

Clerk's Stamp

COURT FILE NUMBER **2301-08292**

COURT COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC
1985, c C-36, as amended

AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF
INDEPENDENT ENERGY CORP.

DOCUMENT **TRANSACTION APPROVAL AND
REVERSE VESTING ORDER**

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File Number: 321102.00017

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice M. Hollins

UPON THE APPLICATION of Independent Energy Corp. (the “**Company**”) for an order, *inter alia*, approving the transactions (the “**Transactions**”) contemplated by the subscription agreement between 2580597 Alberta Ltd.(the “**Purchaser**”), and the Company (the “**Agreement**”), a copy of which is attached as Exhibit “E” to the Affidavit of Mathew Trickey, sworn February 21, 2024 (the “**Trickey Affidavit**”); **AND UPON HAVING READ** the Notice of Application, the Trickey Affidavit, the prior Affidavits sworn in these proceedings, the Fifth Report of the Monitor, filed, the Brief of Law of the Company and the Affidavit of Service of Kim Picard sworn on February

28, 2024; **AND UPON HEARING** from counsel for the Company, the Purchaser, the Monitor, and such other parties present at the hearing of this Application;

IT IS HEREBY ORDERED THAT:

SERVICE

1. Service of the notice of this Application for this Order and supporting materials is hereby declared to be good and sufficient. No other person is required to have been served with notice of this Application and the time for service of this Application is abridged to that actually given, such that this Application is properly returnable today.

CAPITALIZED TERMS

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in the Agreement.

APPROVAL OF THE TRANSACTIONS

3. The Agreement and the Transactions are hereby approved, and the execution of the Agreement by the Company is hereby authorized and approved, with such amendments as the Company and the Purchaser may agree to. The Company is hereby authorized and directed to complete the Transactions subject to the terms of the Agreement, to perform its obligations under the Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions. In the event of any conflict between the terms of the Agreement and this Order, this Order shall prevail.
4. Subject to the terms of the Agreement, this Order shall constitute the only authorization required in respect of the Company proceeding with and completing the Transactions.

REORGANIZATION AND ISSUANCE OF SHARES OF THE COMPANY

5. On the Closing Date, the Company is hereby authorized and directed to complete the Transactions, including the Reorganization and issuance of the Purchased Shares to the Purchaser in consideration for the Purchase Price.

6. The Purchased Shares shall be issued by the Company to the Purchaser free and clear of and from any Losses or Encumbrances.
7. The Purchaser and the Company, in completing the Transactions, are authorized to:
 - (a) execute and deliver any documents and assurances governing or giving effect to the Transactions as the Purchaser and/or the Company, in their discretion, may deem to be reasonably necessary or advisable to conclude the Transactions, including the execution of all such ancillary documents as may be contemplated in the Agreement or necessary or desirable for the completion and implementation of the Transactions, and all such ancillary documents are hereby ratified, approved and confirmed; and
 - (b) take such steps as are, in the opinion of the Purchaser and/or the Company, necessary or incidental to the implementation of the Transactions.
8. The Registrar appointed pursuant to Section 22-1 of the *Business Corporations Act*, RSS 2021, c 6, or 243 of the *Business Corporations Act*, RSA 2000, c B-9, as applicable, shall accept and receive any documents or instruments as may be required to permit or enable and effect the Transactions contemplated in the Agreement, filed by the Company.

VESTING OF ASSETS AND LIABILITIES

9. Subject to the terms of the Agreement, upon delivery of the Monitor's certificate to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to occur commencing at the time of delivery of the Monitor's Certificate (the "**Effective Time**") in the following sequence:
 - (a) all right, title and interest of the Company in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively, without recourse, in the Creditor Trust;
 - (b) all Losses and Encumbrances in respect of the Company, other than the Retained Liabilities and the Lien Claims (as hereinafter defined), shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the

Creditor Trust, and: (i) such Losses and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time, as if the Transferred Assets had not been conveyed and had remained in the possession or control of the person having that possession or control immediately prior to the transfer; (ii) such Losses and Encumbrances equal to the fair market value of the Transferred Assets shall be transferred to and assumed by the Creditor Trust in consideration for the transfer of the Transferred Assets; and (iii) the remaining Losses and Encumbrances shall be transferred to and assumed by the Creditor Trust for no consideration as part of, and to facilitate, the implementation of the Transactions;

- (c) all Losses and Encumbrances other than the Retained Liabilities shall be irrevocably and forever expunged, released and discharged as against the Purchaser and the Retained Assets;
- (d) Mr. Joel Macleod is, without any further action required by any party, appointed as director of the Company and in place of all Persons who were previously serving as directors of the Company, which directors shall be deemed to have resigned as at the Effective Time;
- (e) without limiting subparagraph 9(c), any and all security registrations against the Company (other than any security registrations in respect of a Retained Liability) shall be and are hereby forever released and discharged as against the Company, and all such security registrations, with the exception of any registrations related to the Lien Claims, shall attach to the Transferred Assets vested in the Creditor Trust and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the Effective Time, as if the Transferred Assets had not been conveyed and remained in the possession or control of the person having that possession or control immediately prior to the transfer, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by the Creditor Trust of such Security Registrations; and

- (f) the Company shall cease to be a Party in this Action and shall be released from the purview of the ARIO and all other orders of this Court granted in these proceedings.
10. As of the Effective Time:
- (a) the Company shall continue to hold all right, title and interest in and to the Retained Assets, free and clear of all Losses and Encumbrances, inclusive of Lien Claims, other than the Retained Liabilities; and
 - (b) the Company shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets.
11. For greater certainty, any person that, prior to the Effective Time, had a Loss or Encumbrance other than a Lien Claim or a Retained Liability against the Company or its assets, properties or undertakings shall, as of the Effective Time, no longer have any such Loss or Encumbrance against or in respect of the Company or the Retained Assets, but shall have an equivalent Loss or Encumbrance, as applicable, against the Transferred Assets to be administered by the Creditor Trust from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Loss or Encumbrance had immediately prior to its transfer to the Creditor Trust, and nothing in this Order limits, lessens, modifies (other than by change in debtor) or extinguishes the Loss or Encumbrance of any Person as against the Transferred Assets to be administered by the Creditor Trust.
12. The Monitor's Certificate shall not be delivered to the Purchaser and Closing shall not occur unless and until:
- (a) every builder's lien claim registered on the Lands as of the date of this order (a "**Lien Claim**") and the holder of a Lien Claim, a "**Lien Claimant**") has been resolved by Cortland Credit Lending Corporation ("**Cortland**") or the Purchaser pursuant to an agreement between either (i) Cortland or the Purchaser and (ii) each such Lien Claimant to the satisfaction of the Monitor (a "**Lien Resolution**"); or
 - (b) in the absence of a Lien Resolution for any particular Lien Claim (an "**Unresolved Lien Claim**"), security has been posted for such Unresolved Lien Claim by

Cortland in a non-interest bearing trust account held by the Monitor in an amount not less than 120% of each such Unresolved Lien Claim (the “**Lien Security**”).

13. As of the Effective Time:
 - (a) all Lien Claims and Unresolved Lien Claims shall be fully and finally discharged and released as against the Company and any property of the Company, including the Lands; and
 - (b) the aggregate Lien Security for all Unresolved Lien Claims shall stand as security for the Unresolved Lien Claims and shall not be discharged or disbursed by the Monitor without further order of this Court.
14. The disposition of any Unresolved Lien Claim shall proceed in the manner set out in the Lien Claim Process Order attached hereto as **Schedule “B”**.
15. The Monitor shall be at liberty to release the Lien Security only upon disposition of the corresponding Unresolved Lien Claim, either by way of:
 - (a) agreement between the Purchaser and the Lien Claimant; or
 - (b) further order of the Court,and only in accordance with the terms of such agreement or order.
16. From and after the Effective Time, the Purchaser and/or the Company shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Company and the Retained Assets of the Losses and Encumbrances that are transferred to and vested in the Creditor Trust or the Unresolved Lien Claims discharged pursuant to this Order.
17. Upon the delivery of the Monitor’s Certificate, and upon filing a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Company, the Lien Claims, the Retained Assets or the Transferred

Assets, including but not limited to the Saskatchewan Personal Property Registry or the Saskatchewan Land Titles Office (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Monitor’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the completion of the Transactions and to discharge and release all Lien Claims, Losses and Encumbrances other than Retained Liabilities against or in respect of the Company and the Retained Assets, and presentment of this Order and the Monitor’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.

RELEASES

18. From and after the Effective Time, each of the Monitor, Ernst & Young Orenda Corporate Finance Inc., the Purchaser, the Company, Cortland and each of their current and former directors, officers, employees, contractors, executive team, agents, representatives, and all of their respective advisors, including financial advisors and legal counsel, (the “**Released Parties**”) are hereby released, remised and forever discharged from any and all rights, actions, causes of action, suits, demands, debts, covenants, or claims of any nature whatsoever, whether contractual, extra-contractual, in law or in equity or otherwise, past, present or future, direct or indirect, whether known or unknown (collectively, the “**Indemnified Claims**”) against any of the Released Parties, including in their capacity as equity holders of the Company, as applicable; save and except for any and all Indemnified Claims arising out of or in connection with any fraud, gross negligence or willful misconduct, on the part of the Released Parties, or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.
19. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Company, the Purchaser or the Retained Assets, in any way relating to, arising from or in respect of:

- (a) the Transferred Assets;
- (b) any and all Losses or Encumbrances other than the Retained Liabilities against or relating to the Company, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time;
- (c) the insolvency of the Company prior to the Effective Time;
- (d) the commencement or existence of these CCAA proceedings; or
- (e) the completion of the Transactions.

CREDITOR TRUST

- 20. The Creditor Trust created pursuant to this Order shall be named the “Independent Energy Residual Trust”. The Creditor Trust shall be instituted and administered in accordance with the Creditor Trust Settlement attached as **Schedule “C”** hereto.
- 21. At the Effective Time, the Creditor Trust shall be substituted as a Party in these proceedings in place of the Company and the style of cause for these proceedings shall be changed by deleting the Company as a Party, and replacing it with the Creditor Trust as Party.
- 22. The Creditor Trust, and the Monitor as Trustee of the Creditor Trust, shall enjoy the benefits of the indemnity provided by Section 6.2(b) of the Agreement and any other provision of the Agreement that is for the benefit of either the Creditor Trust or the Monitor as Trustee of the Creditor Trust, notwithstanding the fact that neither are parties to the Agreement.
- 23. The administration of the Creditor Trust shall remain subject to the Court’s oversight and these proceedings.
- 24. In addition to and without limiting the rights and protections afforded to the Company and the Monitor pursuant to the ARIO, the Company, the Monitor and their respective employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering the Creditor Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties. All protections

afforded to the Company and the Monitor pursuant to the ARIO or any further order granted in these proceedings or the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “BIA”) shall continue to apply.

SEALING ORDER

25. The Confidential Appendices 1, 2, 3 and 4 of the Trickey Affidavit shall be sealed on the Court file, kept confidential, and shall not be available for public inspection until 30 days after the filing of the Monitor’s Certificate, pursuant to paragraph 25 of this Order, unless and until an application is made to modify or vary this Order.
26. The Clerk of the Court shall file the Confidential Appendices 1, 2, 3 and 4 of the Trickey Affidavit in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS, BEING THE CONFIDENTIAL APPENDICES 1, 2, 3 AND 4 OF THE AFFIDAVIT OF MATHEW TRICKEY DATED FEBRUARY 21, 2024 (THE “**CONFIDENTIAL APPENDICES**”) PURSUANT TO THE SEALING ORDER ISSUED BY JUSTICE M. HOLLINS ON FEBRUARY 28, 2024. THE CLERK OF THE COURT SHALL NOT RELEASE THE CONFIDENTIAL APPENDICES TO THE PUBLIC UNTIL THIRTY (30) DAYS AFTER THE FILING OF THE MONITOR’S CERTIFICATE IN THE FORM ATTACHED AS SCHEDULE “A” TO THE SEALING ORDER.

MISCELLANEOUS

27. The Monitor is directed to file with the Court a copy of the Monitor’s Certificate forthwith after delivery thereof to the Purchaser.
28. Notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or
 - (c) the provisions of any federal or provincial statute,

the execution of the Agreement and the implementation of the Transactions shall be binding on any trustee or other administrator in respect of the Creditor Trust and any trustee

in bankruptcy or receiver that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Creditor Trust or the Company, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

29. The Company, the Purchaser and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transactions.
30. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Agreement and all amendments thereto, in connection with any dispute involving the Company or the Creditor Trust, and to adjudicate, if necessary, any disputes concerning the Company or the Creditor Trust related in any way to the Transactions.
31. This Court hereby requests the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Company and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company, as an officer of the Court, as may be necessary or desirable to give effect to this Order.

32. Service of this Order may be effected by facsimile, electronic mail, personal delivery, registered mail or courier.



Justice of the Court of King's Bench of
Alberta

SCHEDULE A - FORM OF MONITOR'S CERTIFICATE

COURT FILE NUMBER	2301-08292
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended
	AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEPENDENT ENERGY CORP.
APPLICANT	INDEPENDENT ENERGY CORP.
DOCUMENT	MONITOR'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Norton Rose Fulbright Canada LLP Barristers and Solicitors 400 – 3 rd Avenue SW, Suite 3700 Calgary, Alberta T2P 4H2 Lawyer: Howard A. Gorman K.C. Phone Numbers: 403-267-8144 File Number: 321102.00017

Clerk's Stamp

RECITALS

- A. Independent Energy Corp. (the “**Debtor**”) commenced proceedings (the “**CCAA Proceedings**”) in the Court of King’s Bench of Alberta in the Judicial District of Calgary, Alberta (the “**Court**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) and the Court granted an initial order in the CCAA Proceedings on June 22, 2023 under Court File No. 2301-08292, which initial order was amended and restated by the Court on July 4, 2023 pursuant to an amended and restated initial order;
- B. Pursuant to an Order of the Court dated February 28, 2024 (the “**Order**”), the Court approved the transactions contemplated by the Subscription Agreement dated February 20,

2024, (the “**Subscription Agreement**”) between the Debtor and 2580597 Alberta Ltd. (the “**Purchaser**”).

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Subscription Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser (or its nominee) has paid, and the Debtor has received, the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Subscription Agreement;
2. Cortland has posted the Lien Security for any Unresolved Lien Claims pursuant to paragraph 12(b) of the Order;
3. The conditions to Closing as set out in the Subscription Agreement have been satisfied or waived by the Debtor and the Purchaser (or its nominee); and
4. The Transactions contemplated by the Subscription Agreement have been completed to the satisfaction of the Monitor.
5. This Certificate was delivered by the Monitor at Calgary, Alberta on [●], 2024.

ERNST & YOUNG INC., in its capacity as the Court-appointed Monitor of Independent Energy Corp., and not in its personal or corporate capacity

Per:

Name: Neil Narfason, CPA, CA, CIRP, LIT
Title: Partner, Ernst & Young Inc.

SCHEDULE "B"

UNRESOLVED LIEN CLAIM DISPOSITION PROCESS

1. The Court of King's Bench of Alberta (the "**Court**") has the exclusive jurisdiction in the within proceedings bearing Court File Number 2301-08292 (the "**CCAA Proceedings**") to hear and resolve, the lien claims (the "**Lien Claims**") of PICL Management Ltd., Packard Electric Ltd., Kenlar Insulations Ltd., Jalco Industries Inc., Sandborn Roofs & Seals Inc., Neil Charteris Reclamation Services Inc., League Projects Ltd., Continental Stress Relieving Systems Ltd., G.E. Environmental Solutions Inc., Performance Pump Service Ltd., and Qube Oilfield Services Ltd. (collectively, the "**Lien Claimants**") as against Independent Energy Corp.'s (as owner) interest in the lands legally described as surface parcels:
 - (a) #135891063 SK, with a Reference Land Description of Blk/Par A Plan No. 00MW01955 Extension 1;
 - (b) #149547055 SK, with a Reference Land Description of NW Sec 08 Twp 09 Rge 17 W 3 Extension 30;
 - (c) #203541544 SK, with a Reference Land Description of SE Sec 27 Twp 33 Rge 22 W 3 Extension 2; and
 - (d) #203541623 with a Reference Land Description of SW Sec 27 Twp 33 Rge 22 W 3 Extension 4.
2. Unless the Lien Claims of the Lien Claimants are otherwise settled to the satisfaction of the Monitor and the Purchaser, on or before March 11, 2024, the Lien Claimants shall each provide to the Applicant, the Monitor, the Purchaser and Cortland:
 - (a) all evidence necessary (the "**Lien Claim Evidence**") to prove their Lien Claims, including without limitation, where available and appropriate, the following:
 - (i) contract(s) and any amendments to the contract(s), including change orders;
 - (ii) proof of the value of the services and materials supplied, including:
 - (A) timesheets;
 - (B) photographs;
 - (C) subcontractor/supplier contracts, including invoices and proofs of payment;
 - (D) delivery slips;
 - (E) payment certification;
 - (iii) a statement of accounts, including proofs of payment from their contracting party or other party;

- (iv) all invoices;
 - (v) all correspondence related to the work performed; and
 - (b) written submissions regarding the basis upon which the Lien Claimants are asserting: (i) an entitlement to the purchase price (or any portion thereof) under the Subscription Agreement (the “**Purchase Price**”); and (ii) an entitlement to the Purchaser Price (or any portion thereof) in priority the to the registered charge by Cortland Credit Lending Corporation dated August 16, 2021 (the “**Cortland Mortgage**”).
3. On or before March 18, 2024, either Cortland or the Purchaser will either agree to pay the amount of the Lien Claims (or any one of them) or serve a notice of application (the “**Lien Application**”), together with any additional evidence it deems necessary for the Court to determine whether, and to what extent:
- (a) the Lien Claims are valid and in what amount; and
 - (b) the Lien Claimants have priority over the Cortland Mortgage, such that the Lien Claimants would be entitled to payment of some or all of their Lien Claim from the Purchase Price.
4. Following service of the Lien Application on the Lien Claimants, the Lien Claimants will have until March 26, 2024 to serve their responding materials to the Lien Application on the Purchaser, the Monitor, the Applicant and Cortland.
5. The Lien Application shall be heard by the Court on or before April 3, 2024 and *The Builders’ Lien Act*, SS 1984-85-86, c B-7.1 shall apply.
6. The Lien Claimants, Cortland and the Purchaser are at liberty to amend any date under this Order upon the written agreement of those parties or supplement this process with any additional steps deemed necessary by mutual agreement of the parties. If the Lien Claimants fail to comply with any of the deadlines provided for herein (or as amended by the written agreement of the Lien Claimants and the Purchaser), the Lien Claimants shall be deemed to have forfeited any claim to the Purchase Price and such Lien Claimants’ Lien Claim shall be invalid, discharged and of no further force or effect.

SCHEDULE C
CREDITOR TRUST SETTLEMENT

CREDITOR TRUST SETTLEMENT

Independent Energy Residual Trust

RECITALS

Independent Energy Corp. (the “**Company**”) commenced proceedings (the “**CCAA Proceedings**”) in the Court of King’s Bench of Alberta in the Judicial District of Calgary, Alberta (the “**Court**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) and the Court granted an initial order in the CCAA Proceedings on June 22, 2023 under Court File No. 2301-08292, which initial order was amended and restated by the Court on July 4, 2023 pursuant to the amended and restated initial order (the “**ARIO**”)

On February 28, 2024, the Court granted a Reverse Vesting Order (the “**RVO**”) that, among other things, approved a subscription agreement dated February 20, 2024, entered into between 2580597 Alberta Ltd. (the “**Purchaser**”) and the Company (the “**Subscription Agreement**”).

The Subscription Agreement contemplates a transaction (the “**RVO Transaction**”) which includes, among other things: (i) the establishment of a trust for the benefit of the creditors of the Company (the “**Creditor Trust**”); (ii) the transfer to the Creditor Trust of certain liabilities of the Company (the “**Transferred Liabilities**”); (iii) the transfer to the Creditor Trust of certain assets of the Company (the “**Transferred Assets**”); (iv) the payment by the Purchaser of the Estimated Trustee Fees Amount to be applied for the benefit of the creditors of the Company (the “**RVO Payment**”); and (v) the retention by the Company of certain liabilities associated with the assets and contracts being retained by the Company (the “**Retained Liabilities**” and the “**Retained Assets**”, respectively).

This Creditor Trust Settlement is intended to be appended to and form part of the RVO, for the purpose of furthering the RVO Transaction, including but not limited to governing the manner in which the Creditor Trust shall be established, effective on the closing of the RVO Transaction, and administered thereafter.

ARTICLE 1 ESTABLISHMENT OF THE CREDITOR TRUST

1.1 Settling the Creditor Trust

The Creditor Trust shall be named the “Independent Energy Residual Trust” and shall be settled by the delivery by the Purchaser of the RVO Payment, in the amount of the Estimated Trustee Fees Amount (the “**Settlement Funds**”) to the Trustee.

1.2 Appointment of the Trustee

Ernst & Young Inc. in its capacity as the Court-appointed monitor of the Company shall be the trustee of the Creditor Trust (the “**Trustee**”) and shall hold the Settlement Funds in trust for the creditors of the Company (the “**Creditor Trust Beneficiaries**”), subject to the terms of this Creditor Trust Settlement. The Trustee shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Creditor Trust.

1.3 Purpose of the Creditor Trust

The purpose of the Creditor Trust is for the Trustee to hold the Settlement Funds and the Transferred Assets, assume the Transferred Liabilities, and to distribute the Settlement Funds to the Creditor Trust Beneficiaries, in accordance with their respective priorities, rights and entitlements as against the Company.

ARTICLE 2 THE TRUSTEE

2.1 Authority of Trustee

The Trustee shall have all powers and authorities necessary to carry out the purpose of the Creditor Trust as set out in Article 1.3. The Trustee may from time to time apply to the Court for advice and directions as to the discharge of its powers and duties hereunder.

2.2 Compensation of the Trustee

The Trustee shall be compensated for its services, and reimbursed for its expenses, including the reasonable costs and expenses of its legal counsel from the Settlement Funds.

2.3 Standard of Care; Exculpation

In addition to the rights and protections afforded to the Trustee under the CCAA or as an Officer of this Court, the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Creditor Trust Settlement, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Creditor Trust Settlement shall derogate from the protections afforded to the Trustee by the CCAA or any applicable legislation, or the ARIO.

ARTICLE 3 INDEMNIFICATION

3.1 Indemnification of Trustee and others

To the fullest extent permitted by law, the Creditor Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Trustee, and each of its respective directors, members, shareholders, partners, officers, agents, employees, counsel and other professionals (collectively, the “**Indemnified Persons**”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including reasonable fees and expenses of counsel and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Creditor Trust, except to the extent that the loss, cost, damage, expense or liability resulted from the Indemnified Person’s gross negligence or wilful misconduct.

ARTICLE 4
TERM; TERMINATION OF THE CREDITOR TRUST

4.1 Term; Termination of the Creditor Trust

- (a) The Creditor Trust shall commence on the date that the RVO Transaction closes, and shall terminate no later than three months thereafter; provided, however, that, on or prior to the date that is 30 days prior to such termination, the Trustee may extend the term of the Creditor Trust if it is necessary to the efficient and proper administration of the Creditor Trust in accordance with the purposes and terms of this Creditor Trust Settlement, by filing a notice of such extension with the Court, and serving such notice on interested parties.
- (b) The Creditor Trust may be terminated by the Trustee earlier than its scheduled termination if the Trustee has distributed all Settlement Funds and performed all other duties required by this Creditor Trust Settlement.

ARTICLE 5
AMENDMENT AND WAIVER

5.1 Amendment and Waiver

The Trustee may amend, supplement or waive any provision of this Creditor Trust Settlement, without notice to or the consent of the Creditor Trust Beneficiaries or the approval of the Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Creditor Trust Settlement; (ii) to comply with any legal (including tax) requirements; and (vi) to achieve any other purpose that is not inconsistent with the purpose and intention of this Creditor Trust Settlement.

ARTICLE 6
MISCELLANEOUS PROVISIONS

6.1 Laws as to Construction

This Creditor Trust Settlement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

6.2 Jurisdiction

Without limiting any Person's right to appeal any order of the Court with regard to any matter, (i) the Court shall retain exclusive jurisdiction to enforce the terms of this Creditor Trust Settlement and to decide any claims or disputes which may arise or result from, or be connected with, this Creditor Trust Settlement, or the matters contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Court.

6.3 Irrevocability

The Creditor Trust is irrevocable, but is subject to amendment and waiver as provided for in this Agreement.