or otherwise.

- e. The Pre-Petition Liens and Security Interests secure payment of all the Pre-Petition Obligations.
- f. The Debtor does not have, and hereby absolutely, unconditionally, and irrevocably releases, remises, waives and discharges and is forever barred from bringing or asserting any claims, counterclaims, causes of action, defenses, or setoff rights relating to the Pre-Petition Loan Documents, the Pre-Petition Liens and Security Interests, or the Pre-Petition Obligations against the DIP Lender and its successors and assigns, and its present and former shareholders, members, managers, partners, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, advisors, principals, employees, consultants, agents, legal representatives and other representatives, solely in its capacity as a DIP Lender (or Pre-Petition lender) of the Debtor and in no other capacity. For the avoidance of doubt, the Debtor forever waives and releases any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights against the DIP Lender (on account of both the Pre-Petition Obligations and Post-Petition Obligations), whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other provisions of applicable state or federal law.

E. The DIP Lender is entitled to adequate protection as set forth herein pursuant to Bankruptcy Code sections 361, 362, 363, and 364 for any decrease in the value of its interests in

the Collateral granted by the Debtor to the DIP Lender to secure the payment of the Pre-Petition Obligations pursuant to the Pre-Petition Loan Documents (the “Pre-Petition Collateral”) as well as the DIP Collateral from and after the Petition Date.

F. Debtor needs to use Cash Collateral and obtain proceeds from the DIP Non-Revolver Facility as provided herein through the conclusion of the Final Hearing, in order to prevent immediate and irreparable harm to the Debtor’s bankruptcy estate and minimize disruption to and avoid the termination of its business operations. Entry of this Interim DIP Order will also enhance the possibility of maximizing the value of the Debtor’s business in connection with a chapter 11 plan of reorganization.

G. The Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) sufficient to finance the operation of its business. The Debtor is unable to obtain credit allowable under Bankruptcy Code sections 364(c)(1), (c)(2), or (c)(3) on terms more favorable than those offered by the DIP Lender. An immediate need exists for the Debtor to obtain proceeds of the DIP Non-Revolver Facility in order to continue operations, order critical equipment, and to administer and preserve the value of its bankruptcy estate. The Debtor, as of the Petition Date, does not have sufficient cash resources to finance its ongoing operations and requires the availability of working capital from the DIP Non-Revolver Facility, the absence of which would immediately and irreparably harm the Debtor, its estate, its creditors, and all other stakeholders.

H. The terms of the DIP Non-Revolver Facility have been negotiated at arm’s length, and the DIP Non-Revolver Facility is being extended in good faith, as that term is used in Bankruptcy Code section 364(e).

I. The terms and conditions of the DIP Facility Loan Documents are fair and reasonable, the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration.

J. Under the circumstances of this Chapter 11 Case, this Interim DIP Order is a fair and reasonable response to Debtor's request for the DIP Lender's consent to the use of Cash Collateral and provision of the DIP Non-Revolver Facility, and the entry of this Interim DIP Order is in the best interests of the Debtor's bankruptcy estate, its creditors, and all other parties in interest.

WHEREFORE, IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED, AND THAT:

1. Authorization to Use Cash Collateral. The Debtor is authorized to use the DIP Lender's cash collateral ("Cash Collateral") solely in accordance with the terms and provisions of this Interim DIP Order, to the extent required to pay when due those expenses enumerated in the Approved Budget, and to pay and/or reimburse any and all fees, costs, expenses charges due under any of the DIP Facility Loan Documents, including, without limitation, the Issuance Fee (defined in the DIP Facility Loan Documents) (such fees, costs, expenses, and/or charges, collectively, the "DIP Facility Charges").

2. Authorization to Enter Into The DIP Facility and Incur Indebtedness Thereunder.

a. DIP Facility Loan Documents. The Debtor is hereby immediately authorized and has agreed to: (i) execute the DIP Facility Loan Documents, including all documents that the DIP Lender finds reasonably necessary or desirable to implement the transactions contemplated by the DIP Facility Loan Documents; and (ii) perform its obligations

under and comply with all of the terms and provisions of the DIP Facility Loan Documents and this Interim DIP Order (including, subject to the entry of the Final DIP Order, conversion of all Pre-Petition Obligations into Post-Petition Obligations (as defined in the DIP Facility Loan Documents) pursuant to the Roll-Up Facility). Upon execution and delivery thereof, the DIP Facility Loan Documents shall constitute valid and binding obligations of the Debtor enforceable in accordance with their terms. To the extent there exists any conflict among the terms of the Motion, the DIP Facility Loan Documents, and this Interim DIP Order, this Interim DIP Order shall govern and control.

b. Authorization to Incur DIP Obligations. To enable the Debtor to continue to operate its business, during the period from the entry of this Interim DIP Order through and including the earliest to occur of (i) the entry of the Final DIP Order, and (ii) the Termination Date, in each case unless extended by up to fourteen (14) calendar days by written agreement of the Debtor and the DIP Lender without further order of this Court (such earliest date, as may be extended pursuant to this Paragraph 2(b), the “Interim Period Outside Date” and, the period from the entry of this Interim DIP Order through and including Interim Period Outside Date, the “Interim Period”), and subject to the terms and conditions of this Interim DIP Order and the DIP Facility Loan Documents, including, without limitation, the Approved Budget (as defined below), the Debtor is hereby authorized to borrow under the DIP Non-Revolver Facility Draws in an aggregate outstanding principal amount comprising Non-Revolver Facility Advances not to exceed \$1,500,000.00, and, following the entry of the Final DIP Order, the Debtor’s authority to incur further Post-Petition Obligations, if any, will be governed by the terms of such Final DIP Order. Upon entry of a Final DIP Order: (i) the Debtor shall, subject to the terms of the DIP Facility Loan Documents and such Final DIP Order, be entitled to borrow all amounts under the DIP Non-

Revolver Facility and use Cash Collateral to fund the Debtor's working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the DIP Facility Loan Documents, the Approved Budget (as defined below), the Final DIP Order, and any other orders of this Court, and all outstanding Pre-Petition Obligations shall be automatically converted to Post-Petition Obligations.

c. Permitted Uses of DIP Facility Proceeds. The Debtor is authorized and has agreed to utilize proceeds of the DIP Non-Revolver Facility solely: (i) in accordance with the terms and provisions of the DIP Facility Loan Documents and this Interim DIP Order; (ii) to the extent required to pay those expenses enumerated in the Approved Budget as and when such expenses become due and payable, subject to variances as permitted under the DIP Facility Loan Documents and the other terms of the DIP Facility Loan Documents; and (iii) to pay the DIP Facility Charges. If the DIP Lender advances monies to Debtor and Debtor uses such monies other than in accordance with the terms or provisions of this Interim DIP Order and the DIP Facility Loan Documents, such advances shall be considered Post-Petition Obligations for purposes of this Interim DIP Order.

d. Approved Budget. Attached hereto as Exhibit A is a 13-week cash flow budget (the "Initial Approved Budget") which reflects on a line-item basis the Debtor's (i) weekly projected cash receipts, (ii) weekly projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses under the Chapter 11 Case, capital expenditures, asset sales, including the fees relating thereto, and budgeted fees and expenses of the DIP Lender, and any other fees and expenses relating to the DIP Non-Revolver Facility), (iii) the sum of weekly unused Non-Revolver Facility availability under the DIP Facility plus unrestricted cash on hand (collectively, "Aggregate Liquidity"), and (iv) the weekly outstanding principal balance of the

Post-Petition Obligations. Commencing on December 20, 2024, and continuing every Friday thereafter (i.e., every week), the Debtor shall prepare and deliver to the DIP Lender an updated “rolling” 13-week cash flow budget, which, once approved in writing by the DIP Lender, in its sole discretion, shall supplement and replace the Initial Approved Budget or Supplemental Approved Budget, as applicable, then in effect (each such updated budget that has been approved in writing by the DIP Lender, a “Supplemental Approved Budget”) without further notice, motion, or Court order; provided, however, that unless and until the DIP Lender has approved such updated budget, the Debtor shall remain subject to and be governed by the terms of the Initial Approved Budget or Supplemental Approved Budget, as applicable, then in effect, and the DIP Lender shall not, as applicable, have any obligation to fund to such updated “rolling budget” or permit the use of Cash Collateral with respect thereto, as applicable. Commencing on December 25, 2024 and continuing every Wednesday thereafter (i.e., every week), the Debtor shall provide to the DIP Lender (x) a variance report/reconciliation report certified by the Chief Financial Officer (or some other appropriate officer) of the Debtor, in form acceptable to the DIP Lender, setting forth (A) the actual cash receipts, expenditures, disbursements, and outstanding DIP Non-Revolver Facility balance of the Debtor for such immediately preceding fiscal week (including any “stub week” that includes the Petition Date) cumulatively and on a line-item basis, and the Aggregate Liquidity as of the end of such week, and (B) the variance in dollar amounts of the actual expenditures, disbursements, and outstanding DIP Non-Revolver Facility balance for each week and cumulatively from those budgeted amounts for the corresponding week and cumulatively as reflected in the Approved Budget (defined below), and (y) a certificate signed by the Chief Financial Officer (or some other appropriate officer) of the Debtor, in form acceptable to the DIP Lender, certifying whether the Debtor is in full compliance with the Initial Approved Budget and

any Supplemental Approved Budget, as applicable, for the applicable testing period. The Initial Approved Budget and any Supplemental Approved Budget, whichever is then in effect, shall constitute the “Approved Budget.” Notwithstanding anything to the contrary in this Interim DIP Order, the reasonable professional fees, costs and expenses of the DIP Lender (including, without limitation, counsel and other advisors therefor) shall be due, payable and paid in accordance with the terms of this Interim DIP Order notwithstanding any budgeted amounts for such fees, costs and expenses set forth in the Approved Budget.

e. Prohibited Uses of DIP Facility Funds. The Debtor shall not, through any manner or means or through any other person, directly or indirectly use proceeds of the DIP Non-Revolver Facility in connection with any investigation (including discovery proceedings), initiation, or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lender (related to either Pre-Petition Obligations or Post-Petition Obligations), except for up to \$25,000.00 (the “Committee Investigation Budget”) permitted for investigation costs of any official Committee appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

f. DIP Liens. As security for the Post-Petition Obligations, the following first priority security interests and liens are hereby granted to the DIP Lender, on all property of the Debtor, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the DIP Lender or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, contract rights, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, mining permits, any other permits, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments,

chattel paper, securities (whether or not marketable), franchise rights, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds (provided, however, that to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event the DIP Lender shall be granted only a lien on the proceeds of sale or other disposition of such leasehold interests), real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, (subject to entry of the Final DIP Order) rights under section 506(c) of the Bankruptcy Code, all other Collateral (as defined in the DIP Facility Loan Documents), and all other “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, excluding claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (“Avoidance Actions”), but, subject to entry of the Final DIP Order, including any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise (all of the foregoing collateral collectively referred to as the “DIP Collateral” and, all such Liens granted to the DIP Lender pursuant to this Interim DIP Order and the DIP Facility Loan Documents, the “DIP Liens”):

- (i) pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority Lien on all unencumbered DIP Collateral;

(ii) pursuant to section 364(c)(3) of the Bankruptcy Code, a junior Lien on all DIP Collateral that is subject solely to the Pre-Petition Prior Liens (as defined below); and

(iii) pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior priming lien on all DIP Collateral (including, without limitation, Cash Collateral) that is senior to any Other Secured Parties' Adequate Protection Replacement Liens (as defined below) and Pre-Petition Prior Liens (as defined below) afforded any secured creditors other than the DIP Lender (collectively, the "Primed Liens") regarding the Post-Petition Obligations related to the DIP Non-Revolver Facility; provided, however, that the liens described in this clause (iii) shall be junior solely to the Carve-Out.

g. DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim DIP Order or the DIP Facility Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Lender shall in each and every case be first priority senior liens that (i) to the extent provided in the provisions of this Interim DIP Order and the DIP Facility Loan Documents, shall be subject only to the Carve-Out, and (ii) except as provided in sub-clause (i) of this subsection (g), are senior to all pre-petition and post-petition liens of any other person or entity (including, without limitation, the Primed Liens and the Other Secured Parties' Adequate Protection Replacement Liens). The DIP Liens and the DIP Superpriority Claims (as defined below) (A) subject to entry of the Final Order, shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtor and its estates under section 551 of the Bankruptcy

Code, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the Chapter 11 Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each, a “Successor Case”), and/or upon the dismissal of any of the Chapter 11 Case to the maximum extent permitted by law.

h. Enforceable Obligations. The DIP Facility Loan Documents shall constitute and evidence the valid and binding Post-Petition Obligations of the Debtor, which Post-Petition Obligations shall be enforceable against the Debtor, its estate and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case), and its creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Facility Loan Documents, or this Interim DIP Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 547, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. The DIP Liens granted in this Interim DIP Order shall be fully effective immediately and without any further action by the Debtor or the DIP Lender and without the execution, delivery, filing, or recordation of any financing statements, security agreements, control agreements, title notations, mortgages, deeds of trust, or other documents or instruments. The DIP Liens granted by this Interim DIP Order shall not be subject to any security interest or lien which is avoided and preserved under section 551 of the Bankruptcy

Code, nor shall they be subject to section 510(c) of the Bankruptcy Code, and the DIP Liens shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Chapter 11 Case. Subject to entry of a final order authorizing the Debtor to use Cash Collateral and incur the Post-Petition Obligations entered at or in connection with the Final Hearing (the “Final DIP Order”), the DIP Liens shall not be subject to any landlord’s lien, banker’s lien, bailee’s rights, carrier’s lien, right of distraint or levy, security interest, right of setoff, or any other lien, right, or interest that any bailee, warehouseman, bank, processor, shipper, carrier, or landlord may have in any or all of the DIP Collateral. Without limiting the foregoing, (i) the Debtor shall execute and deliver to DIP Lender such financing statements, security agreements, control agreements, title notations, mortgages, deeds of trust, instruments, and other documents as the DIP Lender may request from time to time, and any such documents filed by the DIP Lender shall be deemed filed as of the date of entry of this Interim DIP Order; and (ii) the DIP Lender shall be deemed to have a perfected DIP Lien on all existing deposit accounts of the Debtor and any new deposit account that the Debtor may establish on or after the date hereof without any further action by the Debtor or the DIP Lender. A copy of this Interim DIP Order (or a notice of this Interim DIP Order in recordable form) may be used by the DIP Lender as a financing statement, mortgage, deed of trust, or similar instrument for purposes of any public filing made by the DIP Lender for the perfection of the DIP Liens and the filing of this Interim DIP Order (or a notice of this Order in recordable form) shall have the same effect as if such instrument had been filed or recorded at the time and on the date of entry of this Interim DIP Order. All state, federal, and county recording officers are authorized and directed to accept a copy of this Interim DIP Order (or a notice of this Interim DIP Order in recordable form) for filing for such purposes.

i. Superpriority Administrative Expense Status. In addition to the DIP Liens granted herein, effective immediately upon entry of the Interim DIP Order, all of the Post-Petition Obligations shall constitute allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve Out, over all administrative expense claims, adequate protection and other diminution claims (including the Other Secured Parties' Adequate Protection Replacement Liens (as defined below) and Other Secured Parties' Adequate Protection Superpriority Claim (as defined below)), unsecured claims, and all other claims against the Debtor, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the "DIP Superpriority Claims"). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against the Debtor, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtor and all proceeds thereof. Other than as provided in the DIP Facility Loan Documents and this Interim DIP Order with respect to the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the Post-Petition Obligations, or with any other claims of the DIP Lender arising hereunder.

j. Roll-Up of Pre-Petition Obligations and Adequate Protection for Lender.

Subject to and only upon entry of a Final DIP Order, and in accordance with the DIP Facility Loan Documents, all Pre-Petition Obligations of the DIP Lender shall immediately, automatically, and irrevocably be deemed to have been converted into Post-Petition Obligations and incurred under the DIP Facility. Until such time as the Roll-Up Facility becomes effective or in the event that the Roll-Up Facility is not approved, and to the extent there is a diminution in value of the interests of the DIP Lender in its Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date resulting from the use, sale, or lease by the Debtor of the applicable Pre-Petition Collateral (including Cash Collateral), the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code or otherwise (the “Diminution in Value of the DIP Lender’s Pre-Petition Collateral”), the DIP Lender, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, Liens upon all of the DIP Collateral (such adequate protection replacement liens, the “DIP Lender’s Adequate Protection Replacement Liens”), which DIP Lender’s Adequate Protection Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens and the Carve-Out. The DIP Lender’s Adequate Protection Replacement Liens and the DIP Superpriority Claims: (A) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or, subject to entry of the Final DIP Order, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall be senior in priority and right of payment to (x) any lien that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in the Chapter 11 Case or any Successor Case, and/or upon the dismissal of any of the Chapter 11 Case.

k. Prohibition Against Additional Debt. Debtor will not incur or seek to incur debt secured by a lien which is equal to or superior to the DIP Liens, or which is given superpriority administrative expense status under Bankruptcy Code section 364(c)(1), unless, in addition to the satisfaction of all requirements of Bankruptcy Code section 364, the DIP Lender has expressly consented in writing to such order.

3. Adequate Protection

a. Other Pre-Petition Secured Parties. Each pre-petition secured party holding valid, enforceable and properly perfected security interests and liens in property of the Debtor, other than the DIP Lender (collectively, the “Other Pre-Petition Secured Parties”), are entitled to adequate protection as set forth herein and to the extent required under Bankruptcy Code sections 361, 362, 363, or 364 for any decrease in the value of such interests in the Other Pre-Petition Secured Parties’ collateral (collectively, the “Other Pre-Petition Secured Parties’ Collateral”) from and after the Petition Date on account of the stay, use, sale, lease, license, grant or other disposition of any Other Pre-Petition Secured Parties’ Collateral (but only to the extent that the Other Pre-Petition Secured Parties held valid, enforceable and properly perfected secured liens and security interests in the Pre-Petition Prior Secured Parties’ Collateral prior to the Petition Date (“Pre-Petition Prior Liens”) and only in the priority that such Pre-Petition Prior Liens were held by such Other Pre-Petition Secured Parties). The Other Pre-Petition Secured Parties are hereby granted replacement liens on the Pre-Petition Secured Parties’ Collateral (but only to the extent that the Other Pre-Petition Secured Parties held valid, enforceable and properly perfected Pre-Petition Prior Liens and only in the priority that such Pre-Petition Prior Liens were held by such Other Pre-Petition Secured Parties) (the “Other Secured Parties’ Adequate Protection Replacement Liens”) as security for the complete payment and performance of the Pre-Petition Secured Parties’

pre-petition debt (the “Other Secured Parties’ Pre-Petition Debt”), subject to the Carve Out, and which Other Secured Parties’ Adequate Protection Replacement Liens shall be junior to the DIP Liens (with respect to the Post-Petition Obligations related to the DIP Non-Revolver Facility). As further adequate protection from any Diminution in Value, the Other Pre-Petition Secured Parties are hereby granted an allowed superpriority administrative expense claim in the Chapter 11 Case and any successor case which, subject to the Carve Out, shall be junior only to the superpriority administrative expense claims of the DIP Lender (with respect to the Post-Petition Obligations related to the DIP Non-Revolver Facility) (the “Other Secured Parties’ Adequate Protection Superpriority Claim”). Notwithstanding the adequate protection afforded the Other Pre-Petition Secured Parties herein, nothing in this Interim DIP Order shall prohibit or adversely affect the rights of either the Debtor, the DIP Lender or any Committee (to the extent applicable) from investigating, objecting to, or contesting, the validity, extent, amount, perfection, priority, or enforceability of any lien or security interest claimed in or against the Debtor’s assets by any of the Other Pre-Petition Secured Parties.

4. Reporting and Rights of Access and Information. The Debtor shall timely comply with all reporting requirements set forth in the DIP Facility Loan Documents and Pre-Petition Loan Documents, as applicable. The Debtor shall comply with the rights of access and information afforded to the DIP Lender under the DIP Facility Loan Documents and the Pre-Petition Loan Documents.

5. Termination Date; Rights and Remedies.

a. Effect of Termination Date. Subject to Paragraph 5(b) below, upon the Termination Date, and without further notice or order of Bankruptcy Court: (i) the Debtor’s authorization to use Cash Collateral and incur Post-Petition Obligations hereunder will

automatically terminate; (ii) the Post-Petition Obligations shall be immediately due and payable; and (iii) the Debtor shall be prohibited from using Cash Collateral for any purpose other than application to the Post-Petition Obligations.

b. Rights and Remedies. Following a period of five (5) days after the occurrence of the Termination Date (such period, the “Remedies Notice Period”), at the DIP Lender’s election and without further order of the Bankruptcy Court: (i) the DIP Lender shall have automatic and immediate relief from the automatic stay with respect to the DIP Collateral (without regard to the passage of time provided for in Bankruptcy Rule 4001(a)(3)), and shall be entitled to exercise all rights and remedies available to them under the DIP Facility Loan Documents and applicable non-bankruptcy law; and (ii) the Debtor shall promptly surrender the DIP Collateral upon written demand by the DIP Lender and otherwise cooperate and not interfere with the DIP Lender in the exercise of its rights and remedies under the DIP Facility Loan Documents and applicable non-bankruptcy law. Notwithstanding the foregoing, during the Remedies Notice Period, the Debtor, any Committee, and the U.S. Trustee shall be entitled to seek an emergency hearing seeking an order of this Bankruptcy Court determining that an Event of Default alleged to have given rise to the Termination Date did not occur, and any other issue the Bankruptcy Court determines is appropriate to resolve; provided, however, that during the Remedies Notice Period, (x) the Debtor shall be entitled to use Cash Collateral in accordance with the terms of this Interim DIP Order solely in accordance with the terms of the Approved Budget, and (y) the DIP Lender shall have no obligation to advance Post-Petition Obligations to Debtor.

6. Carve Out.

a. Carve Out Terms. For purposes of this Interim DIP Order, “Carve Out” shall mean: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under

28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the Carve Out Trigger Notice³) (collectively, the “Statutory Fees”); plus the sum of (ii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees, costs, disbursements, and expenses (the “Allowed Professional Fees”) incurred or earned by the Carve Out Professionals⁴ at any time before or on the Carve Out Trigger Date,⁵ whether allowed by the Bankruptcy Court prior to, on, or after delivery of a Carve Out Trigger Notice (the “Pre-Trigger Carve Out Cap”); and (iii) Allowed Professional Fees of the Carve Out Professionals incurred after the Carve Out Trigger Date in an aggregate amount not to exceed the Post-Carve Out Trigger Notice Amount,⁶ to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iii) being the “Post-Carve Out Trigger Notice Cap”) and such amounts set forth in clauses (i) through (iii), the “Carve Out Cap”); *provided that*, (A) nothing herein shall be construed to impair any party’s ability to object to Court approval of the fees, expenses, reimbursement of expenses or compensation of any Carve Out Professional, (B) the Carve Out with respect to each Carve Out Professional shall not exceed the aggregate amount provided in the applicable line item in the Approved Budget for such Carve Out Professional for the period commencing on the Petition Date and ending on the Carve Out Trigger Date, (C) the Carve Out with respect to each Carve Out

³ “Carve Out Trigger Notice” for purposes of this Interim DIP Order means a written notice delivered by email by the DIP Lender to the Debtor, counsel for the Debtor, the U.S. Trustee, and counsel for any Committee (the “Carve Out Trigger Notice Parties”) stating that the Post-Carve Out Trigger Cap has been invoked, which notice may be delivered following the occurrence and during the continuation of a Default or an Event of Default under the DIP Facility Loan Documents.

⁴ “Carve Out Professionals” for purposes of this Interim DIP Order means: (i) Dinsmore & Shohl LLP, as counsel for the Debtor; (ii) EPIQ Systems, Inc., as claims agent; and (iii) such professionals that are authorized by the Bankruptcy Court to be retained by the Debtor and/or any Committee.

⁵ “Carve Out Trigger Date” for purposes of this Interim DIP Order means the date that is the earliest of (x) the date on which the DIP Lender delivers (by email or other electronic means) the Carve Out Trigger Notice to the Carve Out Trigger Notice Parties, and (y) the Termination Date as provided in the DIP Facility Loan Documents.

⁶ “Post-Carve Out Trigger Notice Amount” for purposes of this Interim DIP Order means an amount equal to \$25,000.00.

Professional shall be reduced dollar-for-dollar by any payment of fees and expenses to the Carve Out Professional, (D) the Carve Out with respect to each Carve Out Professional shall be paid out of any prepetition retainer or property of the estate (other than property subject to an unavoidable security interest in favor of the DIP Lender) before such payments are made from proceeds of the Post-Petition Obligations or the DIP Collateral, and (E) no Carve Out Professional shall be entitled to any portion of the Carve Out allocated for any other Carve Out Professional in the Approved Budget, (F) any unused portion budgeted for a Carve Out Professional during a particular period shall be added to, carried over, and constitute an approved increase in the line item in the Approved Budget for that Carve Out Professional in subsequent periods, and (G) the Carve Out shall not be construed as a limitation or cap on the compensable amount of fees and expenses for any professional retained by the Debtor, but instead only a cap on the amount of fees and expenses that can be paid from DIP Collateral. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Carve Out Professional incurred in connection with the Chapter 11 Case, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve Out as set forth in this Paragraph 6. Nothing in this Interim DIP Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Carve Out Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

b. Carve Out Usage. No portion of the Carve Out and no Post-Petition Obligations or DIP Collateral may be used to pay any fees or expenses incurred by any Person, including the Debtor, any Committee, or any Carve Out Professional, in connection with claims or causes of action adverse (or which claim an interest adverse) to the DIP Lender or any of its rights or interests in the DIP Collateral, Pre-Petition Loan Documents or the DIP Facility Loan

Documents including, without limitation, (i) preventing, hindering, or delaying the DIP Lender's enforcement or realization upon any of the DIP Collateral (or Collateral, to the extent applicable) or the exercise of its rights and remedies under this Interim DIP Order, any of the DIP Facility Loan Documents, or applicable law, in each case, once an Event of Default has occurred under the DIP Facility Loan Documents, (ii) using or seeking to use any Cash Collateral or incurring indebtedness in violation of the terms hereof, or (iii) objecting to, or contesting in any manner, or in arising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any Post-Petition Obligations, any Pre-Petition Obligations, any Pre-Petition Loan Document, any DIP Facility Loan Document, or any liens or security interests with respect thereto or any other rights or interests of the DIP Lender (on account of the Pre-Petition Obligations or the Post-Petition Obligations), or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Lender (on account of the Pre-Petition Obligations or the Post-Petition Obligations); provided, however, that the foregoing shall not apply to costs and expenses, incurred by all of the Committee's Carve Out Professionals in connection with the investigation of a potential Challenge Action in accordance with Paragraph 8(a) of this Interim DIP Order, in an aggregate amount not to exceed the Committee Investigation Budget.

c. Carve Out Procedure. On the last business day of each two-week period prior to the Carve Out Trigger Date, the Debtor shall fund a Dinsmore & Shohl LLP client trust account designated by counsel to the Debtor for the benefit of any of the Debtor's Carve Out Professionals, as well as (if applicable) a client trust account designated by lead counsel to any appointed Committee for the benefit of any Committee Carve Out Professionals (each, a "Carve Out Account"), using proceeds of the Debtor's operations and/or Post-Petition Obligations in an

amount equal to the professional fees for Carve Out Professionals as set forth in the Approved Budget for the week then ended (with the Carve Out amount for each Carve Out Professional determined in accordance with the provisos set forth in subclauses (B) through (E) in Paragraph 6(a) of this Order). Except as set forth in the preceding sentence, the DIP Lender shall have no obligation to fund the Carve Out Accounts or any fees or expenses of Carve Out Professionals accrued on, prior to, or after the Carve Out Trigger Date and the Carve Out Accounts shall be funded solely with the proceeds of the Debtor's operations and/or Post-Petition Obligations as described in Paragraph 6(a) of this Order. All funds in the Carve Out Accounts shall be used to pay the Carve Out (whether such fees are allowed on an interim or final basis) for Allowed Professional Fees for the respective Carve Out Professionals in an amount not to exceed the Carve Out Cap and, subject to the Carve Out Cap, all Carve Out Professionals shall have all professional fees paid from the Carve Out Accounts prior to seeking payment from any other DIP Collateral. If the Carve Out (up to the Carve Out Cap) for Allowed Professional Fees of Carve Out Professionals is paid in full, all remaining funds in the Carve Out Accounts shall be returned to the DIP Lender. The Debtor shall periodically, upon the request of the DIP Lender, provide the DIP Lender a written report (a "Carve Out Report"), in which the Debtor shall disclose its then current estimate of (i) the aggregate amount of unpaid professional fees, costs, and expenses accrued or incurred by the Carve Out Professionals, through the date of the Carve Out Report, and (ii) projected fees, costs, and expenses of the Carve Out Professionals for the 30 day period following the date of such Carve Out Report. Nothing herein shall be construed as consent by the DIP Lender to the allowance of any fees or expenses of the Carve Out Professionals or shall affect the rights of the DIP Lender to object to the allowance and payment of such fees, costs, or expenses, or the right of the DIP Lender to the return of any portion of the Carve Out that is funded with respect to

fees and expenses for a Carve Out Professional that are approved on an interim basis that are later denied on a final basis.

d. Carry Forward/Carry Back. For the avoidance of doubt, to the extent that budgeted amounts for a Carve Out Professional for any Approved Budget period exceed the actual fees and expenses incurred by such Carve Out Professional for that period, the excess may be carried forward to later Approved Budget periods or backward to prior Approved Budget periods to be applied to any fees or expenses that exceeded the budgeted amounts for such prior or later periods.

7. No Surcharge. The Debtor represents that the Approved Budget contains all expenses that are reasonable and necessary for the operation of the Debtor's business and the preservation of the DIP Collateral through the period for which the Approved Budget runs, and therefore includes any and all items potentially chargeable to the DIP Lender under section 506(c) of the Bankruptcy Code. Therefore, in the exercise of its prudent business judgment, and subject to entry of the Final DIP Order, the Debtor (or any appointed trustee) agrees that there will be no surcharge of the DIP Collateral for any purpose unless agreed to in writing by the DIP Lender, and effective upon entry of the Final DIP Order, the Debtor (or any appointed trustee), on behalf of the bankruptcy estate, will be deemed to have waived any and all rights, benefits, or causes of action under Bankruptcy Code section 506(c), the enhancement of collateral provisions of Bankruptcy Code section 552, and under any other legal or equitable doctrine (including, without limitation, unjust enrichment or the "equities of the case" exceptions under section 552(b) of the Bankruptcy Code as they may relate to, or be asserted against, the DIP Lender (on account of the Pre-Petition Obligations or the Post-Petition Obligations). The DIP Lender has agreed to the entry of this Interim DIP Order in reliance on the foregoing.

8. Reservation of Rights; Bar of Challenges and Claims.

a. Notwithstanding any other provisions of this Interim DIP Order, any interested party with requisite standing (other than the Debtor or its professionals) in this Chapter 11 Case (including, without limitation, any Committee) shall have until the date that is forty-five (45) days after entry of this Interim DIP Order (such period, the “Challenge Period”) to commence an adversary proceeding against the DIP Lender on account of only the Pre-Petition Obligations for the purpose (collectively, a “Challenge Action”) of: (i) challenging any of the stipulations contained in Paragraph D of this Interim DIP Order; (ii) challenging the validity, extent, priority, perfection, enforceability, and non-avoidability of only the Pre-Petition Obligations of the Debtor owed to the DIP Lender; (iii) contesting the amount of the DIP Lender’s asserted claims on account of only the Pre-Petition Obligations; (iv) seeking to avoid or challenge (whether pursuant to chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtor to or for the benefit of any of the DIP Lender prior to the Petition Date; or (v) seeking damages or equitable relief against any of the DIP Lenders on account of only the Pre-Petition Obligations arising from or related to prepetition business and lending relationships of the DIP Lender with the Debtor, including, without limitation, equitable subordination, recharacterization, lender liability, and deepening insolvency claims and causes of action.

b. All parties in interest, including without limitation the Committee (if any), that fail to act in accordance with the time periods set forth in the preceding paragraph shall be, and hereby are, barred forever from commencing a Challenge Action and shall be bound by the waivers, stipulations, and terms set forth in this Order. Any Challenge Action filed shall prohibit application of this paragraph only to the extent of the specific matters set forth in such Challenge Action on the date of filing unless the Court orders otherwise. For the avoidance of doubt, if any

Challenge Action is timely filed and a non-appealable order is entered in favor of the plaintiff sustaining any such Challenge Action, the stipulations described in Paragraph D of this Order shall nonetheless remain binding and preclusive on any Committee and any other person or entity, except to the extent that such stipulations and admissions were raised (subject to Bankruptcy Rule 7015) in an adversary proceeding or contested matter prior to the expiration of the Challenge Period and sustained by the final, non-appealable order. Nothing in this Interim DIP Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee or any non-statutory committees appointed or formed in the Chapter 11 Case, standing or authority to pursue any claim or cause of action belonging to the Debtor or its bankruptcy estate, and all rights to object to such standing are expressly reserved.

c. The respective legal and equitable claims, counterclaims, defenses, and/or rights of setoff of the DIP Lender in response to any such Challenge Action are reserved, and the ability of a party to commence a Challenge Action shall in no event revive, renew, or reinstate any applicable statute of limitations which may have expired prior to the date of commencement of such a Challenge Action. Despite the commencement of a Challenge Action, the DIP Lender's Pre-Petition Obligations shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under Bankruptcy Code section 502(d), and not subject to subordination under Bankruptcy Code section 510 until such time as, and only to the extent that, a final and non-appealable judgment and order is entered sustaining such Challenge Action in favor of the plaintiffs therein. For the avoidance of doubt, notwithstanding anything to the contrary in this Interim DIP Order or the DIP Facility Loan Documents, the replacement liens and superpriority administrative expense claims granted to the DIP Lender pursuant to this Interim DIP Order shall be valid, enforceable, properly perfected, and unavoidable until such time as, and only

to the extent that, a final and non-appealable judgment and order is entered sustaining a Challenge Action in favor of the plaintiffs therein. Further, for the avoidance of doubt, all Post-Petition Obligations shall remain valid, enforceable, properly perfected and unavoidable, notwithstanding any pending or successful Challenge Action related to the Pre-Petition Obligations.

d. If a Challenge Action has not been filed during the Challenge Period or a timely-asserted Challenge Action is not successful, then without further order of Court, the claims, liens, and security interests of the DIP Lender on account of the Pre-Petition Obligations shall and shall be deemed to be allowed for all purposes in this Chapter 11 Case and shall not be subject to challenge by any party in interest, including, without limitation, as to extent, validity, amount, perfection, enforceability, priority, or otherwise.

9. Case Milestones. Debtor has agreed to, and is authorized to, timely satisfy each of the Milestones set forth and defined in Section 5.8 of the DIP Facility Loan Documents. The Debtor and the DIP Lender may agree to amend or otherwise modify such Milestones from time to time, in writing, without the need of any further notice, hearing, or order of this Bankruptcy Court (other than a notice of such amendment or modification to be filed with this Bankruptcy Court).

10. Right to Credit Bid. In connection with the sale or other disposition of all or any portion of the DIP Collateral or Pre-Petition Lender Collateral (to the extent applicable), pursuant to section 363(k) of the Bankruptcy Code, the DIP Lender shall have the right to use the Pre-Petition Obligations, the Post-Petition Obligations or any part thereof to credit bid with respect to any sale of all or any portion of the DIP Collateral or Pre-Petition Lender Collateral (to the extent applicable).

11. Waiver of Right to Return/Consent to Setoff. Without the prior written consent of the DIP Lender, the Debtor shall not agree or consent to any of the following: (i) the return of any DIP Collateral pursuant to section 546(h); (ii) any order permitting or allowing any claims pursuant to section 503(b)(9) of the Bankruptcy Code; or (iii) any setoff pursuant to section 553 of the Bankruptcy Code.

12. Indemnification. The Debtor shall indemnify and hold harmless the DIP Lender as set forth in and in accordance with the DIP Facility Loan Documents and the Pre-Petition Loan Documents (to the extent applicable), respectively.

13. No Marshaling. Subject to entry of the Final DIP Order, neither the DIP Lender nor any of the DIP Collateral shall be subject to the doctrine of marshaling.

14. DIP Facility Charges. All DIP Facility Charges must be promptly paid by the Debtor in accordance with this Interim DIP Order and the DIP Facility Loan Documents. To the extent the DIP Lender seeks to be reimbursed for any professional fees and/or expenses, the DIP Lender shall deliver a summary invoice (redacted for privilege) to counsel to the Debtor, the U.S. Trustee, and counsel to the Committee, if one is appointed, but without need for filing any application with the Bankruptcy Court for approval or payment thereof. Notwithstanding the foregoing, if (x) the Debtor, U.S. Trustee, or the Committee object to the reasonableness of a summary invoice submitted by the DIP Lender and (y) the parties cannot resolve such objection, in each case within fourteen (14) days following receipt of such summary invoice (the “DIP Lender Fee Objection Deadline”), the Debtor, the U.S. Trustee or the Committee, as the case may be, shall file with this Bankruptcy Court and serve on the DIP Lender a fee objection (a “DIP Lender Fee Objection”), which objection shall be limited to the issue of the reasonableness of such Lender’s professional fees. The Debtor shall promptly pay any submitted invoice after the expiration of the

DIP Lender Fee Objection Deadline if no Lender Fee Objection is filed with this Bankruptcy Court and served on the DIP Lender prior to the DIP Lender Fee Objection Deadline. If the DIP Lender Fee Objection is timely filed and served, the Debtor shall promptly pay the undisputed amount of the summary invoices, and this Bankruptcy Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the DIP Lender Fee Objection.

15. Modification of Stay. The automatic stay of Bankruptcy Code section 362 is hereby modified with respect to the DIP Lender to the extent necessary to effectuate the provisions of this Interim DIP Order, including, after the Termination Date, to permit the DIP Lender to exercise its rights contemplated by Paragraph 5 of this Interim DIP Order.

16. No Waiver. The DIP Lender shall not be deemed to have suspended or waived any of its rights or remedies under this Interim DIP Order, the DIP Facility Loan Documents, the Bankruptcy Code, or applicable non-bankruptcy law unless such suspension or waiver is hereafter made in writing and signed by a duly authorized officer of the DIP Lender and directed to the Debtor. No failure of the DIP Lender to require strict performance by the Debtor (or by any trustee) of any provision of this Interim DIP Order will waive, affect, or diminish any right of the DIP Lender thereafter to demand strict compliance and performance therewith, and delay on the part of the DIP Lender in the exercise of any right or remedy under this Order, the DIP Facility Loan Documents, the Bankruptcy Code, or applicable non-bankruptcy law will preclude the exercise of any right or remedy. Further, this Interim DIP Order does not constitute a waiver by the DIP Lender of any of its rights under the DIP Lender's Pre-Petition Loan Documents (to the extent applicable), the Bankruptcy Code, or applicable non-bankruptcy law.

17. Limits on Lender Liability. By taking any actions pursuant to this Interim DIP Order, making any loan under the DIP Facility Loan Documents, authorizing the use of Cash

Collateral, or exercising any rights or remedies available to it under the DIP Facility Loan Documents or this Interim DIP Order, the DIP Lender shall not: (i) be deemed to be in control of the operations of the Debtor (*e.g.*, a “controlling person” or “owner or operator”); (ii) be deemed to be acting as a “responsible person” with respect to the operation or management of the Debtor; (iii) otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law; or (iv) owe any fiduciary duty to the Debtor. Furthermore, nothing in this Interim DIP Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the prepetition or post-petition activities of the Debtor.

18. Amendments. The Debtor and the DIP Lender may enter into amendments or modifications of the DIP Facility Loan Documents or the Approved Budget without further notice and hearing or order of this Bankruptcy Court; provided, that (a) such modifications or amendments do not materially and adversely affect the rights of any creditor or other party in interest, and (b) notice of any such amendment or modification is filed with this Bankruptcy Court and provided to any Committee and to the U.S. Trustee.

19. Participations. As and to the extent set forth in Section 8.7 of the DIP Facility Loan Documents, the DIP Lender may at any time, without the consent of, but with notice to the Debtor, sell participations or otherwise assign to any Person (each a “Participant”) in all or a portion of such Lender’s rights and/or obligations under the DIP Facility Loan Documents (including all or a portion of the DIP Loan Commitment and/or the Loan). All obligations of the Debtor owed to Lender under Section 8.3, Section 8.4, and Section 8.10 of the DIP Facility Loan Documents shall likewise be owed by the Debtor to any Participant.

20. Proof of Claim. The DIP Lender shall not be required to file a proof of claim with respect to any of the Pre-Petition Obligations and the stipulations and findings set forth in this Interim DIP Order shall constitute an informal proof of claim in respect thereof.

21. Binding Effect. Except as provided in Paragraph 8 herein, this Interim DIP Order shall be binding on all parties in interest in this Chapter 11 Case and their respective successors and assigns, including any subsequently appointed trustee. If, in accordance with Bankruptcy Code section 364(e), this Interim DIP Order does not become a final, non-appealable order, or if any of the provisions of the Interim DIP Order are hereafter modified, amended, vacated, or stayed by subsequent order of this Bankruptcy Court or any other court, such subsequent order shall not affect the validity and enforceability of any Post-Petition Obligations, DIP Liens, any replacement liens granted to the DIP Lender hereunder, or the section 507(b) superpriority administrative expense claims provided by this Interim DIP Order, or any other claim, lien, security interest, or priority authorized or created hereby or pursuant to the DIP Facility Loan Documents, or adequate protection obligations described in this Interim DIP Order incurred, prior to the actual receipt by the DIP Lender of written notice of the effective date of such subsequent order.

22. Survival. The provisions of this Interim DIP Order, and any actions taken pursuant to or in reliance upon the terms hereof, shall survive entry of, and govern in the event of any conflict with, any order which may be entered in this Chapter 11 Case: (i) confirming any chapter 11 plan; (ii) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing the Chapter 11 Case; (iv) withdrawing the reference of the Chapter 11 Case from this Bankruptcy Court; or (v) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Case in this Bankruptcy Court. The terms and provisions of this Interim DIP Order, including, without limitation, the rights granted to the DIP Lender under Bankruptcy Code section

364(c), shall continue in full force and effect until all of the Post-Petition Obligations are paid in full.

23. Order Effective. This Interim DIP Order shall be effective as of the date of the signature by the Bankruptcy Court.

24. Objection Overruled. Any and all objection to the Motion and the entry of the Interim DIP Order, to the extent not otherwise resolved or withdrawn, hereby are overruled.

25. Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim DIP Order.

26. Notice of Final Hearing. The Final Hearing shall be on **January 14, 2025 at 9:00 a.m. E.S.T.** in the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Suite 200, Lexington, Kentucky 40507. Any objection to entry of the Final DIP Order shall be (a) filed in accordance with the Court's CM/ECF procedures or in writing with the Clerk of the Court, by 4:00 p.m. E.S.T. on the date that is seven (7) days prior to the date of the Final Hearing (as defined below) ("Objection Deadline"), and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the office of the United States Trustee; (ii) counsel to the DIP Lender; (iii) counsel to the Debtor; (iv) counsel to the Debtor's other secured lenders, and (v) counsel to any Committee then appointed in the case.

27. Marco's Coal. For purposes of this interim order, and subject to a final order, no liens or claims, whether in favor of the DIP Lender or as adequate protection, shall attach to the 11,000 tons of coal asserted by Marco to be located on the Debtor's premises as to which Marco International Corporation ("Marco") asserts ownership and bailment rights ("Marco's Coal") or the proceeds thereof, and for the avoidance of doubt, Marco's Coal or the proceeds thereof shall not be considered Collateral under the DIP Financing and shall be excluded from any liens and claims granted under this Order. The foregoing is without prejudice to the DIP Lender, the Debtor

and/or the Committee (to the extent applicable) to investigate, and challenge, the extent, validity, enforceability and priority of Marco's interests, rights and claims alleged herein, and all rights to conduct such an investigation, and assert such a challenge, by any interested party identified above are reserved and preserved; and is without prejudice to Marco and all Marco's rights and claims are reserved.

28. Issues Reserved for Final Hearing. Notwithstanding anything to the contrary in this Interim DIP Order, for the reasons set forth on the record at the hearing held on December 19, 2024, the Court makes no findings of facts or conclusions of law with respect to any issues relating to, and in extending loans and other financial accommodations to the Debtor pursuant to this Interim DIP Order, the DIP Lender is not entitled to the benefits of: (1) the DIP Lender's request for a lien on Avoidance Actions and commercial tort claims and the DIP Lender's request, pursuant to section 364(d)(1) of the Bankruptcy Code, for a first priority, senior priming lien on all DIP Collateral; (2) the Roll-Up; (3) the Interest Rate; (4) the Issuance Fee; (5) the Carve Out; (6) the Challenge Period; (7) the Committee Investigation Budget; (8) the Debtor's indemnification of the DIP Lender; (9) the Debtor's admissions, stipulations, and agreements set forth in Paragraph D. of the Interim DIP Order; (10) Section 7.1(p) of the DIP Facility Loan Documents regarding Claims Against Lender constituting an Event of Default; (11) Other Secured Parties' Adequate Protection Replacement Liens; (12) ACIN/Natural Resource Partners LP; (13) Marco's Coal; (14) The Liquidating Trust of INMET Mining, LLC; or (15) Blackjewel Liquidation Trust, LLC. All rights of all parties in interest with respect to the foregoing are reserved and preserved pending the Final Hearing.

TENDERED BY:

DINSMORE & SHOHL LLP

/s/ Ellen Arvin Kennedy
Ellen Arvin Kennedy, Esq. (KBA #88347)
Brandon E. Lira, Esq. (KBA #100654)
Dinsmore & Shohl LLP
100 West Main Street, Suite 900
Lexington, KY 40504
Tel.: (859) 425-1000
Fax: (859) 425-1099
E-mail: ellen.kennedy@dinsmore.com
brandon.lira@dinsmore.com

-and-

Matthew J. Stockl, Esq. (admitted *pro hac vice*)
Dinsmore & Shohl LLP
550 S. Hope Street, Suite 1765
Los Angeles, CA 90071
Tel.: (213) 335-7737
Fax: (213) 335-7740
E-mail: matthew.stockl@dinsmore.com

Proposed Counsel for Debtor and Debtor-in-Possession

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Gregory R. Schaaf
Bankruptcy Judge
Dated: Friday, December 20, 2024
(grs)