

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-11-063053-231
DATE: January 24, 2024

PRESIDING: THE HONOURABLE KAREN M. ROGERS, J.S.C.

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

STORNOWAY DIAMONDS (CANADA) INC.

-and-

11272420 CANADA INC.

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**SECOND AMENDED AND RESTATED
INITIAL ORDER**

JR1825

- [1] **ON READING** the *Application for the issuance of a Second Amended and Restated Initial Order and Ancillary Relief* dated January 19, 2024 (the "**Application**") of the Debtors pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the affidavit and the exhibits filed in support thereof, as well as the Monitor's report entitled *Third Report to the Court submitted by Deloitte Restructuring inc.* (the "**Monitor's Report**");
- [2] **CONSIDERING** the notification of the Application;

- [3] **CONSIDERING** the submissions of the attorneys present at the hearing of the Application and the testimony of the witnesses heard;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **CONSIDERING** that the initial order rendered on October 27, 2023 was amended and restated on November 3, 2023 and November 13, and that the Stay Period (as defined below) was extended to January 25, 2024.

THE COURT:

- [6] **GRANTS** the Application.
- [7] **ISSUES** an order pursuant to the CCAA (this “**Order**”), divided under the following headings:
- I. Service
 - II. Definitions
 - III. Effective Time
 - IV. Application of the CCAA Administrative Consolidation
 - V. Plan of Arrangement
 - VI. Stay of Proceedings against the Debtors and the Property
 - VII. Stay of Proceedings against the Directors and Officers
 - VIII. Possession of Property and Operations
 - IX. No Exercise of Rights or Remedies
 - X. No Interference with Rights
 - XI. Continuation of Services
 - XII. Non-Derogation of Rights
 - XIII. Secured Creditors Unaffected
 - XIV. Financial Projections
 - XV. Directors’ and Officers’ Indemnification and Charge
 - XVI. Key Employees’ Retention Plan
 - XVII. Restructuring
 - XVIII. Powers of the Monitor
 - XIX. Priorities and General Provisions Relating to CCAA Charges
 - XX. Hearing scheduling and details
 - XXI. General

I. SERVICE

- [8] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [9] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Debtors to interested parties, including the secured creditors which are likely to be affected by the charges created herein.

II. DEFINITIONS

- [10] **ORDERS** that all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief* dated October 26, 2023.

III. EFFECTIVE TIME

- [11] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, province of Québec, on October 27, 2023 (the “**Effective Time**”).

IV. APPLICATION OF THE CCAA AND ADMINISTRATIVE CONSOLIDATION

- [12] **DECLARES** that the Debtors are debtor companies to which the CCAA applies.

- [13] **ORDERS** the consolidation of these CCAA proceedings of the Debtors (the “**CCAA Proceedings**”) under one single Court file and that all proceedings, filings, and other matters in the CCAA Proceedings be filed jointly and together in Court file number 500-11-063053-231.

- [14] **DECLARES** that the consolidation of the CCAA Proceedings in respect of the Debtors shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Debtors including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

V. PLAN OF ARRANGEMENT

- [15] **DECLARES** that one or more of the Debtors, in consultation with the Streamers¹ and Diaquem Inc. (“**Diaquem**”), shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (a “**Plan**”) in accordance with the CCAA.

VI. STAY OF PROCEEDINGS AGAINST THE DEBTORS AND THE PROPERTY

- [16] **ORDERS** that, until and including March 29, 2024, or such later date as the Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), including but not limited to seizures, executions, writs of seizure or execution, any and all actions, applications,

¹ The term “**Streamers**” refers to the Buyers under the *Second Amended and Restated Purchase and Sale Agreement* dated as of November 1, 2019 filed as Exhibit R-8 of the *Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief* dated October 26, 2023, and, when a decision or consent is to be provided by the Streamers pursuant to the terms of this Order, such consent or approval shall be provided in accordance with the required majority or support of the Buyers for such decision set forth in said *Second Amended and Restated Purchase and Sale Agreement* dated as of November 1, 2019.

arbitration proceedings and other lawsuits existing at the time of this Order in which any of the Debtors is a defendant, party or respondent (either individually or with other Persons (as defined below)) shall be commenced or continued against or in respect of the Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph [23] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to section 11.1 CCAA.

- [17] **ORDERS** that the rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of section 11.09 CCAA.

VII. STAY OF PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

- [18] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Debtors nor against any person deemed to be a director or an officer of any of the Debtors under subsection 11.03(3) of the CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Debtors where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

VIII. POSSESSION OF PROPERTY AND OPERATIONS

- [19] **ORDERS** that the Debtors shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof and all bank accounts (collectively the "**Property**"), the whole in accordance with the terms and conditions of this Order.

- [20] **ORDERS** that each of the Debtors are authorized to complete outstanding transactions and engage in new transactions with other Debtors, and to continue, on and after the date of this Order, to buy and sell goods and services, and allocate, collect and pay costs, expenses and other amounts from and to the other Debtors, or any of them (collectively, the "**Intercompany Transactions**") in the ordinary course of business. All ordinary course Intercompany Transactions among the Debtors shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.

- [21] **ORDERS** that the Debtors shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order, provided that such

expenses are made in strict accordance with the Projections (subject to a negative variance of up to the Variance Threshold (as defined below)), or with the prior written consent of the Streamers and Diaquem:

- (a) all outstanding and future wages, salaries, bonuses, expenses, benefits and vacation pay payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any agent, advisor or counsel retained or employed by the Debtors in respect of these proceedings, at their standard rates and charges; and
- (c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Debtors prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$3,600,000, if, in the opinion of the Debtors, the supplier is critical to the business and ongoing operations of the Debtors.

[22] **ORDERS** that the Debtors are authorized to remit or pay the following expenses, in accordance with legal requirements, provided that such expenses are made in strict accordance with the Projections (subject to a negative variance of up to the Variance Threshold (as defined below)) or with the prior written consent of the Streamers and Diaquem:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes;
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, **Sales Taxes**) required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order; and

IX. NO EXERCISE OF RIGHTS OR REMEDIES

[23] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Debtors is a party as a result of the insolvency of the Debtors and/or the CCAA Proceedings, the exercise of any rights or remedies under any agreement to which any of the Debtors is a party, including any bonding, surety, indemnity or other comparable agreement, any events of default or non-performance by the Debtors or any admissions or evidence in the CCAA Proceedings, of any individual, natural person, firm, corporation, partnership,

limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

- [24] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Debtors or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Debtors, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act (Canada)* (the “BIA”) is appointed in respect of any of the Debtors, the period between the date of this Order and the day on which the Stay Period ends shall not be calculated in respect of the Debtors in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

X. NO INTERFERENCE WITH RIGHTS

- [25] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to renew per the same terms and conditions, honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors, as applicable, and the Monitor, or with leave of this Court.

XI. CONTINUATION OF SERVICES

- [26] **ORDERS** that during the Stay Period and subject to paragraph [28] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, failing to renew per the same terms and conditions, altering, interfering with, terminating the supply or, where the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices

as may be agreed upon by the supplier or service provider and the Debtors, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[27] **ORDERS** that, subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Debtors.

[28] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Debtor with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by any of the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into any of the Debtors' accounts until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

XII. NON-DEROGATION OF RIGHTS

[29] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of any of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

XIII. SECURED CREDITORS UNAFFECTED

[30] **ORDERS** that the claims of each of Streamers and Diaquem pursuant to their respective contracts, agreements and arrangement entered into between the Debtors (or any of them) on the one hand, and the Streamers or Diaquem (or any of them) on the other hand, including, without limitation, the Bridge Financing Agreement, the Streaming Agreements, the Working Cap Facility Agreement, the Senior Credit Agreement and the Diaquem Royalty Agreement, shall not be compromised or arranged pursuant to the Plan (or these proceedings) or pursuant to any proposal ("**Proposal**") to be filed pursuant to the BIA or any other proceedings to be initiated thereunder, and, notwithstanding any provision of this order or of any other order to be rendered in the context of these proceedings, the Streamers and Diaquem shall remain and be treated, at all times, as

unaffected creditors in these proceedings (including with respect to the stay of proceedings ordered in this Order) or any proceedings under the BIA, and in any Plan or Proposal.

XIV. FINANCIAL PROJECTIONS

[31] **ORDERS** that the financial projections filed as Appendix B to the Monitor's Report (the "**Projections**") are hereby approved and **ORDERS** the Debtors to: (i) comply with the Projections, subject to any negative variances or projected negative variances of up to 10% on a monthly and aggregate basis (the "**Variance Threshold**") in connection with the expenses set out in the Projections, which expenses exclude, for greater certainty, the "December Payments" amounts payable to the Streamers and Diaquem pursuant to the Projections or to (ii) consult and obtain the prior written approval of the Streamers and Diaquem in connection with any negative variance to the Projections in excess of the Variance Threshold.

[32] (...)

XV. DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

[33] **ORDERS** that the Debtors shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Debtors after the Effective Time, except where such obligations or liabilities were incurred as a result of such Director's gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

[34] **ORDERS** that the Directors of the Debtors shall be entitled to the benefit of and are hereby granted a charge, security and hypothec in the General Encumbered Property (as defined in paragraph [49]) to the extent of the aggregate amount of \$1,400,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [33] hereof as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority established by paragraphs [50] and [51] of this Order.

[35] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [33] of this Order.

XVI. KEY EMPLOYEES' RETENTION PLAN

[36] **ORDERS** that the key employee retention plan (the "**KERP**") represented by the term sheet agreements communicated as Exhibit R-20 *en liasse* to the

Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief, dated October 26, 2023, as amended in accordance with Appendix A of the second Monitor's report dated November 9, 2023 (the "**KERP Agreements**"), is hereby approved and authorizes the Debtors to implement to the KERP and make the payments contemplated therein, the whole in accordance with the terms of the KERP Agreements.

[37] **DECLARES** that the beneficiaries of the KERP are entitled to the benefit of and are hereby granted a charge, hypothec and security affecting the General Encumbered Property (as defined in paragraph [49]) to the extent of the aggregate amount of \$480,000 (the "**KERP Charge**"), having the priority established by paragraphs [50] and [51] of this Order.

[37.1] **ORDERS AND DECLARES** that upon the filing by the Monitor in the present Court record of a certificate in the form attached to the present Order as Schedule "A" (the "**KERP Certificate**") confirming that an amount equal to the KERP Charge and the value of the Debtors' key officers' retention bonuses as described in the executive retention letters communicated under seal, *en liasse*, as Exhibit R-6 to the Application (the "**Retention Letters**"), has been placed in trust with the Monitor or a third party trust agent (the "**KERP Trust**"), the KERP Charge shall be terminated and replaced with the KERP Trust so as to satisfy the obligations of the Debtors set forth in the KERP Agreements and the Retention Letters.

XVII. RESTRUCTURING

[38] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Debtors, in consultation with the Streamers and Diaquem (or with their prior written consent, as indicated in the paragraphs below), shall have the right, subject to approval of the Monitor or further order of the Court, to:

- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;
- (b) with the prior written consent of the Streamers and Diaquem, acting reasonably, or of the Court if the Streamers and Diaquem have a different position on the matter, pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to the SISF Order rendered by this Court on October 27, 2023 and any further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) with the prior written consent of the Streamers and Diaquem, acting reasonably, or of the Court if the Streamers and Diaquem have a different

position on the matter convey, transfer assign, lease, or in any other manner dispose of the Property, outside the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$250,000 or \$1,500,000 in the aggregate;

- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Debtors, as applicable, and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Debtors may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of the Debtors' agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Debtors and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan;
- (f) with the prior written consent of the Streamers and Diaquem, acting reasonably, or of the Court if the Streamers and Diaquem have a different position on the matter and subject to section 11.3 CCAA, assign any rights and obligations of Debtors.

[39] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the Debtors pursuant to section 32 of the CCAA and subsection [38](e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving such Debtor and the Monitor 24 hours' prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Debtors, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

[40] **ORDERS** that the Debtors shall provide to any relevant landlord notice of any of Debtors' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Debtor has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Debtor and the landlord.

[41] **DECLARES** that, in order to facilitate the Restructuring, the Debtors may, subject to the approval of the Monitor, or further order of the Court, settle any claims of

any creditors that are in dispute, provided that to the extent that any expenses are to be incurred in connection with the settlement of such claims, such expenses are made in strict accordance with the Projections, or with the prior written consent of the Streamers and Diaquem.

[42] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtors are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Debtors binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Debtors or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Debtors.

VIII. POWERS OF THE MONITOR

[43] **ORDERS** that Deloitte Restructuring Inc. is hereby appointed to monitor the business and financial affairs of the Debtors as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) (...)
- (b) shall monitor the Debtors’ receipts and disbursements;
- (c) shall assist the Debtors, to the extent required by the Debtors, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Debtors, to the extent required by the Debtors, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Debtors, to the extent required by the Debtors, to review the Debtors’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

- (f) shall assist the Debtors, to the extent required by the Debtors, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Debtors or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Debtors;
- (h) shall report to the Streamers and Diaquem, on demand and as required by any of them, on the state of the operations, business and financial affairs of the Debtors or developments in these proceedings or any related proceedings, including with respect to any solicitation efforts to be made in connection with the Debtors' Property;
- (i) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (j) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (k) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (l) may act as a "foreign representative" of any of the Debtors or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (m) may hold and administer funds in connection with arrangements made among the Debtors, any counterparties and the Monitor, or by Order of this Court; and
- (n) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Debtors, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Debtors nor shall the Monitor be deemed to have done so.

- [44] **ORDERS** that the Debtors and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Debtors in connection with the Monitor's duties and responsibilities hereunder.
- [45] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Debtors with information in response to requests made by them in writing addressed to the Monitor and copied to the counsel for the Debtors. In the case of information that the Monitor has been advised by the Debtors is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Debtors unless otherwise directed by this Court.
- [46] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Debtors or continues the employment of the Debtors' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [47] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [48] **ORDERS** that the Debtors shall pay, in accordance with the Projections, and with the consent of the Monitor:
- (a) the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the legal counsel for the Debtors and Deloitte Corporate Finance Inc. (the "**SISP Agent**") directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after this Order, and shall be authorized to provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
 - (b) the reasonable fees and disbursements of the legal advisors of Diaquem directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after this Order; and
 - (c) the reasonable fees and disbursements of the legal and financial advisors of the Streamers directly related to these proceedings, the Plan and the Restructuring incurred from and after January 1, 2024 or otherwise agreed between the Streamers and Diaquem taking into consideration the provisions of the Intercreditor Agreement (as defined hereinafter) (the "**2024 Streamers' Costs**"), which do not include any fee or disbursement of the Streamers' legal and financial advisors incurred prior

to January 1, 2024 (collectively, the “**2023 Streamers’ Costs**”). The 2023 Streamers’ Costs shall be paid from the “**Stream Net Proceeds**” resulting from the sale of “**Subject Diamonds Interest**” forming part of the “**Stream Collateral**” (as such terms are defined in the *Second Amended and Restated Common Terms and Intercreditor Agreement* dated as of November 1st, 2019, filed *under seal* as Exhibit R-16 to the *Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief*, dated October 26, 2023. (the “**Intercreditor Agreement**”).

[49] **DECLARES** that:

- (a) the Monitor, the SISP Agent, the Monitor’s legal counsel (Osler Hoskin Harcourt LLP), the legal counsel for the Debtors (Norton Rose Fulbright Canada LLP), the legal counsel for Diaquem (McCarthy Tétrault LLP), and the legal and financial advisors of the Streamers (Stikeman Elliott LLP, Fasken LLP and FTI Consulting), as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring (but in the case of the legal and financial advisors of the Streamers, solely for the 2024 Streamers’ Costs), be entitled to the benefit of and are hereby granted a charge, hypothec and security in the Property, with the exception of the Stream Encumbered Property (as defined below) (collectively, the “**General Encumbered Property**”), to the extent of the aggregate amount of \$1,000,000 (the “**General Administration Charge**”), having the priority established by paragraphs [50] and [51] of this Order;
- (b) the legal and financial advisors of the Streamers (Stikeman Elliott LLP, Fasken LLP and FTI Consulting) be entitled to the benefit of and are hereby granted a charge, hypothec and security (the “**Streamers Administration Charge**”) in the Subject Diamonds Interest and the Stream Net Proceeds, as well as any Realization Proceeds and Insurance Proceeds with respect thereto (collectively, the “**Stream Encumbered Property**”), as security for the 2023 Streamers’ Costs and the 2024 Streamers’ Costs incurred directly in relation to these proceedings, the Plan and the Restructuring, whether before or after the making of this Order;

XIX. PRIORITIES AND GENERAL PROVISIONS RELATING TO CCAA CHARGES

[50] **DECLARES** that the priorities of the General Administration Charge, the Streamers Administration Charge and the Directors’ Charge (collectively, the “**CCAA Charges**”), as between such CCAA Charges with respect to any Property to which they apply, shall be as follows:

With respect to the General Encumbered Property

- (a) first, the General Administration Charge; and
- (b) second, the Directors' Charge;
- (c) third, the KERP Charge, subject to paragraph [37.1] herein;

With respect to the Stream Encumbered Property

- (a) the Streamers Administration Charge.

- [51] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, deemed trusts, encumbrances or security of whatever nature or kind (collectively, "**Encumbrances**") affecting the Property charged by such Encumbrances.
- [52] **ORDERS** that, except as otherwise expressly provided for herein, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Debtors, as applicable, obtain the prior written consent of the Monitor and the Debtors, and the prior approval of the Court.
- [53] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [54] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtor; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Debtors of any Third Party Agreement to which any of the Debtor is a party; and
 - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Debtors whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [55] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued

pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtor; and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any of the Debtor pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [56] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all relevant Property of the Debtors charged by the CCAA Charges and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtors.

XX. HEARING SCHEDULING AND DETAILS

- [57] **ORDERS** that, subject to further Order of this Court, all applications in the CCAA Proceedings are to be brought on not less than five (5) days' notice to all Persons on the service list. Each application shall specify a date (the "**Initial Hearing Date**") and time (the "**Initial Hearing Time**") for the hearing.

- [58] **ORDERS** that any Person wishing to object to the relief sought on an application in the CCAA Proceedings must serve a detailed written contestation stating the objection to the application and the grounds for such objection (a "**Contestation**") in writing to the moving party, the Debtors and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montréal Time on the date that is three (3) days prior to the Initial Hearing Date (the "**Objection Deadline**").

- [59] **ORDERS** that, if no Contestation is served by the Objection Deadline, the Judge having carriage of the application (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary or whether application can be determined on the basis of the record; (b) whether, if a hearing is necessary, such hearing will be in person, by video conference or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

- [60] **ORDERS** that, if no Contestation is served by the Objection Deadline, the Debtors shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Debtors shall thereafter advise the service list of the Hearing Details and the Debtors shall report upon its dissemination of the Hearing Details to the Court in a timely manner.

- [61] **ORDERS** that, if a Contestation is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Hearing Date at the Initial Hearing Time, or such earlier or later time as may be directed

by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Hearing Date and at the Initial Hearing Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

XXI. GENERAL

- [62] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisors of the Debtors or of the Monitor in relation to the Business or Property of the Debtors, without first obtaining leave of this Court, upon ten (10) days' written notice to the Debtors counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [63] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [64] **DECLARES** that, except as otherwise specified herein, the Debtors and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [65] **DECLARES** that the Debtors and any party to the proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing an electronic copy of such materials to counsels' email addresses as provided for on the service list.
- [66] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on counsel for the Debtors and counsel for the Monitor and has filed such notice with this Court, or appears on the service list prepared by counsel for the Monitor, save and except when an order is sought against a Person not previously involved in these proceedings.
- [67] **DECLARES** that the Debtors or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

- [68] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [69] **AUTHORIZES** the Debtors or the Monitor to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America, or elsewhere, for orders which aid and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, complement this Order and any subsequent orders of this Court and for which the Monitor shall be the foreign representative of the Debtors (the "**Foreign Representative**"). All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Debtors and the Foreign Representative as may be deemed necessary or appropriate for that purpose.
- [70] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Debtors, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby requested to make such orders and to provide such assistance to the Debtors, and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Debtors in any foreign proceeding, to assist the Debtors, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [71] **DECLARES** that, for the purposes of any applications authorized by paragraphs [69] and [70], Debtors' centre of main interest is located in the province of Québec, Canada.
- [72] **ORDERS** that Exhibit R-6 in support of the Application as well as Appendices A, B and C in support of the Monitor's Report are confidential and are filed under seal.
- [73] **ORDERS** the provisional execution of this Order notwithstanding any appeal.


The Honourable Karen M. Rogers, J.S.C.

SCHEDULE "A"
FORM OF "KERP CERTIFICATE"

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Nº: 500-11-063053-231

Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

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

STORNOWAY DIAMONDS (CANADA) INC.

-and-

11272420 CANADA INC.

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

MONITOR'S CERTIFICATE

RECITALS:

- A. Pursuant to an order of the Honourable Karen M. Rogers of the Superior Court of Québec (Commercial Division) (the "**Court**") dated October 27, 2023, as amended and restated on November 3, November 13 and January __ 2024, the Debtors commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* and Deloitte Restructuring Inc. was appointed as monitor of the Debtors (the "**Monitor**") in those proceedings.
- B. Pursuant to an order of the Court dated January __, 2024, (the "**Second ARIO**") the Court approved the establishment of the KERP Trust to hold an amount equal to the KERP Charge and the value of the Debtors' key officers' retention bonuses as described in the executive retention letters communicated under seal, *en liasse*, as Exhibit R-6 to the *Application for the issuance of a Second Amended and Restated*

Initial Order and Ancillary Relief dated January 19, 2024 (collectively, the “**Retention Amount**”).

- C. The Second ARIO contemplates the issuance of the Monitor’s Certificate upon reception of the Retention Amount by the Monitor or a third party trust agent, in trust,
- D. Unless otherwise indicated herein, capitalized terms used herein have the meanings given to them in the Second ARIO.

THE MONITOR CERTIFIES THE FOLLOWING:

- 1. The Monitor confirms having received in trust the Retention Amount from the Debtors. **[OR]** The Monitor has been informed by the Debtors that the Retention Amount has been deposited in trust with a third party trust agent.
- 2. This Certificate was issued by the Monitor on _____, 2024.

DELOITTE RESTRUCTURING INC., in its capacity as Monitor, and not in its personal or corporate capacity.

Per: _____

Name _____

Title: _____