

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**MOTION RECORD OF THE APPLICANT  
(Comeback Hearing; Returnable Feb. 20, 2020)**

February 18, 2020

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

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# Tab 1

Court File No. CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

**NOTICE OF MOTION  
(Comeback Hearing; Returnable Feb. 20, 2020)**

The Applicant, Orionis Corporation (“**Orionis**”), will make a motion before the Honourable Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) on February 20, 2020, at 10:00AM, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario (the “**Comeback Hearing**”).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order (the “**Amended and Restated Initial Order**”), among other things,
  - (a) extending the Stay Period, as defined in paragraph 10 of the Initial Order, dated February 12, 2020 (the “**Initial Order**”) until and including April 29, 2020;

- (b) increasing the authorization of Ontario Graphite, Ltd. (“**OGL**”), to borrow under the debtor-in-possession facility (the “**DIP Facility**”) described in paragraph 28 of the Initial Order, up to a maximum of US\$2.75 million;
  - (c) deeming all references to dollar amounts in the DIP Term Sheet (as defined in paragraph 29 of the Initial Order) to mean United States dollars (unless otherwise specified therein); and
  - (d) granting other relief customarily granted in orders made in proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”).
2. An Order (the “**SISP & IRP Approval Order**”), among other things,
- (a) if necessary, abridging the time for service of this Notice of Motion, the Motion Record and the Factum of Orionis and dispensing with any further service thereof;
  - (b) approving the sale and investment solicitation procedures (the “**SISP**”), as described below;
  - (c) granting the Monitor (as defined below) the power to conduct the SISP;
  - (d) approving an incentive and retention plan (the “**IRP**”) for the benefit of five of OGL’s employees (including its sole officer) and an independent contractor of OGL (collectively, the “**IRP Participants**”);

- (e) granting a charge in the amount of \$100,000 (the “**IRP Charge**”) in favour of the IRP Participants to secure Retention Payments (defined below) potentially owing to them under the IRP;
- (f) sealing the Confidential IRP Appendix (defined below); and
- (g) such further and other relief as to the Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

**The Initial Order**

1. On February 12, 2020, on Application brought by Orionis, this Court granted protection to OGL under the CCAA pursuant to the Initial Order.
2. In the Initial Order, the Court, among other things,
  - (a) granted a stay of proceedings in favour of OGL (the “**Stay**”) until and including February 22, 2020;
  - (b) authorized OGL to obtain and borrow up to \$200,000 under the DIP Facility to finance its operations until the Comeback Hearing (as defined in paragraph 45 of the Initial Order);
  - (c) appointed Deloitte Restructuring Inc. as the monitor of OGL (the “**Monitor**”); and
  - (d) granted the following charges over all of OGL’s assets, undertakings and property (the “**Property**”), in order of priority:

- (i) a charge in the amount of \$200,000 (the “**Administration Charge**”) in favour of the Monitor and the Monitor’s counsel, Orionis’s counsel and OGL’s counsel to secure the payment of their respective fees and disbursements incurred in connection with these proceedings;
- (ii) a charge (the “**DIP Lender’s Charge**”) in favour of Orionis (in this capacity, the “**DIP Lender**”) to secure all of OGL’s obligations to the DIP Lender under the DIP Facility; and
- (iii) a charge in the amount of \$200,000 (the “**D&O Charge**”) in favour of the directors and officers of OGL.

### **The SISP**

3. The SISP is necessary to facilitate a transparent and efficient disposition of the Property under this Court’s supervision and within a structured process designed to solicit interest from prospective SISP participants and to maximize value.

4. The SISP contemplates an approximate six-month process composed of two stages through which the Monitor will:

- (a) solicit non-binding indications of interest from qualified bidders by April 15, 2020 (“**Phase 1**”); and
- (b) if in the best interests of OGL and its stakeholders, invite such qualified bidders to submit binding purchase or investment bids by June 22, 2020,

which dates may be amended in accordance with the terms of the SISP.

5. The material terms of the SISP are as set out in substantially as described in paragraph 44 of the Report of Deloitte Restructuring Inc., in its capacity as the proposed Monitor of OGL, dated February 11, 2020 (the “**Pre-Filing Report**”) and paragraphs 37 through 40 of the Second Affidavit of David Yanovich Wancier, sworn February 11, 2020 (the “**Second Yanovich Affidavit**”), and a copy of the SISP will be appended to the First Report to the Court of the Monitor, to be filed (the “**First Report**”)
6. Throughout the conduct of the SISP, the Monitor will consult with Orionis, provided, however, that such rights of consultation shall be limited in the event that Orionis elects to participate in the SISP as a bidder within the terms of the SISP.
7. The SISP has been prepared in consultation with OGL and OGL supports the SISP.
8. The SISP does not require the Monitor to accept an offer that is not in the best interests of the creditors of OGL.
9. The terms of the SISP are fair and reasonable in the circumstances.
10. The Monitor will return to this Court to seek approval of any transaction generated through the SISP and approval of definitive documentation with respect to same, or, if no qualified bids are received or if the Monitor concludes that none of the qualified bids received will result in a consummated transaction, the Monitor intends to seek further instructions of this Court.

### **The IRP and IRP Charge**

11. OGL, in consultation with the Monitor, Orionis and the IRP Participants, has developed a IRP to facilitate and encourage the continued participation of the IRP Participants in the business during the SISP, including the completion of the work in relation to the Interim Plan (as defined in the Affidavit of David Yanovich Wancier, sworn January 10, 2020 (the “**First Yanovich Affidavit**”)), which Orionis is willing to fund through advances under the DIP Facility.

12. The anticipated participants in the IRP either possess specialized expertise with respect to OGL’s business operations that would be difficult to replace or are critical for a successful SISP.

13. The IRP provides appropriate incentives for the IRP Participants to remain in their current positions and ensures that they are properly compensated for their assistance in the implementation and execution of the SISP.

14. The IRP contemplates retention bonuses for the employee IRP Participants and retention fees (including HST payable on such fees) for the contractor IRP Participant (collectively, the “**Retention Payments**”) up to an aggregate amount of \$100,000 for the IRP Participants. The IRP also contemplates an inventive bonus to the sole officer of OGL upon completion of a sale or investment transaction resulting from the SISP (the “**Incentive Payment**”). The Retention Payments and the Bonus Payment are subject to certain terms and conditions.

15. The amounts eligible to be paid to each IRP Participant will be set out in a confidential appendix (the “**Confidential IRP Appendix**”) to the First Report.

16. The IRP Charge is necessary to ensure the IRP Participants participate in the IRP.
17. The IRP Charge is proposed to rank in priority to the D&O Charge and subordinate to the Administration Charge and the DIP Lender's Charge.
18. The Monitor, OGL and Orionis have been involved in the development of the proposed IRP, and each of them supports the proposed IRP and IRP Charge.

### **DIP Facility Increase**

19. Given its current financial position, OGL will be unable to continue operations, including its environmental and maintenance obligations, without obtaining additional funding under the DIP Facility.
20. It is anticipated that OGL will require approximately US\$2.5 million (the “**CCAA Funding**”) to finance its working capital requirements and post-filing expenses and costs associated with the CCAA proceedings (including the SISP) through August 2020, inclusive of funds borrowed under the DIP Facility to date.
21. The parties intended that OGL may borrow an amount of up to US\$2.75 million under the DIP Facility, representing the CCAA Funding plus a 10% cumulative permitted variance, subject to the terms of the DIP Term Sheet (as defined in paragraph 29 of the Initial Order).
22. The DIP Term Sheet requires a clarification that the dollar amounts referred to therein (and available under the DIP Facility) are in United States dollars (unless otherwise expressly specified therein).



23. Without further advances under the DIP Facility, OGL will be unable to continue operations and an orderly restructuring will not be achievable.

### **Stay Extension**

24. Since the Stay was granted, Orionis and OGL have acted and continue to act in good faith and with due diligence in respect of the CCAA proceedings.

25. An extension of the Stay Period to April 29, 2020, is appropriate in the circumstances as it will allow:

- (a) OGL to continue the work required under the Interim Plan, and
- (b) the Monitor to conduct Phase 1 of the SISP in accordance with its terms, including engaging in discussions and consultations with stakeholders.

26. It is necessary and in the best interests of OGL and its stakeholders that the Stay Period be extended and that OGL be afforded the “breathing space” it needs to allow for continued operations, including completion of the work required under the Interim Plan, and completing Phase 1 of the SISP.

27. Provided the SISP & IRP Approval Order is granted so as to satisfy the condition precedent for access to additional funding under the DIP Facility, it is forecast that OGL will have sufficient liquidity to continue operating in the ordinary course during the requested Stay Period.

28. OGL and the Monitor support the extension of the Stay Period.

**Sealing**

29. The Confidential IRP Appendix contains confidential, commercially sensitive and personal information.

30. There are no reasonable alternative measures to sealing this information from the public record.

31. The salutary effects of sealing this information outweigh the deleterious effects of doing so.

**General**

32. The provisions of the CCAA, in particular sections 11.02 and 11.2 thereof, and the equitable jurisdiction of this Court.

33. Rules 2.03, 3.02 and 16 of the *Rules of Civil Procedure*.

34. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the First Yanovich Affidavit;
2. the Second Yanovich Affidavit;
3. the Affidavit of Ellerton Castor, sworn February 18, 2020;
4. the Pre-Filing Report;
5. the First Report, to be filed;
6. the Initial Order; and
7. such further material as counsel may advise and this Court may permit.

February 18, 2020

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Court File No: CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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BETWEEN:

**ORIONIS CORPORATION**

Applicant

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**ONTARIO GRAPHITE, LTD.**

Respondent

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

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

**ORIONIS CORPORATION**

Applicant

and

**ONTARIO GRAPHITE, LTD.**

Respondent

Court File No: CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT: TORONTO**

**NOTICE OF MOTION  
(Comeback Hearing; Returnable Feb. 20, 2020)**

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## Tab 2

Court File No: CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**AFFIDAVIT OF ELLERTON CASTOR  
(Sworn February 18, 2020)**

I, **Ellerton Castor**, of the City of Miami in the State of Florida in the United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer and Chief Financial Officer of the Respondent, Ontario Graphite, Ltd. ("OGL"), which positions I have held since June 2018 and December 2012, respectively. Accordingly, I have knowledge of the facts and matters deposed to herein except where stated to be based on information and belief.
2. I have reviewed the Initial Order of Justice Gilmore, dated February 12, 2020 (the "**Initial Order**"), the Affidavit of David Yanovich Wancier, sworn January 10,



2020 (the “**First Yanovich Affidavit**”), the Second Affidavit of David Yanovich Wancier, sworn February 11, 2020 (the “**Second Yanovich Affidavit**”), and the Report of Deloitte Restructuring Inc., in its capacity as proposed monitor of OGL.

3. I swear this affidavit in support of the motion brought by the Applicant, Orionis Corporation (“**Orionis**”), seeking:

- (a) an Order (the “**Amended and Restated Initial Order**”), among other things,
  - (i) extending the Stay Period, as defined in paragraph 10 of the Initial Order, until and including April 29, 2020;
  - (ii) increasing the authorization of OGL to borrow under the debtor-in-possession facility (the “**DIP Facility**”) described in paragraph 28 of the Initial Order, up to a maximum of US\$2.75 million;
  - (iii) deeming all references to dollar amounts in the DIP Term Sheet (as defined in paragraph 29 of the Initial Order and attached as Exhibit “E” to the Second Yanovich Affidavit) to mean United States dollars (unless otherwise specified therein); and
  - (iv) granting other relief customarily granted in orders made in proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”);
  
- (b) an Order (the “**SISP & IRP Approval Order**”), among other things,
  - (i) if necessary, abridging the time for service of this Notice of Motion, the Motion Record and the Factum of Orionis and dispensing with any further service thereof;
  - (ii) approving the sale and investment solicitation procedures (the “**SISP**”), as described below;
  - (iii) granting the Monitor the power to conduct the SISP;
  - (iv) approving an incentive and retention plan (“**IRP**”) for the benefit of five of OGL’s employees (including its sole officer)

and one independent contractor to OGL (collectively, the “**IRP Participants**”);

- (v) granting a charge in the amount of \$100,000 (the “**IRP Charge**”) in favour of the IRP Participants to secure Retention Payments (defined below) potentially owing to them under the IRP; and
- (vi) sealing the Confidential IRP Appendix (defined below).

4. Capitalized terms contained in this affidavit that are not otherwise defined have the meaning ascribed to them in the Initial Order. All references to currency in this affidavit are references to Canadian Dollars unless otherwise specified.

**A. Activities Since Initial Order**

5. Since the Initial Order was granted, OGL has acted in good faith and with due diligence in respect of the CCAA proceedings and, subject to the request for and receipt of the Initial Advance Excess Amount (as defined and described below), has complied with the Initial Order.

*(i) First DIP Advance*

6. Consistent with the Budget (as defined in the Second Yanovich Affidavit), which is attached as Schedule “A” to the DIP Term Sheet, on February 13, 2020, OGL submitted a request to Orionis for an initial advance under the DIP Facility in the amount of US\$183,834, and, on February 14, 2020, Orionis made an advance to OGL in that amount (the “**First DIP Advance**”).

7. The Initial Order authorized initial advances in an amount of up to Cdn\$200,000 until the Comeback Hearing (as defined in paragraph 45 of the Initial Order) (the “**Initial Authorized Borrowings**”).

8. Based on the Bank of Canada posted daily average exchange rate for February 14, 2020, the First DIP Advance is equivalent to approximately Cdn\$244,000. The First DIP Advance therefore exceeded the Initial Authorized Borrowings by approximately Cdn\$44,000 (the “**Initial Advance Excess Amount**”).

9. The exceedance was inadvertent. The parties had always intended that both the DIP Term Sheet and the Initial Order would authorize advances of up to US\$200,000, which would be increased to US\$2.75 million at the Comeback Hearing, as the projected cash flows in the Budget are denominated in United States Dollars. From the outset, the parties anticipated that total borrowings of approximately US\$2.5 million may be necessary during the pendency of these proceedings.

10. Shortly after the First DIP Advance was made, the parties realized the inconsistency in the currencies referenced in the DIP Term Sheet, the Initial Order, and the Budget. The Monitor was immediately notified of the foregoing and confirmed its understanding that advances under the DIP Facility were to be made in United States Dollars. Nonetheless, OGL has retained, and will continue to retain, the Initial Advance Excess Amount pending the outcome of the Comeback Hearing.

*(ii) Interim Plan*

11. OGL has undertaken and completed all facets of the Interim Plan with the exception of the dredging of the polishing pond, which will be commenced after the spring thaw. OGL is currently contemplating that the dredging operation will be completed by May 31, 2020.





**B. SISP**

12. OGL, Orionis and the Monitor participated in the development of, and each supports, the proposed SISP, a copy of which will be appended to the Report of the Monitor to be filed in connection with this Motion (the “**First Report**”).

13. It is proposed that the Monitor be authorized to conduct the SISP, with the assistance of its affiliate, Deloitte Corporate Finance Inc.

14. As set out in the First Yanovich Affidavit, the Monitor has the expertise and knowledge necessary to conduct the SISP and is in the best position to do so.

15. The SISP is in the best interests of OGL and its stakeholders.

**C. IRP and IRP Charge**

16. OGL, in consultation with the Monitor, Orionis and the IRP Participants, has developed an IRP to facilitate and encourage the continued participation of the IRP Participants in the business during the SISP, including the completion of work in relation to the Interim Plan (as defined in the First Yanovich Affidavit).

17. As set out in the Second Yanovich Affidavit:

- (a) The IRP Participants have considerable experience with OGL and have developed specialized expertise with respect to OGL’s business operations and the requirements in the Interim Plan.
- (b) Replacing the IRP Participants during CCAA proceedings would be extremely difficult and costly.





- (c) The IRP Participants are essential to a successful SISP and the completion of all steps necessary to complete the Interim Plan and satisfy OGL's obligations under the Environmental Order (as defined in the Second Yanovich Affidavit).

18. The proposed IRP contemplates retention bonuses for the employee IRP Participants and retention fees for the contractor IRP Participant (collectively, the "**Retention Payments**") up to \$100,000, in aggregate. The proposed IRP also contemplates an incentive bonus to me, as the sole officer of OGL, upon completion of a sale or investment transaction (a "**Transaction**") resulting from the SISP (the "**Incentive Payment**"). The Retention Payments and the Incentive Payment are subject to certain terms and conditions.

19. It is proposed that amounts potentially owing in respect of Retention Payments under the IRP be secured by the IRP Charge, which is proposed to rank in priority to the Directors' Charge and subordinate to the Administration Charge and the DIP Lender's Charge. The Incentive Payment is not proposed to be secured by the IRP Charge. Rather, it is intended that it would be paid with the proceeds of any Transaction resulting from the SISP and that such payment would be directed under the Order approving the Transaction.

20. The First Report will more fully describe the proposed IRP, including disclosing the amounts eligible to be paid to each IRP Participant under the IRP in a confidential appendix (the "**Confidential IRP Appendix**").



21. The Confidential IRP Appendix will contain confidential, commercially sensitive and personal information. I believe it is in the best interests of OGL, OGL's stakeholders and the IRP Participants that the Confidential IRP Appendix be sealed from the public Court record.

22. I understand that OGL, Orionis and the Monitor support the proposed IRP and IRP Charge.

23. In the interests of disclosure, I am one of the IRP Participants and am a beneficiary of the proposed IRP (and IRP Charge), including both Retention Payments and the Incentive Payment.

**D. Increase to the Authorization under the DIP Facility**

24. The Initial Order authorized OGL to borrow up to \$200,000 under the DIP Facility to finance OGL's activities until the Comeback Hearing (the "**Immediate Funding**").

25. OGL's current financial position is consistent with the anticipated cash flows in the Budget.

26. As provided in the Budget, OGL requires an anticipated amount of approximately US\$2.5 million to finance the CCAA proceedings (collectively with the Immediate Funding, the "**CCAA Funding**").

27. OGL therefore requires authorization to borrow up to US\$2.75 million under the DIP Facility to finance the CCAA Funding, inclusive of a 10% cumulative variance



from the Budget (as contemplated by the DIP Term Sheet, subject to clarifying that advances are to be in US dollars).

28. To ensure the DIP Term Sheet remains effective and properly reflects the parties' intentions, and to minimize disruption to the CCAA proceedings, it is proposed that a provision be added to the Amended and Restated Initial Order deeming the amounts referred to in the DIP Term Sheet to be in US dollars (unless otherwise specified therein).

29. If authorization to borrow further funds under the DIP Facility is not obtained, OGL cannot continue operations, including performing works necessary under the Interim Plan, and an orderly restructuring will not be achievable.

**E. Stay Extension**

30. It is proposed that the Stay Period in the Initial Order be extended to April 29, 2020.

31. The proposed extension to the Stay Period will afford OGL with necessary "breathing space" to continue operations and advance the CCAA, and in particular it will allow:

- (a) OGL to continue the work required under the Interim Plan, and
- (b) the Monitor to complete the first phase of the SISF in accordance with its terms.

32. Provided that the SISF & IRP Approval Order is granted in a form satisfactory to Orionis, thereby satisfying certain conditions precedent to accessing additional



funds under the DIP Facility contained in the DIP Term Sheet, OGL is forecast to have sufficient liquidity to finance its operations (including funding the SISP and certain elements of the Interim Plan) through April 29, 2020.

33. As noted above, Orionis and OGL have acted and continue to act in good faith and with due diligence in respect of the CCAA proceedings.

34. I understand that OGL, Orionis and the Monitor support the proposed extension to the Stay Period.

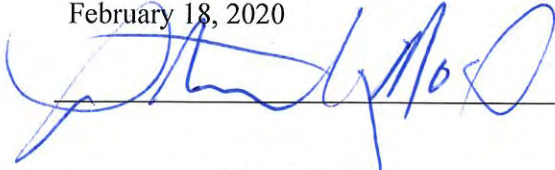
35. The proposed extension to the Stay Period is in the best interests of OGL and its stakeholders.

#### **F. CONCLUSION**

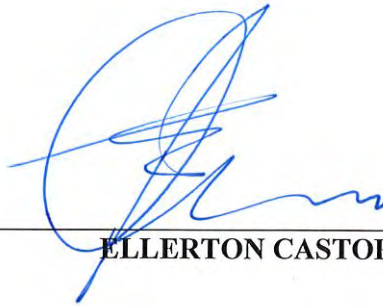
36. For the reasons set out above, and in the First Yanovich Affidavit and the Second Yanovich Affidavit, I believe that granting the SISP & IRP Approval Order and the Amended and Restated Initial Order sought by Orionis is in the best interests of OGL, Orionis and all other interested parties. If the SISP & IRP Approval Order and Amended and Restated Initial Order are not obtained, OGL can no longer fund its operations and will be unable to satisfy its obligations under the Environmental Order. Further, extending the Stay Period will maintain the “status quo” and permit the Monitor to undertake the SISP, thereby seeking to maximize realization on the Property.



SWORN BEFORE ME at the City of  
Miami in the State of Florida in the  
United States of America on  
February 18, 2020



Notary Public



ELLERTON CASTOR





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

**28** ORIONIS CORPORATION

Applicant

and

ONTARIO GRAPHITE, LTD.

Respondent

Court File No: CV-20-00634195-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT: TORONTO

AFFIDAVIT OF ELLERTON CASTOR  
(Sworn Feb. 18, 2020)

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## Tab 3

Court File No. CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

|                      |   |                       |
|----------------------|---|-----------------------|
| THE HONOURABLE MADAM | ) | THURSDAY, THE 20th    |
|                      | ) |                       |
| JUSTICE GILMORE      | ) | DAY OF FEBRUARY, 2020 |

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**ORDER  
(SISP & IRP Approval Order)**

**THIS MOTION**, made by the Applicant, Orionis Corporation (“**Orionis**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Initial Order of Justice Gilmore, dated February 12, 2020 (the “**Initial Order**”), the Affidavit of David Yanovich Wancier, sworn January 10, 2020, the Second Affidavit of David Yanovich, sworn February 11, 2020, the Affidavit of Ellerton Castor, sworn February 18, 2020 (the “**Castor Affidavit**”), the Pre-Filing Report of



Deloitte Restructuring Inc., in its capacity as the proposed monitor of Ontario Graphite, Ltd., dated February 11, 2020, the First Report to the Court of the Monitor, dated February ●, 2020 (the “**First Report**”), the Factum of Orionis, and on hearing the submissions of counsel for Orionis, counsel for the Monitor, counsel for the Respondent, Ontario Graphite, Ltd. (the “**Debtor**”), and no one appearing for any other parties, although properly served as appears from the affidavit of service of ●, sworn February ●, 2020,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order and the Sale and Investment Solicitation Procedure, attached as Schedule “A” to this Order (the “**SISP**”).

#### **SISP**

3. **THIS COURT ORDERS** that the SISP is hereby approved.
4. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to perform its obligations under the SISP, including through its affiliate, Deloitte Corporate Finance Inc., and to take any and all steps that are reasonably necessary or desirable to carry out the SISP.
5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, directors, employees, advisors, agents and controlling persons, including Deloitte Corporate Finance Inc. as agent of the Monitor (collectively, the “**Agents**”), shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of their duties under the SISP or the provisions of this Order, save and except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Monitor or the Agents, as applicable, in performing their obligations under the SISP or the provisions of this Order , as determined by this Court.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor, the Monitor and its Agents may disclose personal information of identifiable individuals to interested parties who participate in the SISP and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale or investment transaction through the SISP (the “**Sale**”). Each interested party (and their respective advisors) to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Debtor, or in the alternative destroy all such information.

#### **IRP**

7. **THIS COURT ORDERS** that the incentive and retention plan (the “**IRP**”) described in the Castor Affidavit and the First Report is hereby approved and the Debtor is authorized to make the Retention Payments (as defined in the Castor Affidavit) contemplated thereunder and set out in confidential appendix “●” to the First Report (the “**Confidential IRP Appendix**”) in accordance with the terms and conditions of the IRP.

8. **THIS COURT ORDERS** that the individual participants in the IRP listed in the Confidential IRP Appendix (the “**IRP Participants**”) shall be entitled to the benefit of and are hereby granted a charge (the “**IRP Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000, to secure amounts owing to the IRP Participants in respect of Retention Payments under the IRP on a *pari passu* basis among the IRP Participants.

9. **THIS COURT ORDERS** that the IRP Charge shall constitute a charge on the Property and shall have priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Administration Charge and the DIP Lender’s Charge.

**Sealing**

10. **THIS COURT ORDERS** that the Confidential IRP Appendix is hereby sealed pending further Order of the Court.

**General**

11. **THIS COURT ORDERS** that the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body (each a “**Judicial Body**”) to give effect to this Order and to assist the Monitor and its respective agents in carrying out the terms of this Order. All Judicial Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

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# Tab A

**SCHEDULE "A"**  
**SALE AND INVESTOR SOLICITATION PROCEDURES**

## SALE AND INVESTMENT SOLICITATION PROCEDURE

### ONTARIO GRAPHITE, LTD.

#### RECITALS

- A.** Pursuant to an Order (the “**CCAA Order**”) granted by the Ontario Superior Court of Justice (the “**Court**”) on February 12, 2020, Deloitte Restructuring Inc. was appointed as monitor (the “**Monitor**”) in the *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings of Ontario Graphite, Ltd. (“**OGL**”).
- B.** On February 20, 2020, the Court granted an order (the “**SISP Approval Order**”), among other things, approving and ratifying the sale and investment solicitation procedure (the “**SISP**”) and the SISP procedures set forth herein (these “**SISP Procedures**”).
- C.** The SISP Approval Order, the SISP, and these SISP Procedures shall govern the process for soliciting and selecting bids for:
- (a) the sale (a “**Sale**”) of all or substantially all of the property, assets and undertakings of OGL (the “**Property**”), including without limitation:
    - (i) the Kearney Mine Property (as defined below); and
    - (ii) all mining equipment owned by OGL, wherever located, including at the Kearney Mine (as defined below); and
  - (b) for the restructuring, recapitalization or refinancing of OGL (an “**Investment**”).
- D.** All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

#### ARTICLE 1 DEFINED TERMS

In these SISP Procedures:

- (1) “**Application Affidavits**” means the Affidavits of David Yanovich Wancier sworn on January 10, 2020 and February 11, 2020, the latter in support of an Initial Order pursuant to the CCAA.
- (2) “**Approval Hearing**” is defined in Section 5.7(1).
- (3) “**Backup Bid**” is defined in Section 5.6(4).
- (4) “**Backup Bid Expiration Date**” is defined in Section 5.6(6).
- (5) “**Backup Bidder**” is defined in Section 5.6(4).

- (6) “**Bid Notice**” is defined in Section 4.3(5).
- (7) “**Bridge Notes**” means, collectively, the secured notes issued by OGL to Orionis dated January 19, 2016, July 19, 2017, and March 20, 2019, in each case as they may have been amended.
- (8) “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.
- (9) “**CCAA**” is defined in Recital A.
- (10) “**CCAA Order**” is defined in Recital A.
- (11) “**CCAA Proceedings**” means the CCAA proceedings in respect of OGL pursuant to the CCAA Order.
- (12) “**Confidentiality Agreement**” is defined in Section 2.4(1).
- (13) “**Court**” is defined in Recital A.
- (14) “**Definitive Agreements**” is defined in Section 5.6(5).
- (15) “**Definitive Investment Agreement**” is defined in Section 5.3(a).
- (16) “**Definitive Purchase Agreement**” is defined in Section 5.2(b).
- (17) “**Deposit**” is defined in Section 5.2(i).
- (18) “**Draft Approval Order**” means the form of sale approval and vesting order to be developed by the Monitor in consultation with the Secured Creditor and provided to Qualified Phase 2 Bidders that submitted a Qualified Phase 1 Bid that is a Sale Proposal.
- (19) “**Draft Purchase Agreement**” means the form of purchase and sale agreement to be developed by the Monitor in consultation with the Secured Creditor and provided to Qualified Phase 2 Bidders that submitted a Qualified Phase 1 Bid that is a Sale Proposal.
- (20) “**Investment**” is defined in Recital C(b).
- (21) “**Investment Amount**” is defined in Section 5.3(a).
- (22) “**Investment Proposal**” is defined in Section 4.2(1)(a)(ii).
- (23) “**Kearney Mine**” means the mining, exploration, development and recommissioning project located 26 kilometres north-east of Kearney, Ontario, consisting of seven mining leases covering an area of approximately 435 hectares and 116 mining claims, as described in the Application Affidavit.
- (24) “**Kearney Mine Property**” means:

- (a) the three mining leases and 15 mining claims to which OGL has title; and
  - (b) the four mining leases and 12 mining claims to which OGL has a beneficial interest; as further described in the Application Affidavits.
- (25) “**Known Potential Bidders**” is defined in Section 2.4(1).
  - (26) “**Monitor**” is defined in Recital A.
  - (27) “**Non-Binding Indication of Interest**” is defined in Section 4.1(1).
  - (28) “**OGL**” is defined in Recital A.
  - (29) “**Orionis**” means Orionis Corporation.
  - (30) “**Phase 1 Bid Deadline**” is defined in Section 4.1(2).
  - (31) “**Phase 2 Bid Deadline**” is defined in Section 5.1.
  - (32) “**Potential Bidder**” is defined in Section 2.5(1).
  - (33) “**Property**” is defined in Recital C(a).
  - (34) “**Purchase Price**” is defined in Section 5.2(b).
  - (35) “**Qualified Bidder**” is defined in Section 5.4(1).
  - (36) “**Qualified Bids**” is defined in Section 5.4(1).
  - (37) “**Qualified Investment Bid**” is defined in Section 5.3.
  - (38) “**Qualified Phase 1 Bid**” is defined in Section 5.2.
  - (39) “**Qualified Phase 1 Bidder**” is defined in Section 2.5(2).
  - (40) “**Qualified Phase 2 Bidder**” is defined in Section 4.3(4).
  - (41) “**Qualified Purchase Bid**” is defined in Section 5.2.
  - (42) “**Sale**” is defined in Recital C(a).
  - (43) “**Sale Proposal**” is defined in Section 4.2(1)(a)(i).
  - (44) “**Secured Claims Amount**” means the aggregate amount owing (including, but not limited to, principal, interest, fees and recoverable expenses) to the Secured Creditor, as at the date which the transactions contemplated by the Successful Bid, if any, are completed, under the Bridge Notes or otherwise that are validly secured by the Property, and any funds



advanced by Orionis to OGL in connection with the CCAA Proceedings that are secured by a Court ordered charge, all as determined by the Monitor or the Court.

- (45) “**Secured Creditor**” means Orionis or any purchaser, transferee or assignee of the Bridge Notes or of the right to repayment of funds advanced by Orionis to the Monitor in connection with the CCAA Proceedings that are secured by a Court ordered charge.
- (46) “**SISP**” is defined in Recital B.
- (47) “**SISP Approval Order**” is defined in Recital B.
- (48) “**SISP Procedures**” is defined in Recital B.
- (49) “**Solicitation Process**” is defined in Section 2.1(1).
- (50) “**Successful Bid**” is defined in Section 5.6(3).
- (51) “**Successful Bidder**” is defined in Section 5.6(4).
- (52) “**Target Closing Date**” means May 29, 2020.
- (53) “**Teaser Letter**” is defined in Section 2.4(1).
- (54) “**Transaction**” means a Sale or an Investment.

## **ARTICLE 2 SOLICITATION**

### **2.1 Solicitation Process**

- (1) These SISP Procedures describe, among other things, the Property available for sale, the opportunity for an investment in OGL, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning OGL, the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids and a Backup Bid (if a Backup Bid is identified in accordance with these SISP Procedures), and the approval thereof by the Court (collectively, the “**Solicitation Process**”).
- (2) The Monitor (including through its affiliate, Deloitte Corporate Finance Inc.) shall conduct the Solicitation Process as outlined herein. In the event that there is a disagreement or clarification required as to the interpretation or application of these SISP Procedures, the Court shall hear such matter and provide directions, upon application of the Monitor or any other party with a hearing on not less than five (5) Business Days’ notice.

## 2.2 Sale and Investment Opportunity

These SISP Procedures provide for (a) a sale of all or part of the Property, and/or (b) an Investment to be structured in a manner acceptable to the Monitor in consultation with the Secured Creditor and OGL.

## 2.3 “As Is, Where Is”

Any Sale or Investment will be on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Monitor or OGL or any of their agents, estates, advisors, professionals or otherwise, except to the extent set forth in the relevant agreement with the Successful Bidder.

## 2.4 Solicitation of Interest

- (1) The Monitor shall prepare a list of potential bidders capable of submitting a Sale Proposal or Investment Proposal (the “**Known Potential Bidders**”). The Secured Creditor may on a timely basis identify any parties to the Monitor which shall be included in the list of Known Potential Bidders. Concurrently, the Monitor, in consultation with the Secured Creditor, will prepare (a) an initial offering summary (the “**Teaser Letter**”) to notify Known Potential Bidders of the existence of the Solicitation Process and invite the Known Potential Bidders to express their interest in participating in a Sale or Investment, and (b) a form of confidentiality agreement satisfactory to the Monitor (a “**Confidentiality Agreement**”).
- (2) Promptly after preparation of the Known Potential Bidders list, the Monitor shall distribute the Teaser Letter and the Confidentiality Agreement to the Known Potential Bidders.

## 2.5 Participation Requirements

- (1) Unless otherwise provided for herein, ordered by the Court or agreed by the Monitor, in order to participate in the Solicitation Process and be considered for qualification as a Qualified Phase 1 Bidder, an interested party, including a Known Potential Bidder (a “**Potential Bidder**”), must deliver the following to the Monitor prior to the Phase 1 Bid Deadline:
  - (a) An executed Confidentiality Agreement, which shall inure to the benefit of any Successful Bidder in the event that a Transaction is completed;
  - (b) A letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (c) A written acknowledgment of receipt of a copy of the SISP Approval Order (including these SISP Procedures) agreeing to accept and be bound by the provisions contained therein.
- (2) The Monitor shall designate a Potential Bidder as a “**Qualified Phase 1 Bidder**” if:

- (a) Such Potential Bidder has satisfied all of the requirements described in Section 2.5(1) above; and
- (b) Such Potential Bidder's financial information and credit support or enhancement demonstrate to the satisfaction of the Monitor, in its reasonable business judgement, the financial capability of such Potential Bidder to consummate a Transaction and that such Potential Bidder is likely (based on availability of financing, experience and other considerations) to consummate either a Sale or an Investment.

The Monitor may waive one or more of the requirements set out in Section 2.5(1)(a) to (c) and designate a Potential Bidder as a Qualified Phase 1 Bidder. The Secured Creditor shall be deemed to be a Qualified Phase 1 Bidder.

- (3) The determination as to whether a Potential Bidder is a Qualified Phase 1 Bidder pursuant to Section 2.5(2) will be made as promptly as practicable after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Phase 1 Bidder, the Monitor will promptly notify the Potential Bidder that it is a Qualified Phase 1 Bidder.
- (4) If it is determined in accordance with Section 2.5(2) above, that there are no Qualified Phase 1 Bidders and that, as a consequence, proceeding with these SISP Procedures is not in the best interests of OGL or its stakeholders, the Monitor shall notify the Secured Creditor forthwith, and within ten (10) Business Days of such determination, file a motion with the Court seeking directions with respect to the conduct of the SISP.

### **ARTICLE 3 DUE DILIGENCE**

#### **3.1 Due Diligence**

- (1) As soon as practicable after the determination that a party is a Qualified Phase 1 Bidder, the Monitor will make available to such Qualified Phase 1 Bidder in a secure online electronic data room confidential due diligence information that is in the possession and control of the Monitor regarding:
  - (a) The Property available for sale; and
  - (b) The debt of, and equity interests in, OGL.

At the request of a Qualified Phase 1 Bidder, such confidential due diligence information shall also be provided on a confidential basis satisfactory to the Monitor to a proposed lender of such Qualified Phase 1 Bidder that is reasonably acceptable to the Monitor.

- (2) Each Qualified Phase 1 Bidder shall have such access to due diligence materials, on-site inspections and information relating to the Property, and other information as the Monitor deems appropriate in its discretion.

- (3) The Monitor shall not be obligated to furnish any due diligence materials or information after the Phase 2 Bid Deadline.
- (4) Without limiting the generality of any term or condition of any Confidentiality Agreement between the Monitor and any Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Successful Bidder or Backup Bidder, unless otherwise agreed by the Monitor or ordered by the Court, no Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Successful Bidder or Backup Bidder shall be permitted to have any discussions with any counterparty to any contract with OGL, any current or former director, officer or employee of OGL, or with any regulatory authority responsible for OGL or any of their businesses or any other Potential Bidder, Qualified Phase 1 Bidder or Qualified Phase 2 Bidder in connection with a Non-Binding Indication of Interest or any other bid submitted in accordance with the terms hereof or in contemplation thereof.
- (5) The Monitor is not responsible for, and will have no liability with respect to, any information obtained by any Known Potential Bidder, Potential Bidder or Qualified Bidder in connection with the Property, a Sale or Investment. The Monitor does not make any representations or warranties whatsoever as to the information or the materials provided, except, to the extent the representations or warranties are contained in any Definitive Purchase Agreement or Definitive Investment Agreement between a Successful Bidder or Backup Bidder and the Monitor.

#### **ARTICLE 4 PHASE 1**

##### **4.1 Seeking Non-Binding Indications of Interest by Qualified Phase 1 Bidders**

- (1) Until the Phase 1 Bid Deadline, in accordance with the terms of the SISP Approval Order and these SISP Procedures, the Monitor will seek to identify and qualify Qualified Phase 1 Bidders, and will solicit non-binding indications of interest from Qualified Phase 1 Bidders to acquire all, or substantially all of the Property or make an Investment (each a “**Non-Binding Indication of Interest**”).
- (2) Subject to Section 4.3(5), in order to continue to participate in the Solicitation Process, a Qualified Phase 1 Bidder must deliver a Non-Binding Indication of Interest to the Monitor so as to be received by the Monitor not later than 5:00 p.m. (Toronto time) on April 15, 2020, or such later date or time as the Monitor may determine appropriate with the prior written consent of the Secured Creditor, acting reasonably (the “**Phase 1 Bid Deadline**”).

##### **4.2 Non-Binding Indications of Interest by Qualified Phase 1 Bidders**

- (1) Unless otherwise ordered by the Court or agreed by the Monitor, in order to be considered a “**Qualified Phase 1 Bid**” a Non-Binding Indication of Interest submitted by a Qualified Phase 1 Bidder must be received on or before the Phase 1 Bid Deadline, and contain the following information:
  - (a) An indication of whether the Qualified Phase 1 Bidder is offering to:

- (i) acquire all or part of the Property (a “**Sale Proposal**”); or
  - (ii) make an Investment (an “**Investment Proposal**”);
- (b) In the case of a Sale Proposal, the Non-Binding Indication of Interest shall identify:
- (i) the purchase price (including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 1 Bidder);
  - (ii) the assets included, any of the assets expected to be excluded, and/or any additional assets desired to be included in the transaction;
  - (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable);
  - (iv) an acknowledgement that the contemplated sale will be made on an “as is, where is” basis;
  - (v) the key material contracts and leases, if any, the Qualified Phase 1 Bidder wishes to acquire and the Qualified Phase 1 Bidder’s proposed treatment of related cure costs, if any;
  - (vi) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the grant or transfer of any mining permits or licenses or other approvals with respect to environmental matters, required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vii) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder’s ability to consummate the contemplated transaction by the Target Closing Date;
  - (viii) a detailed description of any additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;
  - (ix) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
  - (x) a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder’s financial or other capabilities to consummate the contemplated transaction;

- (xi) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose; and
  - (xii) any other terms or conditions of the Sale Proposal which the Qualified Phase 1 Bidder believes are material to the transaction;
- (c) In the case of an Investment Proposal, it shall identify:
- (i) the aggregate amount of the equity and debt investment (including, the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made in OGL;
  - (ii) the underlying assumptions regarding the pro forma capital structure (including, the anticipated debt levels, debt service fees, interest and amortization);
  - (iii) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of OGL and the proposed treatment of employees;
  - (iv) the structure and financing of the transaction including all requisite financial assurance including a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder's financial or other capabilities to consummate the contemplated transaction;
  - (v) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the grant or transfer of any mining permits or licenses, required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vi) the proposed corporate governance structure of the entity or entities owning/operating the business, following implementation of the Investment;
  - (vii) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
  - (viii) additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;

- (ix) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder's ability to consummate the contemplated transaction by the Target Closing Date;
  - (x) the proposed treatment of stakeholders, including lenders, trade creditors, shareholders and employees;
  - (xi) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose;
  - (xii) any other terms or conditions of the Investment Proposal which the Qualified Phase 1 Bidder believes are material to the transaction; and
- (d) Such other information reasonably requested by the Monitor.
- (2) The Monitor may, with the consent of the Secured Creditor, acting reasonably, waive compliance with any one or more of the requirements specified herein and deem any non-compliant Non-Binding Indication of Interest to be a Qualified Phase 1 Bid. Notwithstanding the foregoing, prior written consent shall not be required for amendments or modifications to the SISP that are administrative or minor in nature such that they are unlikely (in the Monitor's reasonable discretion) to have a material effect on the results of the SISP or the Secured Creditor, provided further that the Monitor shall consult with the Secured Creditor in advance of any such matters.

#### **4.3 Assessment of Qualified Phase 1 Bids and Determination of Qualified Phase 2 Bidders**

- (1) Subject to Section 4.3(7), the Monitor will provide copies of any Qualified Phase 1 Bids received to the Secured Creditor, and consult with the Secured Creditor.
- (2) In consultation with the Secured Creditor and OGL, the Monitor will assess any Qualified Phase 1 Bids received and will determine whether proceeding with these SISP Procedures on the basis of such Qualified Phase 1 Bids is in the best interests of OGL and its stakeholders. Such assessment will be made as promptly as practicable after the Phase 1 Bid Deadline.
- (3) If the Monitor, in accordance with Section 4.2 above, determines that no Qualified Phase 1 Bids were received, the Monitor shall advise the Secured Creditor forthwith, and within ten (10) Business Days file a motion with the Court seeking directions.
- (4) If the Monitor, in accordance with Section 4.2 above, determines that
  - (a) One or more Qualified Phase 1 Bids were received, and
  - (b) Proceeding with these SISP Procedures is in the best interests of OGL and its stakeholders,

these SISP Procedures will continue and each Qualified Phase 1 Bidder who has submitted a Qualified Phase 1 Bid that is determined by the Monitor, on consideration of the

information delivered pursuant to Section 4.2(1), likely be consummated shall be a **“Qualified Phase 2 Bidder”**. The Monitor shall provide advance written notice of the commencement of Phase 2 and the names of the Qualified Phase 2 Bidders to the Secured Creditor and OGL.

- (5) Notwithstanding any other provision in these SISP Procedures, the Secured Creditor shall be deemed to be a Qualified Phase 2 Bidder even if it did not submit a Non-Binding Indication of Interest. Subject to the restrictions and limitations set out in Section 4.3(7), the Secured Creditor shall be permitted to submit a Qualified Purchase Bid or Qualified Investment Bid, provided that the Secured Creditor declares its intention to do so within five (5) Business Days of the commencement of Phase 2 (as described in Article 5 hereto) by delivering written notice thereof to the Monitor (the **“Bid Notice”**). The Bid Notice shall contain the amount of the Secured Creditor’s bid together with a summary of all material terms of the bid. The Secured Creditor shall not be entitled to increase the amount of its bid following delivery of the Bid Notice. The Monitor shall forthwith provide a copy of the Bid Notice to all Qualified Phase 1 Bidders and Qualified Phase 2 Bidders, as applicable.
- (6) If the Secured Creditor does not submit a Bid Notice within five (5) Business Days of the commencement of Phase 2 then the Secured Creditor will not be permitted to submit any bid thereafter, save and except for in the circumstances described in Section 5.5(2).
- (7) Notwithstanding any other provision of this SISP, to the extent that the Secured Creditor or any employee, officer, director or partner of the Secured Creditor or any of its affiliates, at any time received copies of any Qualified Phase 1 Bid or information regarding the proposed consideration to be paid by the bidder in such Qualified Phase 1 Bid, the Secured Creditor shall not be permitted to submit any bid that provides for consideration that exceeds the amount of the Secured Claims Amount.

## **ARTICLE 5 PHASE 2**

### **5.1 Seeking Qualified Bids by Qualified Phase 2 Bidders**

In order to continue to participate in the Solicitation Process, a Qualified Phase 2 Bidder must deliver a Qualified Purchase Bid or Qualified Investment Bid to the Monitor so as to be received by the Monitor by no later than 5:00 p.m. (Toronto time) on June 22, 2020, or such later date or time as the Monitor may determine appropriate (the **“Phase 2 Bid Deadline”**).

### **5.2 Qualified Purchase Bids**

A Sale Proposal submitted by a Qualified Phase 2 Bidder will be considered a **“Qualified Purchase Bid”** only if the Sale Proposal complies with all of the following:

- (a) It includes a letter stating that the Sale Proposal is irrevocable until the earlier of:
  - (i) approval by the Court of a Successful Bid; and



(ii) 45 Business Days following the Phase 2 Bid Deadline;

provided, however, that if such Sale Proposal is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the earlier of: (i) the closing of the Successful Bid or the Backup Bid, as the case may be; and (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;

- (b) It includes a duly authorized and executed purchase and sale agreement substantially in the form of Draft Purchase Agreement specifying the purchase price, including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 2 Bidder, expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto (the “**Definitive Purchase Agreement**”), and such ancillary agreements as may be required by the Qualified Phase 2 Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and the proposed orders to approve the sale by the Court, as well as copies of such materials marked to show the amendments and modifications to the Draft Purchase Agreement and Draft Approval Order;
- (c) It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting a Sale Proposal, a Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submissions of its Sale Proposal or these SISP Procedures;
- (d) It includes evidence sufficient to allow the Monitor to make a reasonable determination as to the Qualified Phase 2 Bidder’s (and its direct and indirect owners and their principals’) financial and other capabilities to consummate the transaction contemplated by the Sale Proposal, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (e) It is not conditioned on:
- (i) the outcome of unperformed due diligence by the bidder; and/or
  - (ii) obtaining any financing capital; and

it includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;

- (f) It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Phase 2 Bidder’s direct and indirect owners and their principals, and the complete terms of any such participation;

- (g) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
- (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Sale Proposal;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Monitor, or any of its advisors, except as expressly stated in the Definitive Purchase Agreement submitted by it;
  - (iii) is a sophisticated party capable of making its own assessments in respect of making its Sale Proposal; and
  - (iv) has had the benefit of independent legal advice in connection with its Sale Proposal;
- (h) It includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;
- (i) Except in the case of a credit bid, it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 5% of the proposed gross Purchase Price, to be held and dealt with in accordance with these SISP Procedures;
- (j) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder will assume the obligations of OGL under executory contracts, unexpired leases, and licences proposed to be assigned (or identifies with particularity which of such contracts, leases, and licenses of OGL, as applicable, that the Qualified Phase 2 Bidder wishes not to assume, or alternatively wishes to assume), contains full details of the Qualified Phase 2 Bidder's proposal for the treatment of related cure costs, and which of these the assumption of which is a condition of closing;
- (k) It provides for closing of the Qualified Purchase Bid by no later than the Target Closing Date;
- (l) If the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor, that names the

Monitor as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;

- (m) It includes evidence, in form and substance satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval and any approvals with respect to the grant or transfer of any mining permits or licenses), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (n) It contains other information reasonably requested by the Monitor; and
- (o) It is received by no later than the Phase 2 Bid Deadline.

### 5.3 Qualified Investment Bids

An Investment Proposal submitted by a Qualified Phase 2 Bidder will be considered a “**Qualified Investment Bid**” only if the Investment Proposal complies with all of the following:

- (a) It includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment (the “**Investment Amount**”) and details regarding the proposed equity and/or debt structure of OGL, if applicable, following completion of the proposed transaction (a “**Definitive Investment Agreement**”);
- (b) It includes a letter stating that the Investment Proposal is irrevocable until the earlier of:
  - (i) approval by the Court of a Successful Bid; and
  - (ii) 45 Business Days following the Phase 2 Bid Deadline;provided, however, that if such Investment Proposal is selected as the Successful Bid or Backup Bid, it shall remain irrevocable until the earlier of:
  - (i) the closing of the Successful Bid or the Backup Bid, as the case may be; and
  - (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;
- (c) It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting an Investment Proposal, the Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submission of its Investment Proposal or these SISP Procedures;

- (d) It includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor, to allow the Monitor to make a reasonable determination as to the Qualified Phase 2 Bidder's financial and other capabilities to consummate the transaction contemplated by the Investment Proposal;
- (e) It is not conditioned on:
  - (i) the outcome of unperformed due diligence by the Qualified Phase 2 Bidder; and/or
  - (ii) obtaining any financing capital; andincludes an acknowledgement and representation that the Qualified Phase 2 Bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (f) It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Investment Proposal, including the identification of the Qualified Phase 2 Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (g) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
  - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its Investment Proposal;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of OGL or the completeness of any information provided in connection therewith, including by the Monitor or any of its advisors, except as expressly stated in the Definitive Investment Agreement;
  - (iii) is a sophisticated party capable of making its own assessments in respect of making its Investment Proposal; and
  - (iv) has had the benefit of independent legal advice in connection with its Investment Proposal;
- (h) It includes evidence, in form and substance satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Investment Proposal;

- (i) It is accompanied by a Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 10% of the Investment Amount, to be held and dealt with in accordance with these SISP Procedures;
- (j) It provides for closing of the Qualified Investment Bid by no later than the Target Closing Date;
- (k) If the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the Investment Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, and satisfactory to the Monitor, that names OGL as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) It includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) It contains other information reasonably requested by the Monitor; and
- (n) It is received by no later than the Phase 2 Bid Deadline.

#### **5.4 Qualified Bids**

- (1) Qualified Purchase Bids and Qualified Investment Bids shall hereinafter be referred to as “**Qualified Bids**” and each a “**Qualified Bid**” and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as a “**Qualified Bidder**”.
- (2) Notwithstanding Section 5.2 and Section 5.3 hereof, the Monitor, with the consent of the Secured Creditor, may waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such non-compliant bids to be Qualified Purchase Bids or Qualified Investment Bids, as the case may be.

#### **5.5 No Qualified Bids**

- (1) In consultation with the Secured Creditor and OGL, the Monitor will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated and whether proceeding with these SISP Procedures is in the best interests of OGL and its stakeholders. Such determination will be made, subject to the prior written consent of the Secured Creditor, acting reasonably, as promptly as practicable after the Phase 2 Bid Deadline.
- (2) If the Monitor, in accordance with Section 5.5(1) above, determines, in consultation with the Secured Creditor and OGL, that (a) no Qualified Bid was received, or (b) at least one Qualified Bid was received but it is not likely that the transactions contemplated in any

such Qualified Bids will be consummated, the Monitor shall, within ten (10) Business Days of such determination, file a motion with the Court seeking directions. In the circumstances described in this subsection, the Secured Creditor shall have the option within five (5) Business Days from such determination to submit a credit bid (that would constitute a binding agreement if accepted) even if they did not submit a credit bid at any other point during Phase 1 or Phase 2, and notwithstanding the receipt of any new information regarding bids or offers after the commencement of Phase 2.

## **5.6 Selection Criteria**

- (1) In selecting the Successful Bid, the Monitor, in consultation with the Secured Creditor and OGL, will review each Qualified Bid. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to, items such as:
  - (a) The Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the bidder) provided by such bid;
  - (b) The claims likely to be created by such bid in relation to other bids;
  - (c) the counterparties to the transaction;
  - (d) The proposed revisions to the Draft Purchase Agreement and the Draft Approval Order and the terms of the transaction documents;
  - (e) Other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
  - (f) The assets included or excluded from the bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property;
  - (g) The transition services required from OGL post-closing and any related restructuring costs; and
  - (h) The likelihood and timing of consummating the transaction by the Target Closing Date.
- (2) Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as:
  - (a) The Investment Amount and the proposed sources and uses of such capital;
  - (b) The debt to equity structure post-closing;
  - (c) The counterparties to the transaction;
  - (d) The terms of the transaction documents;
  - (e) Other factors affecting the speed, certainty and value of the transaction;

- (f) Planned treatment of and recovery to stakeholders; and
  - (g) The likelihood and timing of consummating the transaction by the Target Closing Date.
- (3) The Monitor may select Qualified Bids for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the Investment Amount or Purchase Price offered, before identifying the highest or otherwise best Qualified Bid(s) received (the “**Successful Bid**”).
  - (4) Upon completion of any further negotiations or clarifications that may be conducted pursuant to Section 5.6(3) above, the Monitor will identify the Successful Bid and may identify a next highest or otherwise best Qualified Bid received (such offer, the “**Backup Bid**”). The Qualified Bidder(s) who made the Successful Bid is/are the “**Successful Bidder**” and the Qualified Bidder(s) who made the Backup Bid (if a Backup Bid is identified in accordance with these SISP Procedures) is/are the “**Backup Bidder**”. The Monitor will notify the Successful Bidder and any Backup Bidder that they are, respectively, the Successful Bidder and the Backup Bidder.
  - (5) The Monitor will finalize definitive agreements in respect of the Successful Bid and the Backup Bid, if any, conditional upon approval by the Court (the “**Definitive Agreements**”).
  - (6) If a Backup Bid is identified in accordance with these SISP Procedures, then such Backup Bid shall remain open until the consummation of the transaction contemplated by the Successful Bid (the “**Backup Bid Expiration Date**”).
  - (7) All Qualified Bids (other than the Successful Bid and any Backup Bid) shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid or any Backup Bid by the Court.

## 5.7 Approval Hearing

- (1) After Definitive Agreements in respect of a Successful Bid and Backup Bid, if any, have been finalized, in the case of the Successful Bid, signed (conditional on Court approval) and, in the case of the Backup Bid signed (conditional on non-completion of the Successful Bid and on Court approval), the Monitor shall seek a hearing as soon as practicable on a date to be scheduled by the Court that will permit not less than five (5) Business Days’ notice to the service list (the “**Approval Hearing**”) to approve the Successful Bid and the Backup Bid, if any, should the Successful Bid not close for any reason. The Approval Hearing may be adjourned or rescheduled by the Monitor, without further notice, by an announcement of the adjourned date at the Approval Hearing.
- (2) If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then the Backup Bid, if any, will be deemed to be the Successful Bid and the Monitor shall effectuate the transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

## 5.8 Deposits

- (1) All Deposits shall be retained by the Monitor and invested in an interest-bearing trust account in a Schedule I bank in Canada. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved pursuant to the Approval Hearing shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Successful Bidder upon closing of the Successful Bid. The Deposit (plus accrued interest) paid by the Backup Bidder, if there is one, shall be retained by the Monitor until the Backup Bid Expiration Date or, if the Backup Bid becomes the Successful Bid, shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Backup Bidder upon closing of the Backup Bid. The Deposits (plus applicable interest) of all Qualified Phase 2 Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders without interest within five (5) Business Days of the date upon which the Successful Bid and Backup Bid, if any, are approved by the Court. If these SISP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the bidders without interest within five (5) Business Days of the date upon which these SISP Procedures are terminated.
- (2) If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close, it shall forfeit its Deposit to the Monitor; provided, however, that the forfeiture of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Monitor has or may have against such breaching entity.

## 5.9 Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any Canadian or other foreign statute or are otherwise required at law in order to implement the Successful Bid or Backup Bid, as the case may be.

## 5.10 Notice to the Monitor

Any notice or other communication to be given to the Monitor in connection with this SISP shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the Monitor as follows:

Deloitte Restructuring Inc.  
8 Adelaide Street West, Suite 200  
Toronto, ON M5K 0A9  
Attention: Phil Reynolds and Todd Ambachtsheer  
Telephone: 416-956-9200 and 416-607-0781  
Email: [philreynolds@deloitte.ca](mailto:philreynolds@deloitte.ca) and [tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)



### **5.11 Reservation of Rights**

- (1) The Monitor may:
  - (a) Reject at any time any bid that is:
    - (i) inadequate or insufficient;
    - (ii) not in conformity with the requirements of these SISP Procedures or any orders of the Court applicable to OGL; or
    - (iii) contrary to the best interests of OGL, its estate, and stakeholders as determined by the Monitor;
  - (b) In accordance with the terms hereof, accept bids not in conformity with these SISP Procedures to the extent that the Monitor determines, in its reasonable business judgement, that doing so would benefit OGL, its estate, and stakeholders;
  - (c) In accordance with the terms hereof extend the Phase 1 Bid Deadline or Phase 2 Bid Deadline; and
  - (d) Reject all bids.

The Monitor shall not be required to accept the highest bid, but shall be entitled to recommend to the Court a transaction that in its view maximizes value for all stakeholders.

- (2) These SISP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Monitor on the one hand and any Known Potential Bidder, Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Qualified Bidder, Successful Bidder or Backup Bidder, on the other hand, except as specifically set forth in Definitive Agreements that may be executed by the Monitor.
- (3) Subject to the restrictions and limitations set out in Section 4.3(7) hereof, the Secured Creditor shall be granted by the Monitor with full access to the information in connection with the Non-Binding Indication of Interests, the Phase 1 Qualified Bids and/or the Phase 2 Qualified bids, as the case may be.

### **5.12 Further Orders**

At any time during the SISP, the Monitor may apply to the Court for directions with respect to the discharge of its powers and duties hereunder.

### **5.13 Credit Bid**

These SISP Procedures permit the Secured Creditor to submit a credit bid, provided such credit bid is in accordance with the terms and conditions of these SISP Procedures and in accordance with applicable law.

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

**ORIONIS CORPORATION**

Applicant

and

**ONTARIO GRAPHITE, LTD.**

Respondent

Court File No: CV-20-00634195-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT: TORONTO**

**ORDER**

**(SISP & IRP Approval Order, made Feb. 20, 2020)**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West, 1 First Canadian Place  
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

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Sean Stidwill (LSO# 71078J)

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Fax: 416.862.6666

## Tab 4

Court File No. CV-20-00634195-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

|                      |   |                                |
|----------------------|---|--------------------------------|
| THE HONOURABLE MADAM | ) | THURSDAY, THE 20 <sup>TH</sup> |
|                      | ) |                                |
| JUSTICE GILMORE      | ) | DAY OF FEBRUARY, 2020          |

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order dated Feb. 12, 2020)**

**THIS MOTION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on February 12, 2020 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of David Yanovich Wancier sworn January 10, 2020 (the “**First Yanovich Affidavit**”) and February 11, 2020 (the “**Second Yanovich Affidavit**”) and the exhibits thereto, the affidavit of Ellerton Castor, sworn February 18, 2020 (the “**Castor Affidavit**”), and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, and counsel for Deloitte Restructuring Inc. (“**Deloitte**”), with counsel for the Ministry of the Environment, Conservation and Parks (the “**MECP**”) and the Ministry of Energy, Northern Development and Mines (“**ENDM**”) in attendance and not opposing, and on being advised that those parties listed in the affidavits of service filed were given notice of this Motion, and on reading the First Report of the Monitor, dated February 18, 2020 (the “**First Report**”),

#### **INITIAL ORDER AND INITIAL FILING DATE**

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

#### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Respondent (the “**Debtor**”) is a company to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Debtor and the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Debtor shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Debtor shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Debtor is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Debtor shall be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Debtor of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Debtor, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Debtor shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date subject to compliance with the Budget (as defined in the Second Yanovich Affidavit), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Debtor in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Debtor shall, subject to compliance with the Budget as may be amended from time to time, be entitled but not required to pay all reasonable expenses incurred by the Debtor in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Debtor following the Initial Filing Date.

9. **THIS COURT ORDERS** that the Debtor shall, in accordance with legal requirements, remit or pay:

- (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) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Debtor in connection with the sale of goods and services by the Debtor, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Debtor.

10. **THIS COURT ORDERS** that, from and after the Initial Filing Date, the Debtor shall not make any payments pursuant to this Order other than those contemplated by the Budget, as same may be amended from time to time, or upon further Order of this Court.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Debtor is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtor to any of its creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Debtor shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate; and



- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

all of the foregoing to permit the Debtor to proceed with an orderly restructuring of the Business.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including April 29, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtor or the Monitor, or affecting the Business or the Property, except with the written consent of the Debtor and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Debtor and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor, and that the Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order or the Initial Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Debtor. Nothing in this Order of the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Debtor, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtor or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

19. **THIS COURT ORDERS** that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Debtor shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

21. **THIS COURT 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 Debtor's directors and officers 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 indemnified in accordance with paragraph 19 of this Order.

**APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that Deloitte is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Debtor with the powers and obligations set out in the CCAA or set forth herein and that the Debtor and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Debtor pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Debtor's receipts and disbursements and the Debtor's compliance with the Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Debtor, to the extent required by the Debtor or the DIP Lender, in its dissemination of financial and other information to the DIP Lender and its counsel as may reasonably be requested by the DIP Lender;
- (d) advise the Debtor in its preparation of the Debtor's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender as may reasonably be requested by the DIP Lender;
- (e) advise the Debtor or Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Debtor or Applicant, to the extent required, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtor, to the extent that is necessary to adequately assess the Debtor's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or the Initial Order or anything done in pursuance of the Monitor's duties and powers under this Order

or the Initial Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Debtor and the DIP Lender with information provided by the Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Debtor is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Debtor may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtor as part of the costs of these proceedings. The Debtor is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Debtor on a periodic basis.

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Debtor's counsel, the Applicant's counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

### **DIP FINANCING**

31. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow under a credit facility from Orionis Corporation (the "**DIP Lender**") in order to finance the Debtor's working capital requirements, costs associated with the Interim Plan (as defined in the First Yanovich Affidavit) and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed US\$2,750,000, unless permitted by further Order of this Court.

32. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the debtor-in-possession financing term sheet between the Debtor and the DIP Lender dated as of February 10, 2020 appended as Exhibit E to the Second Yanovich Affidavit (the "**DIP Term Sheet**") and, notwithstanding section 17 of the DIP Term Sheet, all references to dollar amounts therein (without further description and unless otherwise specified) shall mean United States Dollars.

33. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the "**Definitive Documents**"), as may be contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order. For greater

certainty, all indebtedness, interest, fees, liabilities and obligations related to or arising from the First DIP Advance (as defined in the Castor Affidavit) shall constitute DIP Obligations

34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender’s Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five business days notice to the Debtor and the Monitor, may exercise any and all of its rights and remedies against the Debtor or the Property under or pursuant to the Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and



- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

37. **THIS COURT ORDERS** that the priorities of the Directors’ Charge, the Administration Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$200,000);

Second – DIP Lender’s Charge; and

Third – Directors’ Charge (to the maximum amount of \$200,000).

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the DIP Lender’s Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

41. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtor entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Debtor pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtor's interest in such real property leases.

### **SERVICE AND NOTICE**

43. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the Initial Filing Date, (i) make the Initial Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtor of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

44. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

45. **THIS COURT ORDERS** that the Applicant, the Debtor and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

46. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/ca-en/ogl](http://www.insolvencies.deloitte.ca/ca-en/ogl).

47. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant, the Debtor and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

48. **THIS COURT ORDERS** that the Applicant, the Debtor or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Debtor, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Debtor, the Monitor and their respective 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 Applicant and the Debtor and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Debtor and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Applicant, the Debtor and the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. **THIS COURT ORDERS** that any interested party (including the Debtor and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

**ORIONIS CORPORATION**

Applicant

and

**ONTARIO GRAPHITE, LTD.**

Respondent

Court File No: CV-20-00634195-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
PROCEEDING COMMENCED AT: TORONTO

**AMENDED AND RESTATED INITIAL ORDER**  
(Amending Initial Order dated Feb. 12, 2020)

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant,  
Orionis Corporation

## Tab 5

Court File No. CV-20-00634195-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

|                      |   |                                      |
|----------------------|---|--------------------------------------|
| THE HONOURABLE MADAM | ) | <del>WEDNESDAY, THE 12TH</del>       |
|                      | ) | <u>THURSDAY, THE 20<sup>TH</sup></u> |
| JUSTICE GILMORE      | ) | DAY OF FEBRUARY, 2020                |

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order dated Feb. 12, 2020)**

**THIS ~~APPLICATION~~MOTION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order (the "Initial Order") issued on February 12, 2020 (the "Initial Filing Date") and extending the stay of proceedings provided for therein was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of David Yanovich Wancier sworn January 10, 2020 (the "First Yanovich Affidavit") and February 11, 2020 (the "**Second Yanovich Affidavit**") and the exhibits thereto, ~~and on being advised that the secured creditors who are~~



~~likely to be affected by the charges created herein were given notice~~ the affidavit of Ellerton Castor, sworn February 18, 2020 (the “Castor Affidavit”), and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, and counsel for Deloitte Restructuring Inc. (“Deloitte”), ~~no one appearing although duly served as appears from the affidavit of service of Mark Sheeley sworn February 11, 2020~~ with counsel for the Ministry of the Environment, Conservation and Parks (the “MECP”) and the Ministry of Energy, Northern Development and Mines (“ENDM”) in attendance and not opposing, and on being advised that those parties listed in the affidavits of service filed were given notice of this Motion, and on reading the ~~pre-filing report~~ First Report of the ~~proposed monitor~~ Monitor, dated February ~~11~~ 18, 2020 (the “~~Pre-Filing Report~~”) and the ~~consent of Deloitte to act as the Monitor, – First Report~~”).

### INITIAL ORDER AND INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~ Motion and the ~~Application~~ Motion Record is hereby abridged and validated so that this ~~Application~~ Motion is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Respondent (the “**Debtor**”) is a company to which the CCAA applies.

### PLAN OF ARRANGEMENT

~~3.4.~~ **THIS COURT ORDERS** that the Debtor and the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## POSSESSION OF PROPERTY AND OPERATIONS

**4.5.** **THIS COURT ORDERS** that the Debtor shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Debtor shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Debtor is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

**5.6.** **THIS COURT ORDERS** that the Debtor shall be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Debtor of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Debtor, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

**6.7.** **THIS COURT ORDERS** that the Debtor shall be entitled but not required to pay the following expenses whether incurred prior to or after ~~this Order~~ the Initial Filing Date subject to compliance with the Budget (as defined in the Second Yanovich Affidavit), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the ~~date of this Order~~Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Debtor in respect of these proceedings, at their standard rates and charges.

7.8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Debtor shall, subject to compliance with the Budget as may be amended from time to time, be entitled but not required to pay all reasonable expenses incurred by the Debtor in carrying on the Business in the ordinary course after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Debtor following the ~~date of this Order~~Initial Filing Date.

8.9. **THIS COURT ORDERS** that the Debtor shall, in accordance with legal requirements, remit or pay:

- (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) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtor in connection with the sale of goods and services by the Debtor, but only where such Sales Taxes are accrued

or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~Initial Filing Date, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Debtor.

9.10. **THIS COURT ORDERS** that, from and after the ~~date of this Order~~Initial Filing Date, the Debtor shall not make any payments pursuant to this Order other than those contemplated by the Budget, as same may be amended from time to time, or upon further Order of this Court.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Debtor is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtor to any of its creditors as of ~~this date~~the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Debtor shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate; and

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

all of the foregoing to permit the Debtor to proceed with an orderly restructuring of the Business.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

~~10.~~13. **THIS COURT ORDERS** that until and including ~~February 22~~April 29, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtor or the Monitor, or affecting the Business or the Property, except with the written consent of the Debtor and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

~~11.~~14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Debtor and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

~~12.~~15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right,

renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

~~13.~~16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor, and that the Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~Initial Filing Date are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

~~14.~~17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order or the Initial Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Debtor. Nothing in this Order of the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

~~15.~~18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any

claim against the directors or officers that arose before the ~~date hereof~~ [Initial Filing Date](#) and that relates to any obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Debtor, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtor or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

~~16.~~[19.](#) **THIS COURT ORDERS** that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

~~17.~~[20.](#) **THIS COURT ORDERS** that the directors and officers of the Debtor shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph ~~16~~[19](#) of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~34~~[37](#) and ~~36~~[39](#) herein.

~~18.~~[21.](#) **THIS COURT 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 Debtor's directors and officers 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 indemnified in accordance with paragraph ~~16~~[19](#) of this Order.

#### **APPOINTMENT OF MONITOR**

~~19.~~[22.](#) **THIS COURT ORDERS** that Deloitte is ~~hereby,~~ [as of the Initial Filing Date,](#) appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Debtor with the powers and obligations set out in the CCAA or set forth herein and that the Debtor and its shareholders, officers, directors, and

Assistants shall advise the Monitor of all material steps taken by the Debtor pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

~~20.~~23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Debtor's receipts and disbursements and the Debtor's compliance with the Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Debtor, to the extent required by the Debtor or the DIP Lender, in its dissemination of financial and other information to the DIP Lender and its counsel as may reasonably be requested by the DIP Lender;
- (d) advise the Debtor in its preparation of the Debtor's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender as may reasonably be requested by the DIP Lender;
- (e) advise the Debtor or Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Debtor or Applicant, to the extent required, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- ~~(e)~~(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtor, to the extent that is necessary to adequately assess the Debtor's business and financial affairs or to perform its duties arising under this Order;



~~(f)~~(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

~~(g)~~(i) perform such other duties as are required by this Order or by this Court from time to time.

~~21.~~24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

~~22.~~25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or the Initial Order or anything done in pursuance of the Monitor's duties and powers under this Order or the Initial Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

~~23.~~26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Debtor and the DIP Lender with information provided by the Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the

information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Debtor is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Debtor may agree.

~~24.~~27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this [Order or the Initial](#) Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this [Order or the Initial](#) Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

~~25.~~28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtor as part of the costs of these proceedings. The Debtor is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Debtor on a periodic basis.

~~26.~~29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~27.~~30. **THIS COURT ORDERS** that the Debtor's counsel, the Applicant's counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of ~~this~~[the Initial](#) Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~34~~37 and ~~36~~39 hereof.

## DIP FINANCING

~~28.~~31. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow under a credit facility from Orionis Corporation (the “**DIP Lender**”) in order to finance the Debtor’s working capital requirements, costs associated with the Interim Plan (as defined in the ~~Second~~First Yanovich Affidavit) and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed ~~US\$200,000~~2,750,000, unless permitted by further Order of this Court.

~~29.~~32. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the debtor-in-possession financing term sheet between the Debtor and the DIP Lender dated as of February 10, 2020 appended as Exhibit E to the Second Yanovich Affidavit (the “**DIP Term Sheet**”) and, notwithstanding section 17 of the DIP Term Sheet, all references to dollar amounts therein (without further description and unless otherwise specified) shall mean United States Dollars.

~~30.~~33. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the “**Definitive Documents**”), as may be contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the “**DIP Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order. For greater certainty, all indebtedness, interest, fees, liabilities and obligations related to or arising from the First DIP Advance (as defined in the Castor Affidavit) shall constitute DIP Obligations

~~31.~~34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before ~~this Order is made~~ Initial

Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs ~~34~~37 and ~~36~~39 hereof.

~~32~~35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five business days notice to the Debtor and the Monitor, may exercise any and all of its rights and remedies against the Debtor or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

~~33~~36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

~~34.~~37. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$200,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$200,000).

~~35.~~38. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~36.~~39. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

~~37.~~40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

~~38.~~41. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued

pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtor entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Debtor pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

39-42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtor’s interest in such real property leases.

## SERVICE AND NOTICE

~~40.~~43. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the ~~date of this Order~~Initial Filing Date, (i) make ~~this~~the Initial Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtor of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

~~41.~~44. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

~~42.~~45. **THIS COURT ORDERS** that the Applicant, the Debtor and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

~~43.46.~~ This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/ca-en/ogl](http://www.insolvencies.deloitte.ca/ca-en/ogl).

~~44.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant, the Debtor and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

~~45.~~ **COMeBACK MOTION**

~~46.47. THIS COURT ORDERS that the comeback motion shall be heard at a date and time to be fixed by a Commercial List Judge, but in no event later than February 22, 2020 (the "Comeback Hearing").~~

## **GENERAL**

~~47.48.~~ **THIS COURT ORDERS** that the Applicant, the Debtor or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

~~48.49.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Debtor, the Business or the Property.

~~49.50.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Debtor, the Monitor and their respective 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 Applicant and the Debtor and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Debtor and the Monitor and their respective agents in carrying out the terms of this Order.

~~50.~~51. **THIS COURT ORDERS** that each of the Applicant, the Debtor and the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~51.~~52. **THIS COURT ORDERS** that any interested party (including the Debtor and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

~~52.~~53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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Applicant

and

Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT: TORONTO

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order dated Feb. 12, 2020)**

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant,  
Orionis Corporation

## Tab 6

Revised: January 21, 2014

Court File No. ~~\_\_\_\_\_~~ CV-20-00634195-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST )**

THE HONOURABLE ~~\_\_\_\_\_~~ MADAM ) ~~WEEKDAY~~ THURSDAY, THE # 20<sup>TH</sup>  
 JUSTICE ~~\_\_\_\_\_~~ GILMORE ) DAY OF ~~MONTH~~ FEBRUARY,  
~~20YR~~ 2020

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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 [APPLICANT'S NAME] (the  
 "Applicant")~~

~~INITIAL ORDER~~

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order dated Feb. 12, 2020)**

THIS ~~APPLICATION~~MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order (the "Initial Order") issued on February 12, 2020 (the "Initial Filing Date") and extending the stay of proceedings provided for therein was heard this day at 330 University Avenue, Toronto, Ontario.

~~ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto~~

ON READING the affidavits of David Yanovich Wancier sworn January 10, 2020 (the "First Yanovich Affidavit") and February 11, 2020 (the "Second Yanovich Affidavit") and the exhibits thereto, the affidavit of Ellerton Castor, sworn February 18, 2020 (the "Castor Affidavit"), and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, and counsel for Deloitte Restructuring Inc. ("Deloitte"), with counsel for the Ministry of the Environment, Conservation and Parks (the "MECP") and the Ministry of Energy, Northern Development and Mines ("ENDM") in attendance and not opposing, and on being advised that ~~the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME]<sup>1</sup> although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor, those parties listed in the affidavits of service filed were given notice of this Motion, and on reading the First Report of the Monitor, dated February 18, 2020 (the "First Report").~~

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~~<sup>1</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

## INITIAL ORDER AND INITIAL FILING DATE

1. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

## SERVICE

2. THIS COURT ORDERS that the time for service of the Notice of ~~Application~~Motion and the ~~Application~~Motion Record is hereby abridged and validated<sup>2</sup> so that this ~~Application~~Motion is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

3. THIS COURT ORDERS AND DECLARES that the ~~Applicant~~Respondent (the “Debtor”) is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Debtor and the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”).

## POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the ~~Applicant~~Debtor shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”). Subject to further Order of this Court, the ~~Applicant~~Debtor shall continue to carry on business in a manner consistent with the preservation of its business (the “Business”) and Property. The ~~Applicant~~Debtor is authorized and empowered to continue to retain and

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~~2 If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “Assistants”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~{~~ THIS COURT ORDERS that the ~~Applicant~~Debtor shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place ~~as described in the Affidavit of [NAME] sworn [DATE]~~ or replace it with another substantially similar central cash management system (the “Cash Management System”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~Debtor of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~Debtor, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the Plan CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~}~~

7. THIS COURT ORDERS that the ~~Applicant~~Debtor shall be entitled but not required to pay the following expenses whether incurred prior to or after ~~this Order~~the Initial Filing Date subject to compliance with the Budget (as defined in the Second Yanovich Affidavit), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the ~~date of this Order~~Initial

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~~<sup>3</sup> This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Debtor in respect of these proceedings, at their standard rates and charges.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the ~~Applicant~~Debtor shall, subject to compliance with the Budget as may be amended from time to time, be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Debtor in carrying on the Business in the ordinary course after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant~~Debtor following the ~~date of this Order~~Initial Filing Date.

9. THIS COURT ORDERS that the ~~Applicant~~Debtor shall ~~remit~~, in accordance with legal requirements, remit or pay:

- (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) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~Debtor in connection with the sale of goods and services by the ~~Applicant~~Debtor, but only where such Sales



Taxes are accrued or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~Initial Filing Date, and

(e) — any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Debtor.

~~(d)(c) THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated]<sup>4</sup> in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“Rent”), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.~~

10. THIS COURT ORDERS that, from and after the Initial Filing Date, the Debtor shall not make any payments pursuant to this Order other than those contemplated by the Budget, as same may be amended from time to time, or upon further Order of this Court.

~~10.~~11. THIS COURT ORDERS that, except as specifically permitted herein, the ~~Applicant~~Debtor is hereby directed, until further Order of this Court: (a) to make no

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~~4 The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~ Debtor to any of its creditors as of ~~this date~~ the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

~~11,12.~~ THIS COURT ORDERS that the ~~Applicant~~ Debtor shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and to dispose of redundant or non-material assets not exceeding \$•25,000 in any one transaction or \$•100,000 in the aggregate~~<sup>5</sup>; and
- ~~(b) — terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~; ~~and~~
- ~~(c)(b) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;~~

all of the foregoing to permit the ~~Applicant~~ Debtor to proceed with an orderly restructuring of the Business ~~(the “Restructuring”)~~.

~~12. — THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant~~

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~~5 Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

~~landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims [or resiliates] the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

~~13. THIS COURT ORDERS that if a notice of disclaimer [or resiliation] is delivered pursuant to Section 32 of the CCAA, 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, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer [or resiliation], the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

**NO PROCEEDINGS AGAINST THE ~~APPLICANT~~DEBTOR OR THE PROPERTY**

~~14.~~13. THIS COURT ORDERS that until and including ~~{DATE—MAX. 30 DAYS}~~April 29, 2020, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~Debtor or the Monitor, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Debtor and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## NO EXERCISE OF RIGHTS OR REMEDIES

~~15.~~14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the [ApplicantDebtor](#) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the [ApplicantDebtor](#) and the Monitor, or leave of this Court, provided that nothing in this Order shall (i)a) empower the [ApplicantDebtor](#) to carry on any business which the [ApplicantDebtor](#) is not lawfully entitled to carry on, (ii)b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii)c) prevent the filing of any registration to preserve or perfect a security interest, or (iv)d) prevent the registration of a claim for lien.

## NO INTERFERENCE WITH RIGHTS

~~16.~~15. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the [ApplicantDebtor](#), except with the written consent of the [ApplicantDebtor](#) and the Monitor, or leave of this Court.

## CONTINUATION OF SERVICES

~~17.~~16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the [ApplicantDebtor](#) or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the [ApplicantDebtor](#), are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the [ApplicantDebtor](#), and that the [ApplicantDebtor](#) shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers,

internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~Initial Filing Date are paid by the ~~Applicant~~Debtor in accordance with normal payment practices of the ~~Applicant~~Debtor or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Debtor and the Monitor, or as may be ordered by this Court.

#### NON-DEROGATION OF RIGHTS

~~18.~~17. THIS COURT ORDERS that, notwithstanding anything else in this Order or the Initial Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Debtor. Nothing in this Order of the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

#### PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

~~19.~~18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~Debtor with respect to any claim against the directors or officers that arose before the ~~date hereof~~Initial Filing Date and that relates to any obligations of the ~~Applicant~~Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~Debtor, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Debtor or this Court.

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~~<sup>6</sup> This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

~~20.~~19. THIS COURT ORDERS that the ~~Applicant~~Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Debtor after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

~~21.~~20. THIS COURT ORDERS that the directors and officers of the ~~Applicant~~Debtor shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~200,000~~200,000, as security for the indemnity provided in paragraph ~~{20}~~19 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~37 and ~~{40}~~39 herein.

~~22.~~21. THIS COURT 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 ~~Applicant~~Debtor's directors and officers 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 indemnified in accordance with paragraph ~~{20}~~19 of this Order.

## APPOINTMENT OF MONITOR

~~23.~~22. THIS COURT ORDERS that ~~[MONITOR'S NAME] is hereby~~Deloitte is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Debtor with the powers

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~~7 The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~8 Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Debtor and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Debtor pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

~~24.~~23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant~~Debtor's receipts and disbursements and the Debtor's compliance with the Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the ~~Applicant~~Debtor, to the extent required by the ~~Applicant~~Debtor or the DIP Lender, in its dissemination, ~~to the DIP Lender and its counsel on a [TIME INTERVAL] basis~~ of financial and other information ~~as agreed to between the Applicant~~DIP Lender and the DIP Lender which its counsel as may reasonably be ~~used in these proceedings including reporting on a basis to be agreed with~~requested by the DIP Lender;
- (d) advise the ~~Applicant~~Debtor in its preparation of the ~~Applicant~~Debtor's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender ~~and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to~~as may reasonably be requested by the DIP Lender;
- (e) advise the Debtor or Applicant in its development of the Plan and any amendments to the Plan;

- (f) assist the [Debtor or Applicant](#), to the extent required ~~by the Applicant~~, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~[Debtor](#), to the extent that is necessary to adequately assess the ~~Applicant~~[Debtor](#)'s business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

~~25.~~24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

~~26.~~25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, [the Ontario Mining Act](#), or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the



Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or [the Initial Order or](#) anything done in pursuance of the Monitor's duties and powers under this [Order or the Initial](#) Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

~~27:~~26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the ~~Applicant~~[Debtor](#) and the DIP Lender with information provided by the ~~Applicant~~[Debtor](#) in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~[Debtor](#) is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~[Debtor](#) may agree.

~~28:~~27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this [Order or the Initial](#) Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order [or the Initial Order](#) shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

~~29:~~28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~[Debtor](#) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~[Debtor](#) as part of the costs of these proceedings. The ~~Applicant~~[Debtor](#) is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant~~[Debtor](#) on a ~~{TIME INTERVAL}~~[periodic](#) basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$ ● [-, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

~~30.~~29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~31.~~30. THIS COURT ORDERS that the ~~Monitor,~~Debtor's counsel ~~to the Monitor, if any,~~ and the Applicant's counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~●~~200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of ~~this~~the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~37 and ~~{40}~~39 hereof.

#### DIP FINANCING

~~32.~~31. THIS COURT ORDERS that the ~~Applicant~~Debtor is hereby authorized and empowered to obtain and borrow under a credit facility from ~~{DIP LENDER'S~~ NAME}Orionis Corporation (the "DIP Lender") in order to finance the ~~Applicant~~Debtor's working capital requirements, costs associated with the Interim Plan (as defined in the First Yanovich Affidavit) and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed US\$●2,750,000, unless permitted by further Order of this Court.

~~33.~~32. THIS COURT ORDERS ~~THAT~~that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~debtor-in-possession financing term sheet between the ~~Applicant~~Debtor and the DIP Lender dated as of ~~{DATE}~~February 10, 2020 appended as Exhibit E to the Second Yanovich Affidavit (the "~~Commitment Letter~~DIP Term Sheet") and, filed notwithstanding section 17 of the DIP Term Sheet, all references to dollar amounts therein (without further description and unless otherwise specified) shall mean United States Dollars.

~~34.~~33. THIS COURT ORDERS that the ~~Applicant~~Debtor is hereby authorized and empowered to execute and deliver such ~~credit~~ agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the “Definitive Documents”), as ~~are~~may be contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant~~Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents (collectively, the “DIP Obligations”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order. For greater certainty, all indebtedness, interest, fees, liabilities and obligations related to or arising from the First DIP Advance (as defined in the Castor Affidavit) shall constitute DIP Obligations

~~35.~~34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “DIP Lender’s Charge”) on the Property as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before ~~this~~Order is made Initial Filing Date. The DIP Lender’s Charge shall have the priority set out in paragraphs ~~{38}~~37 and ~~{40}~~39 hereof.

~~36.~~35. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon ●five business days notice to the ~~Applicant~~Debtor and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~Debtor or the Property under or pursuant to the ~~Commitment Letter~~, Definitive Documents and the DIP Lender’s Charge,

including without limitation, to cease making advances to the ~~Applicant~~Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~Debtor against the obligations of the ~~Applicant~~Debtor to the DIP Lender under ~~the Commitment Letter~~, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Debtor and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Debtor; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Debtor or the Property.

~~37.~~36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise ~~filed by the Applicant~~ under the CCAA, or any proposal filed ~~by the Applicant~~ under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

~~38.~~37. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows<sup>9</sup>:

First – Administration Charge (to the maximum amount of \$●200,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$●200,000).

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~~9 The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~39.~~38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~40.~~39. THIS COURT ORDERS that ~~each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property and ~~such Charges~~ shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

~~41.~~40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the ~~Applicant~~Debtor also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

~~42.~~41. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, ~~the Commitment Letter,~~ the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan

documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the ~~Applicant~~Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant~~Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~Debtor entering into the ~~Commitment Letter~~DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~Applicant~~Debtor pursuant to this Order, ~~the~~ ~~Commitment Letter or~~ the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

~~43.42.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant~~Debtor’s interest in such real property leases.

## SERVICE AND NOTICE

~~44.43.~~ THIS COURT ORDERS that the Monitor shall ~~(i)~~ without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, ~~(ii)~~ within five days after the ~~date of this Order~~Initial Filing Date, ~~(A)~~ make ~~this~~the Initial Order publicly available in the manner prescribed under the CCAA, ~~(B)~~ send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~Debtor of more than \$1000, and ~~(C)~~ prepare a list showing the names and addresses of those creditors and the estimated

amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

45. **THIS COURT ORDERS** that the Applicant, the Debtor and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

~~45.~~46. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: ‘<@>’[www.insolvencies.deloitte.ca/ca-en/ogl](http://www.insolvencies.deloitte.ca/ca-en/ogl).

~~46.~~47. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant, the Debtor and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant~~Debtor’s creditors or other interested parties at their respective addresses as last

shown on the records of the ~~Applicant~~Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

~~47.~~48. THIS COURT ORDERS that the Applicant, the Debtor or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~their powers and duties hereunder.

~~48.~~49. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Debtor, the Business or the Property.

~~49.~~50. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Debtor, the Monitor and their respective 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 Applicant and the Debtor and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Debtor and the Monitor and their respective agents in carrying out the terms of this Order.

~~50.~~51. THIS COURT ORDERS that each of the Applicant, the Debtor and the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



~~51.~~52. THIS COURT ORDERS that any interested party (including the ~~Applicant~~Debtor and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

~~52.~~53. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**  
**ORIONIS CORPORATION** Applicant and **ONTARIO GRAPHITE, LTD.** Respondent

Court File No: CV-20-00634195-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**PROCEEDING COMMENCED AT: TORONTO**

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order dated Feb. 12, 2020)**

**OSLER, HOSKIN & HARCOURT LLP**

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Our Matter No. 1165915

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

**ORIONIS CORPORATION**

Applicant

and

**ONTARIO GRAPHITE, LTD.**

Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT: TORONTO**

**MOTION RECORD OF THE APPLICANT  
(Comeback Hearing; Returnable Feb. 20, 2020)**

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