

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC 04 2014

ENTERED



Estate No. 11-1904501
Court No. B141088
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
MERCATOR MINERALS LTD.

ORDER MADE AFTER APPLICATION

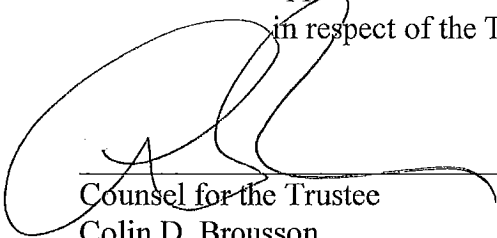
BEFORE REGISTRAR CAMERON) TUESDAY, THE 2ND DAY
)
) OF DECEMBER, 2014

THE APPLICATION of the Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of Creston Moly Corp. and Mercator Minerals Ltd. (in such dual capacities the “Trustee”) coming on for hearing at Vancouver, British Columbia, on this day; AND ON HEARING Colin D. Brousson, counsel for the Trustee; AND Vicki Tickle, counsel for Société Générale; AND UPON READING the material filed:


THIS COURT ORDERS AND DECLARES THAT:

1. The form of Engagement Letter (the “**Engagement Letter**”) between the Trustee and Deloitte Corporate Finance Inc. (the “**Deloitte CF**”) attached hereto as Schedule “A” is approved.
2. The Trustee is authorized and directed to engage Deloitte CF on the terms set out in the Engagement Letter.
3. During the term of the Engagement Letter, in addition to the terms set out therein, Deloitte CF shall:

- (a) provide, to the Inspectors of the Estate of Mercator Minerals Ltd. (the “**Inspectors**”) on a monthly basis, and upon other reasonable request of the Inspectors, reports on the status of the sales process, the work Deloitte CF has completed under the Engagement Letter and Deloitte CF fees as at the date of such report;
- (b) submit its accounts (in accordance with section 4. “Consideration for Services” of the Engagement Letter) for approval by the Inspectors and the Court which approval shall have been given before the Trustee pays any amount to Deloitte CF in respect of the Transaction Fee (as defined in the Engagement Letter).

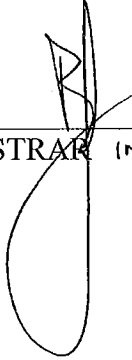


Counsel for the Trustee
Colin D. Brousson



Counsel for Société Générale
Vicki Tickle

BY THE COURT



REGISTRAR IN BANKRUPTCY

Schedule "A"

Deloitte

Deloitte Corporate Finance Inc.
2800 - 1055 Dunsmuir Street
4 Bentall Centre
P.O. Box 49279
Vancouver BC V7X 1P4
Canada

Tel: 604-669-4466
Fax: 604-602-1583
www.deloitte.ca

November 28, 2014

Private and Confidential

Deloitte Restructuring Inc.
2800 - 1055 Dunsmuir Street
4 Bentall Centre
Vancouver, BC V7X 1P4

Attention: Huey Lee, Senior Vice President

Subject: Creston Moly Corp., in bankruptcy

Dear Sir:

The purpose of this letter is to confirm the appointment of Deloitte Corporate Finance Inc. ("**Financial Advisor**" or "**Deloitte**") as financial advisor to Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of Mercator Minerals Ltd. and Creston Moly Corp. (the "**Trustee**"). The Financial Advisor will conduct a sales process to divest Creston Moly Corp. ("**Creston**"), a wholly-owned subsidiary of Mercator Minerals Ltd. ("**Mercator**"), via the sale of either:

- (a) Mercator's corporate shares in Creston; or
- (b) Creston's corporate shares in its directly and indirectly held wholly owned subsidiaries, namely Creston Mining Corporation, Tenajon Resources Corp. and Exploraciones Global SA de CV; or
- (c) The assets of Creston's subsidiaries, namely the El Creston deposit located in Sonora, Mexico; the Ajax deposit located in British Columbia, Canada; and the Molybrook deposit located in Newfoundland, Canada.

Such sale may occur on a solicited or unsolicited basis, or by way of an amalgamation, arrangement, merger or other business combination transaction involving Creston and a third party to effect any such sale or disposition by Creston (individually or collectively, a "**Transaction**"). This letter of engagement is subject to Court approval.

This letter confirms our mutual understanding and agreement regarding the terms and scope of our engagement to render financial advisory services to the Trustee in connection with a Transaction. This letter agreement constitutes the entire agreement of the parties pertaining to a Transaction and supersedes all prior communications, understandings and agreements relating to the subject matter hereof.

1. Appointment and Engagement

By its acceptance of this letter, the Trustee hereby appoints Financial Advisor, and we agree to act, as financial advisor to the Trustee in respect of the Transaction.

This engagement of Financial Advisor shall be for a period of six months (the "Initial Term") and commences on the date hereof unless extended by the mutual agreement of the Trustee and Financial Advisor, or unless earlier terminated by Financial Advisor or the Trustee, upon giving 30 days' written notice to that effect to the other party.

2. Services to be Rendered by Financial Advisor

Financial Advisor shall perform such advisory services of a strategic and financial nature as are required by and/or reasonably requested by the Trustee including the following:

- (a) Review and analyze public and confidential financial and technical information, management prepared and third party studies and forecasts relating to Creston;
- (b) Undertake the necessary activities to prepare Creston for marketing and prepare a list of prospective buyers;
- (c) In consultation with the Trustee, assist in preparing a marketing document and engage with prospective buyers in a dialogue to solicit feedback and determine level of interest in consummating a Transaction;
- (d) Assist in all negotiations in respect of any Transaction including the provision of advice as to the form, structure, terms and price of a Transaction with a view to maximizing value for the bankruptcy estate of Mercator Minerals Ltd. and Creston Moly Corp. (the "Estates");
- (e) Assist in the preparation of materials pertaining to a Transaction;
- (f) In the event of alternative proposals, assist in the detailed assessment of such proposals, the financial qualifications of potential purchasers and, if applicable, the negotiation of alternative transactions to the Transaction;
- (g) Assist in due diligence matters, along with the Trustee and its other advisors; and
- (h) Generally assist in the execution of an overall process that seeks to maximize realizations for the Estates.

The engagement of Financial Advisor to perform any additional services in respect of the Transactions and not otherwise covered by the terms of this letter shall be set forth in, and subject to the terms and conditions of, a separate or amending letter agreement and the fees for such services, including but not limited to detailed assessment of tax structuring related items, will be negotiated separately and in good faith.

3. Disclosure of our Advice and this Engagement

The Trustee acknowledges that all oral or written opinions, advice and materials provided by Financial Advisor to the Trustee in connection with Financial Advisor's engagement hereunder are intended solely for the benefit and internal use of the Trustee and the Trustee agrees that no such opinion, advice or material shall be used for any other purpose or publicly reproduced, disseminated, quoted from or referred to at any time, in any manner or for any purpose, nor shall any public references to Financial Advisor or this engagement be made by the Trustee (or such persons), without our prior written consent in each specific instance; provided, however, that the foregoing shall not prevent the Trustee from making such disclosure which, in the judgment of the Trustee, is required under applicable securities laws or the *Bankruptcy and Insolvency Act, Canada* ("BIA") or policy statements or stock exchange rules and provided in any event to the extent permitted thereunder that Financial Advisor is given a reasonable opportunity to review and comment thereon prior to any such disclosure being made.

Notwithstanding the foregoing, Financial Advisor consents to the disclosure of the terms of engagement of Financial Advisor and the services provided by Financial Advisor under this letter agreement in any take-over bid circular, directors' circular, management proxy circular or other disclosure document (each a "Disclosure Document") prepared by the Trustee or any other parties to the Transaction and mailed to shareholders of the Mercator Minerals Ltd. or the shareholders of any other parties to the Transaction from time to time in connection with a Transaction. Financial Advisor also understands that it will be necessary to share some opinions, advice and materials provided by Financial Advisor to the Trustee with the Inspectors of the Mercator bankruptcy estate. Financial Advisor also understands that the Disclosure Document may be filed with securities regulatory authorities. Financial Advisor expressly disclaims any liability or responsibility for the form or content of any directors' circular or similar disclosure document prepared by the Trustee or any other parties to the Transaction and mailed to Mercator's shareholders or the shareholders of any other parties to the Transaction in connection with any Transaction, other than disclosure of the terms of engagement of Financial Advisor and the services provided by Financial Advisor under this engagement letter that may be required by law, and any advice given by Financial Advisor, and such disclosure shall have been approved by Financial Advisor, acting reasonably. Financial Advisor expressly disclaims any liability or responsibility to the Trustee or any other party by reason of any unauthorized use, publication or distribution of the advice or opinions provided by Financial Advisor in connection with any Transaction.

4. Consideration for Services

Notwithstanding anything else contained herein, for our services hereunder, the Trustee agrees to pay or issue to Financial Advisor from proceeds of the Estate, the following:

- a) Accrued fees calculated on an hourly basis will be due and payable on closing of a Transaction (the "Transaction Fee") using the below billing rates and classifications.

Deloitte's fees will be based on the amount of professional time required using our standard hourly billing rates inclusive of a risk premium customary to this type of engagement, which vary depending upon the experience level of the professionals involved as follows:

Managing Director / Partner:	\$1,075/hr
Executive Director:	\$ 850/hr
Vice-President:	\$ 675/hr
Associate:	\$ 475/hr
Analyst:	\$ 350/hr

It is hereby agreed that the minimum Transaction Fee payable shall be the lower of: a) \$250,000; and b) the Transaction Value (as defined below).

Engagement team

This engagement will be under the direction of Jeremy South, who will maintain overall responsibility for the engagement on behalf of Financial Advisor. Kevin Becker will coordinate daily management of the engagement. The engagement team will include the following personnel:

Name	Function	Title
Kevin Becker	Project Lead	Executive Director
Jeremy South	Project Oversight	Managing Director / Partner
Cecilia Zhao	Execution Support	Vice-President
Chelsea Jiang	Execution Support	Analyst

Other professionals who will be identified during the course of the engagement may also be included to provide technical support. Circumstances may occur that could result in changes to our anticipated staffing for this engagement. Deloitte will, however, use its best efforts to ensure that the members of the engagement team are not changed without prior consultation.

Deloitte will provide to the Trustee a monthly statement summary of accrued hourly billings. The first statement will be provided one month following execution of this engagement letter.

- b) In the event that a Transaction is not completed during the Initial Term (subject to extension by the mutual agreement), and the Trustee enters into an agreement in respect of one or more Transactions or to complete one or more Transactions within six months of the termination of this engagement, then the Trustee shall pay Financial Advisor the Transaction Fee, payable upon closing of such Transaction; and
- c) In the event that Financial Advisor is requested to perform additional services in addition to those described in this agreement, Financial Advisor shall receive additional fees, as may be agreed between Financial Advisor and the Trustee.

For these purposes, the "Transaction Value" shall be the aggregate value of the total consideration (in cash, securities, assumption of debt or other property or interest) paid, payable, committed to, received by, issued to or transferred to the Trustee and/or Mercator's or its subsidiaries' security holders that can reasonably be considered to be payment for a Transaction. For the purposes of calculating the "Transaction Value", any non-cash consideration will be assessed, where specified, as valued in any Disclosure Document, and otherwise, at its estimated fair market value at the time of the closing of the Transaction with the value of publicly traded securities being determined by reference to the ten day weighted average trading price immediately subsequent to the closing of the Transaction.

The Trustee will reimburse Financial Advisor for all reasonable out-of-pocket expenses incurred by Financial Advisor in performing this agreement, including (but not limited to) travel and communication expenses, courier charges and reasonable fees and disbursements of any other consultants engaged by Financial Advisor with the prior consent of the Trustee. Financial Advisor shall obtain the prior approval of the Trustee to any single expenditure in excess of CDN\$2,000. Such reimbursable expenses will be payable on the closing of a Transaction, upon receipt by the Trustee of Financial Advisor's invoices.

5. Confidentiality

We and each of our directors, officers, employees and agents will keep strictly confidential and will use only for the purpose of performing our obligations hereunder all information, whether written or oral, acquired from the Trustee and Mercator's subsidiaries and their respective agents and advisors in connection with our work hereunder except information that was made available to the public prior to our engagement or that thereafter becomes available to the public other than through a breach by us of our obligations hereunder or was known to us prior to our engagement and except to the extent that we are required by Law or in connection with legal process or regulatory proceedings to disclose such information. If we are so required to disclose any such information, we will provide the Trustee with advance written notice of such requirement so that the Trustee may seek an appropriate protective order. For purposes of this agreement, "Law" means any rule, regulation, stock exchange rule, subpoena, court order or any other similar judicial, legal or regulatory process or examination.

6. Information

The Trustee will ensure that Financial Advisor is provided, on a timely basis, with all information (financial or otherwise), data, opinions, appraisals, valuations, documentation or other information and materials of whatsoever nature or kind concerning Creston and any Transaction which might reasonably be considered by the Trustee to be material to this engagement or which Financial Advisor may reasonably request in the performance of its services, including reasonable access to the officers, directors, employees, independent auditors and other advisors and consultants of the Trustee.

To the extent that any Transaction involves any non-cash consideration, the Trustee will also ensure that Financial Advisor is provided, on a timely basis, with all information (financial or otherwise), data, opinions, appraisals, valuations, documentation or other information and materials of whatsoever nature or kind concerning the party offering such non-cash consideration and its subsidiaries to the extent such information is available or made available to the Trustee and legally permitted to be provided to Financial Advisor, as Financial Advisor might reasonably be considered material to this engagement or which Financial Advisor may reasonably request in the performance of its services.

The Trustee acknowledges and agrees that Financial Advisor shall be relying upon the accuracy and completeness of the information and documentation furnished to it pursuant to the preceding paragraphs and, subject to the exercise of its professional judgment, shall be under no obligation to verify independently the accuracy and completeness of such information and documentation or to investigate whether any changes have occurred to the facts set out or referred to in such information or documentation subsequent to the date thereof (but shall consider the impact of any such changes of which it is aware or that are brought to its attention).

7. Advertisements

Once the Transaction is consummated, the Trustee agrees that Financial Advisor has the right to place advertisements in financial and other newspapers and journals, at its own expense, describing its services to the Trustee hereunder; provided that Financial Advisor shall submit a copy of any such proposed advertisements to the Trustee for its approval, such approval not to be unreasonably withheld.

8. Survival of Terms

Sections 3, 4 and 5 of this letter agreement and the Indemnity shall survive the completion of our engagement hereunder.

9. Notices

Any notice or other communication required or permitted to be given under this letter agreement shall be in writing and shall be sufficiently given or made by delivery or by telecopy or similar facsimile transmission (receipt confirmed) to the respective parties as follows:

If to the Trustee:

Deloitte Restructuring Inc.

Attention: Mr. Paul Chambers
Senior Manager
1055 Dunsmuir St, Suite 2800
Vancouver BC V7X 1P4
Email: pachambers@deloitte.ca

If to Financial Advisor:

Deloitte Corporate Finance Inc.

Attention: Mr. Kevin S. Becker
Executive Director
1055 Dunsmuir St, Suite 2800
Vancouver BC V7X 1P4
Email: kebecker@deloitte.ca

Any notice so given shall be deemed conclusively to have been given and received when so personally delivered or so telecopied or transmitted. Any party may change its address by notice to the others in the manner set out above.

10. No Partnership

The Trustee acknowledges that it has retained Financial Advisor solely to provide the services set forth in this letter. In rendering such services, Financial Advisor will act as an independent contractor, and Financial Advisor owes its duties arising out of this engagement solely to the Trustee and to no other person. The Trustee acknowledges that nothing in this letter is intended to create duties beyond those expressly provided for in this letter, and Financial Advisor and the Trustee specifically disclaim the creation of any partnership, joint venture, fiduciary, agency or non-contractual relationship between, or the imposition of any partnership, joint venture, fiduciary, agency or non-contractual duties on, either party.

11. General Business Terms

The attached General Business Terms form part of our mutual agreement concerning this engagement. By signing this agreement the parties agree to be bound by these General Business Terms. In the event of a conflict between this letter and the General Business Terms, the letter shall take precedence with respect to that term.

12. Governing Law

The agreement resulting from the acceptance of this engagement letter shall be governed by and construed in accordance with the laws of the Province of British Columbia and the parties hereto attorn to the exclusive jurisdiction of the superior courts of the Province of British Columbia.

If the foregoing is in accordance with your understanding, please indicate your agreement to the above terms and conditions by signing the enclosed duplicate copy of this letter and returning it to us.
Yours truly,

Jeremy South, Managing Director
Deloitte Corporate Finance Inc.

Agreed and accepted by:

DELOITTE RESTRUCTURING INC.
in its capacity as trustee in bankruptcy of
Mercator Minerals Ltd. and Creston Moly Corp.
and not in its personal capacity

Signature of authorized signing officer

Name

Title

Date

General business terms

The following general business terms (the "Terms") apply to the engagement letter between Deloitte Corporate Finance Inc. and Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of Mercator Minerals Ltd. and Creston Moly Corp. and not in its personal capacity (the "Trustee") except as expressly set forth in the engagement letter to which these Terms are attached (the "Engagement Letter" or engagement letter").

1. Contracting parties

- a) **Definitions:** "Deloitte" or "Deloitte Canada" shall mean the Canadian corporation Deloitte Corporate Finance Inc. "Deloitte Entities" shall mean Deloitte Canada and where appropriate its directors, officers, partners, principals, professional corporations, employees, agents, subsidiaries and affiliates and to the extent providing services under the engagement letter, the member firms of Deloitte Touche Tohmatsu Limited, the subsidiaries and affiliates of such member firms, and all of their respective directors, officers, partners, principals, professional corporations, employees, agents; and in all cases any successor or assignee.
- b) This engagement letter is between the Trustee and Deloitte Canada. The Trustee agrees that its relationship is solely with Deloitte Canada as the entity contracting with the Trustee to provide the services covered by this engagement letter. Notwithstanding the fact that certain services covered by this engagement letter may be carried out by personnel provided to Deloitte Canada from other Deloitte Entities through service or other agreements, Deloitte Canada remains solely responsible and liable to the Trustee for all services covered by the engagement letter. Accordingly, the Trustee agrees that none of the Deloitte Entities (except Deloitte Canada) will have any liability to the Trustee, and the Trustee will not bring any claims or proceedings of any nature (whether in contract, tort, breach of statutory duty, or otherwise and including, but not limited to, a claim of negligence) in any way in respect of or in connection with this engagement against any of the Deloitte Entities (except Deloitte Canada) or against any subcontractors that Deloitte Canada may use to provide the services covered by this engagement letter.
- c) To the extent that Deloitte Entities (other than Deloitte Canada) are providing services to Deloitte Canada in connection with this engagement as subcontractors to Deloitte Canada, then the term "Deloitte" should read as "Deloitte Entities" for purposes of these Terms.

2. Services

- a) It is understood and agreed that the services to be provided under the Engagement Letter (the "Services") may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and be made by, the Trustee. In connection with the Services, Deloitte shall be entitled to rely on all decisions and approvals of the Trustee.

- b) The Services conducted by Deloitte cannot be relied upon to disclose errors or fraud should they exist. The Services will not constitute an audit conducted in accordance with generally accepted auditing standards, an examination or compilation of, or the performance of agreed upon procedures with respect to prospective financial information, an examination of or any other form of assurance with respect to internal controls, or other attestation or review services in accordance with standards or rules established by the CICA or other regulatory body. Deloitte will not express an opinion or any other form of assurance on any operating or internal controls, financial statements, forecasts, projections or other financial information.
- c) Neither the Services or any advice or reports in connection therewith are intended to be, nor shall be construed to be, "investment advice" within the meaning of the US Investment Advisors Act of 1940. In the performance of the Services, Deloitte will not perform any evaluation of internal controls and procedures for financial reporting upon which the Trustee and/or Mercator and its subsidiaries can base its assertion in connection with the US Sarbanes-Oxley Act of 2002 or related rules or regulations ("Sarbanes-Oxley"). Deloitte will make no representations or warranties and will provide no assurances that Mercator's and its subsidiaries' disclosure controls and procedures are compliant with the certification requirements of and internal controls and procedures for financial reporting are effective as required by Sarbanes-Oxley or any other standards or rules, including, without limitation, Sections 302 and 404 of Sarbanes-Oxley. The Services will be conducted in accordance with these Terms and, to the extent performed by the subsidiaries of Deloitte & Touche USA LLP, in accordance with the *Statement of Standards for Consulting Services* established by the American Institute of Certified Public Accountants.

3. Term

Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of the Services. Either party may terminate this engagement at any time upon giving at least thirty (30) days written notice, unless otherwise stated in the above portion of the Engagement Letter, to that effect to the other party, provided that in the event of termination for cause, the breaching party shall have the right to cure the breach within the notice period. In the event of termination pursuant to this paragraph, the Trustee agrees to compensate Deloitte Canada under the terms of the Engagement Letter for Services performed and expenses incurred through the effective date of termination.

4. Timely performance

Deloitte will endeavour to complete within any agreed upon time-frame the performance of the Services. However, Deloitte will not be liable for failures or delays in performance that arise from causes beyond Deloitte's control, including the untimely performance by the Trustee of its obligations as set out in the engagement letter and in these Terms.

5. Fees and payment

- a) All fees and other charges do not include any applicable federal, provincial or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes or duties shall be assumed and paid by the Trustee without deduction from the fees and charges hereunder.
- b) To the extent that, as part of the Services to be performed by Deloitte Canada as described in the engagement letter, Deloitte Canada personnel are required to perform the services in the United States of America ("US Business"), the Trustee and Deloitte Canada agree to assign performance of the US Business to Deloitte Canada LLP, an affiliate of Deloitte Canada. All services

performed by Deloitte Canada LLP shall be performed under the direction of Deloitte Canada which shall remain responsible to the Trustee for such Services. Deloitte Canada LLP shall invoice the Trustee with respect to the US Business and Deloitte Canada will invoice for services performed in Canada ("Canadian Business"). Payment for US business and/or Canadian Business can be settled with one payment to Deloitte Canada.

6. Independence

- a) Deloitte Canada may terminate this engagement upon written notice to the Trustee if it determines that (i) a governmental, regulatory or professional entity (including, without limitation, provincial accounting institutes, Canadian and foreign securities commissions, the Canadian Public Accountability Board and the Public Company Accounting Oversight Board) or an entity having the force of law has introduced a new, or modified an existing, law, rule, regulation, interpretation or decision the result of which would render the performance by Deloitte of any part of the engagement illegal or otherwise unlawful or in conflict with independence or professional rules, or (ii) circumstances change (including, without limitation, changes in ownership of Mercator or any of its affiliates) such that the performance by Deloitte of any part of the engagement would be illegal or otherwise unlawful or in conflict with independence or professional rules. Upon termination of the engagement, the Trustee will compensate Deloitte Canada under the terms of the Engagement Letter for the expenses incurred through the effective date of termination. For greater certainty, in the event that Deloitte Canada terminates this engagement pursuant to this section 6(a), the Transaction Fee shall not be payable under any circumstances including under section 4(a) of the Engagement letter.
- b) The Trustee shall provide Deloitte Canada with prompt written notice if Mercator or any of its subsidiaries or affiliates engages Deloitte Canada, a member firm of Deloitte Touche Tohmatsu Limited or any affiliate of such a member firm to provide audit related services.

7. Conflict of interest

- a) **Notification and resolution.** Should Deloitte Canada determine that there is a potential conflict of interest in connection with its performance of the Services, Deloitte Canada will advise the Trustee promptly and endeavour to resolve such potential conflict. Also, the Trustee agrees to notify Deloitte Canada promptly of any potential conflict affecting this engagement of which it is, or becomes aware. Where a potential conflict is identified by either party and Deloitte Canada believes the Trustee's interests can be properly safeguarded by the implementation of appropriate procedures, Deloitte Canada will discuss and agree such procedures with the Trustee.
- b) In the event that Deloitte Canada, an affiliate of Deloitte Canada or a member firm of Deloitte Touche Tohmatsu Limited or any of their respective affiliates acts for any other party, (i) Deloitte will not disclose any Confidential Information (defined below) that the Trustee provides to Deloitte in connection with this engagement and will not use such Confidential Information for another party's benefit, and (ii) Deloitte will establish appropriate ethical walls between the persons involved in advising the Trustee under this engagement and the persons involved in advising another party.

8. Trustee responsibilities

- a) **Cooperation.** The Trustee shall cooperate with Deloitte in the performance of the Services, including, without limitation, providing Deloitte with reasonable facilities and timely access to data, information and personnel of the Trustee. The Trustee shall be responsible for the

performance of its personnel and agents and for the accuracy and completeness of all data and information provided to Deloitte for purposes of the performance by Deloitte of the Services hereunder.

- b) **Management.** The Trustee shall be solely responsible for, among other things: (i) making all decisions and performing all functions in respect of its statutory duties in administering the Estates under the BIA; (ii) designating a competent management member to oversee the Services; (iii) evaluating the adequacy and results of the Services; (iv) accepting responsibility for the results of the Services; and (v) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

9. Information

- a) **Access and reliance.** The Trustee will make available to Deloitte all information (financial or otherwise) reasonably necessary to enable Deloitte to provide the Services. The Trustee will also provide Deloitte with any information, advice and opinions relevant to the engagement that may be delivered by third parties, such as legal counsel (except where necessary to preserve privilege) and accounting, financial, environmental or other advisors, and will ensure that such third parties co-operate with Deloitte on matters considered by Deloitte to be relevant to the engagement. In carrying out its Services, Deloitte will rely on information that is publicly available, prepared or supplied by the Trustee or provided to Deloitte by third parties. Deloitte will be entitled to rely on, and is under no obligation to verify, the accuracy or completeness of such information and Deloitte has no responsibility for the accuracy or completeness of the information provided by, or on behalf of, Trustee or other parties. This engagement cannot be relied upon to disclose errors or fraud should they exist. Further, Deloitte is under no obligation to investigate any changes that may occur in such information subsequent to the date thereof.
- b) **Confidentiality.** To the extent that, in connection with this engagement, Deloitte come into possession of any proprietary or confidential information of Trustee, Mercator, Creston or its subsidiaries ("Confidential Information") (including Personal Information as defined in section 12(b) below), Deloitte will not disclose such information to any third party, other than the Deloitte Entities, without the Trustee's consent, except as may be required or permitted by law, regulation, judicial or administrative process, or in accordance with applicable professional standards, or in connection with litigation pertaining thereto. "Confidential Information" shall not include information which:
- i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by Deloitte in breach hereof;
 - ii) is disclosed by the Trustee to a third party without substantially the same restrictions as set forth herein;
 - iii) becomes available to Deloitte on a non-confidential basis from a source other than the Trustee which Deloitte believes is not prohibited from disclosing such information to Deloitte by obligation to the Trustee;
 - iv) is known by Deloitte prior to its receipt from the Trustee without any obligation of confidentiality with respect thereto; or
 - v) is developed by Deloitte independently of any disclosures made by the Trustee to Deloitte of such information.
- c) **Prospective financial information.** Unless Deloitte Canada and the Trustee agree otherwise in the Engagement Letter, Deloitte will not compile, examine or apply other procedures to prospective financial information of Mercator, Creston or its subsidiaries or other parties in

accordance with Canadian Institute of Chartered Accountants Standards and accordingly, will express no opinion or any other form of assurance or representations concerning its accuracy, completeness or presentation format. Any financial forecasts or projections belong to Mercator, Creston or its subsidiaries or other parties and are the sole responsibility of such management. There will usually be differences between projected and actual results, because events and circumstances frequently do not occur as expected or predicted, and those differences may be material.

- d) Deloitte will not return or provide records or information obtained in the course of the engagement to the Trustee if it is illegal to do so or if Deloitte is required to withhold the records or information by law enforcement or other public regulatory authorities (regardless of whether the engagement has been terminated).

10. Reporting

- a) **Qualifications to advice, opinions, and reports.** Any advice, opinions, or reports provided by Deloitte will be made subject to, and will be based upon, such assumptions, limitations, qualifications and reservations as Deloitte, in its judgment, deems necessary or prudent in the circumstances, including without limitation: (i) the time available to perform the Services, (ii) the information, data, opinions, advice and representations made available to Deloitte, and (iii) access to the Trustee's management, advisors and agents.
- b) **Amendments to reports.** Deloitte reserves the right to amend its advice, opinions, and reports accordingly, in the event that new information becomes available which may be contrary to or different from that which is set out to the Trustee in documents or verbal reports. Notwithstanding the foregoing, Deloitte has no responsibility for performing any services or procedures beyond those agreed to by Trustee and Deloitte Canada or for updating the Services performed.
- c) **Limitation on use and distribution.** Except as otherwise agreed in writing, all services in connection with this engagement shall be solely for the Trustee's internal purposes and use, and this engagement does not create privity between Deloitte and any person or party other than the Company ("third party"). This engagement is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports, or Services of Deloitte. The Company further agrees that the advice, opinions, reports or other materials prepared or provided by Deloitte are to be used only for the purpose contemplated by the Engagement Letter and shall not be distributed to any third party, except to the extent required under applicable securities laws or the BIA, without the prior written consent of Deloitte Canada.
- d) **Ownership.** Deloitte shall retain all right, title and interest in the reports, opinions and other documents provided by Deloitte to the Company and the Company shall be entitled to use such material in accordance with section 10(c).

11. Indemnification and limitation on liability

- a) **Application.** The provisions of this Section 11 shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise. This Section shall survive termination or expiry of the engagement. The provisions of this Section are not applicable to the extent that mandatory provisions of applicable regulatory bodies prohibit a professional financial advisor from limiting liability.

- b) **Limitation on liability.** The Trustee and Deloitte Canada agree to the following with respect to Deloitte's liability to the Trustee:
- i) Deloitte shall not be liable to the Trustee for any claims, liabilities, or expenses relating to this engagement for an aggregate amount in excess of the fees paid by the Trustee to Deloitte Canada pursuant to this engagement, except to the extent finally judicially determined to have resulted from the Gross Negligence (defined herein), bad faith or intentional misconduct of Deloitte. For the purposes of this agreement, "gross negligence" shall mean: any act performed in connection with providing the Services that is (a) a substantially marked and flagrant departure from the duty to abide by the rules of conduct normally applicable to the provision of such Services under the circumstances in which such Services are provided or (b) intended to inflict, or which is in reckless disregard of, or wanton indifference to harmful consequences which Deloitte knew or should have known could result from such act provided however that "gross negligence" does not include mere ordinary fault, any error of judgment or mistake made by Deloitte or any partner, director, officer, employee or agent of Deloitte in good faith in connection with providing the Services for the purposes of this engagement and is more than just neglect or ordinary care towards others or just inadvertence.
 - ii) In no event shall Deloitte be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this engagement or any loss of revenue or profit or any other commercial or economic loss or failure to realize expected savings.
 - iii) In any action, claim, loss or damage arising out of the engagement, the Trustee agrees that Deloitte's liability will be several and not joint and several, and the Trustee may only claim payment from Deloitte of Deloitte's proportionate share of the total liability based on the degree of fault of Deloitte as finally determined by a court of competent jurisdiction.
- c) **Limitation on actions.** No action, regardless of form, relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except for an action for non-payment of fees.

12. Other

- a) **Regulatory or legal action.** The Trustee will notify Deloitte Canada promptly of any request received by the Trustee from any third party, including a regulatory authority, for any material information or for a meeting or hearing; the issuance of any restraining order; or the initiation of a proceeding or litigation relating to this engagement.

Subject to any professional issues including audit independence, if requested and if the parties agree, Deloitte will testify (as a non expert witness) or provide reasonable support services to the Trustee before any governmental commission, regulatory authority or court. Any such testimony or support services will be confined to the services performed under this engagement. Deloitte shall have the right to employ counsel in connection with such testimony or support services.

Deloitte shall be paid for any time spent by its personnel in connection with such support at their standard hourly rates, which shall be separate and apart from any other professional fees payable hereunder. The Trustee shall also reimburse Deloitte for its reasonable out-of-pocket costs, charges and expenses, including legal counsel, incurred in connection therewith. These fees and expenses shall be separate and in addition to any other fees or amounts payable under the provisions for payment of fees in the engagement letter.

- b) **Privacy.** Deloitte and the Trustee acknowledge and agree that, during the course of this engagement, Deloitte may collect personal information about identifiable individuals ("Personal Information"), either from the Trustee or from third parties. The Trustee and Deloitte Canada agree that Deloitte will collect, use and disclose Personal Information on behalf of the Trustee solely for purposes related to completing this engagement, providing services to the Trustee and in a manner consistent with section 9(c) above. Deloitte shall not collect, use and disclose such Personal Information for Deloitte's own behalf or for its own purposes.
- c) **Survival and interpretation.** The agreements and undertakings of the Trustee contained in the Engagement Letter together with the following sections of these Terms shall survive the expiration or termination of this engagement: 1, 2, 4, 5, 6, 8, 9, 10, 11 and 12.
- d) **Governing law.** These Terms, the Engagement Letter and all matters relating to this engagement (whether in contract, statute, tort (such as negligence), or otherwise), shall be governed by, and construed in accordance with, the laws of the Province of British Columbia. Any action or proceeding relating to this engagement shall be brought in the Province of British Columbia, and the parties submit to the jurisdiction of the courts of that Province and waive any defence of inconvenient forum to the maintenance of such action or proceeding.
- e) **Severability.** If any provision of the Terms or the Engagement Letter is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.
- f) **Entire agreement.** These Terms and the Engagement Letter is the complete agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether oral or written.
- g) **Assignment.** Except as provided below, neither party may assign, transfer or delegate any of its rights or obligations hereunder (including, without limitation, interests or Claims relating to this engagement) without the prior written consent of the other party. Trustee hereby consents to Deloitte Canada assigning or subcontracting any portion of the Services to any affiliate or related entity, whether located within or outside of Canada, provided that, any such assignment or subcontracting shall not relieve Deloitte Canada of its obligations hereunder. Services performed hereunder by Deloitte Canada's subcontractors shall be invoiced as professional fees on the same basis as Services performed by Deloitte Canada's personnel, unless otherwise agreed. Deloitte Canada may, without the consent of the Trustee, assign or subcontract its rights and obligations hereunder to (i) any affiliate or related entity or (ii) any entity which acquires all or a substantial part of the assets or business of Deloitte Canada.
- h) **Currency.** All financial references herein are to Canadian dollars unless specifically indicated otherwise. If it is necessary to convert any amounts into Canadian dollars, a prevailing commercial bank exchange rate at closing or the time of the invoice shall be used.
- i) **Notices.** Any notice or other communication required or permitted to be given under this engagement shall be in writing and shall be sufficiently given or made by delivery or by post or by telecopy or similar facsimile transmission (with confirmation of accurate and complete transmission obtained by the sender) to the respective parties. Any notice so given shall be deemed conclusively to have been given and received when so personally delivered or posted or so telecopied or transmitted, except that any notice delivered after 5:00 p.m. on the day prior to a

non-business day shall be deemed to have been received at 9:00 a.m. on the first business day following delivery. Any party may change its address, telephone number or facsimile number by notice to the others in the manner set out above.

- j) **Communication.** Except as instructed otherwise in writing, each party may assume that the other approves of properly addressed fax, email (including email exchanged via Internet media) and voicemail communication of both sensitive and non-sensitive documents and other communications concerning this engagement, as well as other means of communication used or accepted by the other.
- k) **Language.** The parties have requested that this Agreement and all communications and documents relating hereto be expressed in the English language. Les parties ont exigé que la présente convention ainsi que tous les documents s'y rattachant soient rédigés dans la langue anglaise.
- l) **Quality of Service.** If, at any time, you believe our service to you could be improved or if you are dissatisfied with any aspect of our services you should raise the matter with the engagement partner. Alternatively, if you wish to discuss the matter with someone other than the engagement partner, or make a complaint, please email nfeethics@deloitte.ca or call 1 (888) 683-2020 and ask for the National Ethics Leader. We will acknowledge the complaint upon receipt and every effort will be made to investigate expeditiously.

DRAFT

Estate No. 11-1904501
Court No. B141088
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
MERCATOR MINERALS CORP.

ORDER MADE AFTER APPLICATION

GOWLING LAFLEUR HENDERSON LLP
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