

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

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

SECOND REPORT OF THE MONITOR

DATED APRIL 21, 2020

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INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, commenced a proceeding (the “**CCAA Proceeding**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”).

As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (as amended and restated on February 20, 2020, the “**Initial Order**”) that among other things:

- (a) Appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
- (b) Granted a stay of proceedings in respect of OGL through to April 29, 2020;
- (c) Approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000;
- (d) Approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000; and
- (e) Approved a debtor-in-possession credit facility (the “**DIP Facility**”) established under a CCAA Debtor-In-Possession Financing Term Sheet dated February 10, 2020 (the “**DIP Term Sheet**”) between OGL and Orionis (the “**DIP Lender**”) and also approved a charge in favour of Orionis in respect of such DIP Facility. The

quantum of the approved borrowings was limited to USD\$2.75 million. The DIP Term Sheet is attached as Appendix “**B**” to this Second Report.

2. On February 20, 2020, the Court granted a further Order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation procedure (the “**SISP**”) to identify bidders or investors for the Assets. The SISP was to be administered by the Monitor.

PURPOSE

3. The Monitor files this Second Report in respect of a material adverse change (the “**MAC**”) in respect of OGL’s CCAA Proceeding and the various effects the MAC is expected to have.

TERMS OF REFERENCE

4. In preparing this Second Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, OGL’s books and records, discussions with management of OGL (“**Management**”), discussions with Orionis and its legal counsel, and information from third-party sources (collectively, the “**Information**”). Except as described in this Second Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*

and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

(b) Deloitte has prepared this Second Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the MAC. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

5. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in U.S. dollars.

ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDING

6. Since the date of the SISP Approval Order, the Monitor has taken steps to administer the SISP. A copy of the SISP is attached as Appendix “C” to this Second Report. The Monitor’s activities to administer the SISP have included:

(a) Developing marketing materials (a “teaser” and a confidential information memorandum (the “**CIM**”)) for distribution to creditors both prior to and after the execution of a non-disclosure agreement (and “**NDA**”);

(b) Along with Management, developing a list of potentially interested parties in OGL’s assets (the “**Buyers List**”). The Buyers List included 327 parties including mining companies (both graphite and other base metals, 37 parties in total), diversified metals and mining producers (75 parties), graphite producers (43 parties), users of graphite (126 parties), trading houses (15 parties), and financial buyers that focus on mining opportunities (31 parties);

- (c) Contacting parties on the Buyers List to see if they had any interest in signing an NDA to further explore the OGL opportunity. The Monitor leveraged its global network to reach out to Buyers List parties in other jurisdictions (Asia, Europe, etc.);
 - (d) Providing the CIM and other materials to parties that had executed an NDA. The Monitor then responded to questions from such parties on an ongoing basis;
 - (e) Confirming to those parties that had executed an NDA the requirements to submit a bid prior to the Phase 1 bid deadline of April 15, 2020 at 5:00 p.m. (Toronto time) (the “**Phase 1 Bid Deadline**”); and
 - (f) Preparing and providing a summary of the three bids received to Orionis as DIP Lender as required by the SISP.
7. Each of the three bids received by the Phase 1 Bid Deadline required clarification as certain of the economics were unclear to the Monitor. Such clarifications occurred on April 16, 2020. Based on the result of these clarifications, and after receiving a summary of the three bids received, Orionis advised that it did not find any of the three bids to be compliant with the terms of the SISP or to provide sufficient value.
8. On April 17, 2020, Orionis delivered a notice of event of default and termination of DIP Facility to the Monitor and OGL (the “**Lender Notice**”), which advised that Orionis determined that an event of default under section 15(n) of the DIP Term Sheet occurred and, accordingly, the Obligations (as defined in the DIP Term Sheet) became due and payable in accordance with section 8(c) of the DIP Term Sheet. The Lender Notice also served as Orionis’s notice to terminate the DIP Facility pursuant to section 9 of the DIP

Term Sheet and in accordance with the Initial Order. Sections 8, 9 and 15(n) of the DIP Term Sheet are reproduced below in part (all capitalized terms as defined in the DIP Facility):

Section 8 (Repayment): “Unless otherwise agreed in writing by the Debtor and the Lender, the Obligations shall be due and payable on demand and, if not demanded, shall be repaid to the Lender as follows: [...] (c) in full, (i) on the expiry of the Initial Term (as defined below), subject to any Extended Term (as defined below), [...] or (v) after the occurrence of an Event of Default (as defined below). [...]”

Section 9 (Term): “[...] the Lender may terminate the DIP Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired. The Initial Term shall also be deemed to have expired if at any time the Lender, acting reasonably, determines that there is no reasonable prospect that a sale of the Assets, satisfactory to the Lender, will be identified or completed through the SISP.”

Section 15 (Events of Default): “(n) the Lender in good faith believes the prospect of payment of the Obligations or the performance of the Debtor’s other obligations hereunder or under any of the security granted in connection herewith is impaired or that any of the Assets are or are about to be placed in jeopardy.”

A copy of the DIP Facility termination notice is attached as Appendix “**D**” to this Second Report.

9. Based on this notice, the Monitor has considered whether the termination of the DIP Facility constitutes a MAC. In order to do so, the Monitor has considered the Standards of Professional Conduct (the “**Standards**”) of the Canadian Association of Insolvency and Restructuring Professionals (“**CAIRP**”). The Standards require the following to be considered:

- (a) Whether the change has a significant adverse effect on the projected cash flow;
 - (b) Whether the change significantly impairs, or is reasonably expected to significantly impair, the debtor's financial circumstances or the ability of the debtor to carry on operations;
 - (c) Whether the change significantly impairs the likelihood of success of a proposal or Plan of Compromise or Arrangement; or
 - (d) Whether the change significantly prejudices the rights or interests of one or more classes of creditors.
10. Absent the DIP Facility or other third party financing, OGL has no sources of cash flow or liquidity. As such, the Monitor is of the view that the termination of the DIP Facility meets each of the criteria above and, as such, a MAC has occurred.
11. The Monitor has prepared a Notice of Material Adverse Change (the "**MAC Notice**") to be posted on its case website at www.insolvencies.deloitte.ca/en-ca/ogl. Where possible, the Monitor will also send a copy of the MAC Notice to OGL's creditors and those parties that appear on the Service List. The MAC Notice (without appendices) is attached to this Second Report as Appendix "**E**".

EFFECT OF THE DIP TERMINATION ON THE INTERIM PLAN AND OGL'S ENVIRONMENTAL COMPLIANCE

12. In addition to providing funding to administer the SISF and these CCAA Proceedings, the funding contemplated by the DIP Facility would have been necessary for OGL to maintain the Kearney Mine site's (the "**Mine**") environmental compliance and to carry out certain work (the "**Ordered Work**" and together with the ongoing environmental maintenance,

the “**Interim Plan**”) pursuant to a Director’s Order (the “**Order**”) issued by the Ministry of the Environment, Conservation and Parks (the “**MECP**”). The remaining components of the Ordered Work largely involve dredging OGL’s polishing pond and other related work at the Mine.

13. In addition to OGL, certain company executives were personally named in the Order.
14. As part of the Interim Plan, OGL installed a mobile treatment unit (the “**MTU**”) that treats water prior to it being discharged into the local watershed. The main function of the MTU is to maintain the level of acidity of water being discharged. Since water leaving the Mine site is naturally acidic, it is treated with “lime”, an alkaline solution that helps to neutralize the water and balance its acidity. Without ongoing funding, such treatment will no longer be possible. Management estimates that existing lime supply will run out on or about April 23, 2020.
15. Much of the necessary work contemplated by the Order, which is “capital” in nature, was originally scheduled to be completed in the fall of 2019. However, due to an early freeze at the Mine site, it was necessary for OGL to seek an amendment to the Order to allow it to perform certain elements in the spring of 2020. Such deferral was agreed with the MECP in December 2019.
16. Management has previously confirmed to the Monitor that necessary purchase orders have been issued and the various contractors are scheduled to perform the remaining Ordered Work as soon as environmental conditions allow (i.e. the polishing pond thaws and the roads on the Mine site are in suitable condition for heavy equipment to access the necessary areas of the property).

17. Approximately \$250,000 is required to complete the remaining Ordered Work. Absent the DIP Facility, OGL does not have sufficient liquidity to pay the contractors to carry out the Ordered Work, nor to maintain the liming activities performed by the MTU.

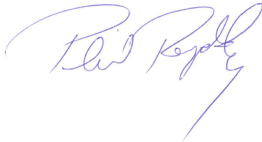
NEXT STEPS

18. OGL has limited cash resources and its current bank balance is approximately CAD\$45,000.
19. The Monitor will be assessing OGL's options given the issuance of the MAC Notice and will report to the Court when there is greater certainty in this regard.

All of which is respectfully submitted this 21st day of April, 2020.

Deloitte Restructuring Inc.
Solely in its capacity as the Monitor
of Ontario Graphite, Ltd. and not
in its personal capacity

Per:



Philip J. Reynolds, LIT
Senior Vice-President

Appendix "A"

Initial Order

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

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**”), 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.

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.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 20 2020

PER / PAR: 

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

ORIONIS CORPORATION **and** **ONTARIO GRAPHITE, LTD.**
Applicant 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
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

John MacDonald (LSO# 25884R)
Tel: 416.862.5672
Email: jmacdonald@osler.com

Sandra Abitan (BQ# 189023-9)
Tel: 514.904.5648
Email: sabitan@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheeley@osler.com

Sean Stidwill (LSO# 71078J)
Tel: 416.862.4871
Email: sstidwill@osler.com

Fax: 416.862.6666

Lawyers for the Applicant,
Orionis Corporation

Our Matter No. 1165915

Appendix "B"

DIP Term Sheet

CCAA DEBTOR-IN-POSSESSION FINANCING TERM SHEET

Dated as of February 10, 2020

WHEREAS Orionis Corporation (the “**Lender**”) and Ontario Graphite, Ltd. (the “**Debtor**”) are parties to secured notes dated January 19, 2016, July 19, 2017, and March 20, 2019 (collectively, and as each may have been amended, supplemented, or otherwise modified, the “**Secured Notes**”), demand debentures dated January 19, 2016, July 19, 2017, March 20, 2019, and March 20, 2019 securing the obligations owing to Lender under the Secured Notes (collectively, and as each may have been amended, supplemented, or otherwise modified, the “**Demand Debentures**”) and related agreements and instruments (collectively, the “**Loan Documents**”) pursuant to which the Lender has, on a secured basis, provided funding to the Debtor in an amount in excess of US\$15 million (the “**Secured Note Debt**”);

AND WHEREAS the Lender has made demand on the Debtor for the Secured Note Debt, and the Debtor has failed to repay such obligations, which remain outstanding as at the date of this term sheet;

AND WHEREAS the Lender intends to bring an application pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on February 12, 2020 (the “**Filing Date**”) in respect of the Debtor for the purpose of commencing a sale and investment solicitation process (a “**SISP**”) in respect of the Debtor’s assets, undertakings and properties, real and personal, (the “**Assets**”) in form presented by the Lender to the Debtor;

AND WHEREAS Deloitte Restructuring Inc. has consented to act as monitor (in such capacity, the “**Monitor**”) in the foregoing CCAA proceedings (the “**CCAA Proceedings**”) and to conduct the SISP;

AND WHEREAS the Lender has agreed to fund certain costs and obligations that may be incurred by the Debtor (directly or indirectly by the Monitor on behalf of the Debtor) in relation to the CCAA Proceedings and the SISP subject to, and in accordance with, the terms set out herein (such funding facility, the “**DIP Facility**”);

NOW THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. **DIP FACILITY:** The DIP Facility will be a secured super-priority debtor-in-possession non-revolving term multi-draw credit facility up to the Maximum Advance Amount (as defined below), and will be available to the Debtor until the expiry of the Initial Term or, if applicable, any Extended Term (each as defined below), subject to and upon the terms and conditions set out in this CCAA Debtor-In-Possession Financing Term Sheet (the “**Term Sheet**”).
2. **PURPOSE OF THE DIP FACILITY:** To fund the costs of the CCAA Proceedings, including, without limitation:

- (a) the fees and disbursements of the Monitor and its legal counsel in connection with the exercise of the powers and duties conferred upon the Monitor by the Initial Order of the Court (as may be amended from time to time, the “**Initial Order**”) and any other Order of the Court in the CCAA Proceedings, including conduct of the SISP;
- (b) the cost associated with the maintenance, preservation and safeguarding of the Assets, including working capital for site operations and general and administrative expenses;
- (c) paying or remitting employee wages, employee vacation pay, employee expenses, employee disbursements, and source deductions; and
- (d) funding the Interim Plan (as defined in, and attached as Appendix D to, the Minutes of Settlement among Tom Burkett, Ellerton Castor, Derek Hirsch, the Debtor, and the Ministry of Environment, Conservation and Parks, as approved by the Ontario Environmental Review Tribunal in a decision dated October 28, 2019, as such Minutes of Settlement were subsequently amended),

all in accordance with this Term Sheet and the budget appended hereto as Schedule “A” (as may be amended, modified or supplemented from time to time by agreement of the Lender and the Debtor, in consultation with the Monitor, the “**Budget**”).

3. AVAILABILITY:

The DIP Facility may be drawn down by the Debtor:

- (a) subject to satisfaction or waiver of the Immediate Funding Condition (as defined below), in an amount not to exceed \$200,000 (the “**Immediate Funding**”),
- (b) subject to satisfaction or waiver of the remaining Conditions Precedent (as defined below), in accordance with the Budget and as otherwise agreed with the Lender,

with advances to be made at times and in amounts determined by the Lender (each, an “**Advance**”).

Prior to the making of any Advance, the Debtor shall submit a written request (an “**Advance Request**”), which may be submitted by email. Subject to the terms hereof, upon receipt of an Advance Request, the Lender (or its designee) may, in its

sole discretion, provide the requested Advance to the Debtor by wire transfer to an account stipulated by the Debtor.

The parties intend that any Advance is to be made prior to the time that liability for the anticipated costs and expenses are to be incurred by the Debtor in accordance with the Budget, and the Debtor will use best efforts to provide reasonable advance notice of any Advance Request and to not incur any obligation to any party unless and until the Debtor is in receipt of sufficient funds to satisfy such obligation in full.

- 4. MAXIMUM ADVANCE AMOUNT:** Notwithstanding any provision to the contrary herein, the Lender shall not be obliged to fund any Advances which, in the aggregate, would exceed \$2,750,000 (the “**Maximum Advance Amount**”), unless the Lender otherwise agrees.
- 5. PERMITTED VARIANCE:** The expenditures set out in the Budget may not be exceeded without the consent of the Lender, other than a variance in the actual expenditures from the Filing Date against forecasted expenditures for such period of up to 10% on a cumulative basis, measured monthly in the last full week of each month as set out in the Budget (the “**Cumulative Permitted Variance Threshold**”).
- 6. INTEREST:** Interest shall accrue on all Advances from the date that each Advance is made on the outstanding balance of such Advance at an annual interest rate of 15% per annum.

All interest shall be computed on the basis of a year of 365 days for the actual number of days (including the first day but excluding the last day) elapsed and shall be calculated and compounded monthly on the first day of the month.

All indebtedness, interest, fees, and other obligations to the Lender under and pursuant to this Term Sheet, including under any other agreements, instruments, charges, or other documents delivered in connection herewith, as well as any costs and expenses (including legal fees) incurred by the Lender in connection with any enforcement of the terms hereof, shall be “**Obligations**” hereunder.

If any provision of this Term Sheet or any ancillary document in connection with this Term Sheet would obligate the Debtor to make any payment of interest or other amount payable to the Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with

retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lender of interest at a criminal rate and any such amounts actually paid by the Debtor in excess of the adjusted amount shall be forthwith refunded to the Debtor.

Upon the occurrence of an Event of Default, the interest rate on the amounts outstanding hereunder, including, without limitation, the DIP Facility, shall be the lesser of (i) 25% per annum, and (ii) the highest rate permitted by applicable law per annum.

7. SECURITY:

All Obligations shall be secured by a super-priority Court-ordered charge and claim on all of the present and after-acquired Assets of the Debtor (the “**DIP Lender’s Charge**”), such DIP Lender’s Charge to be granted by way of the Initial Order.

The DIP Lender’s Charge shall be in priority to all liens, security interests, claims, encumbrances, mortgages, or charges, whether statutory or otherwise, on the Assets, but subordinate only to a charge that may be granted in favour of the Monitor and its counsel, counsel to the Debtor, and counsel to the Lender for their professional fees and disbursements incurred in connection with the CCAA Proceedings, at their standard rates and charges, in an amount not to exceed \$200,000 (the “**Administration Charge**”).

The DIP Lender’s Charge shall be effective without the need for any further documentation or filings, including in any personal property security registration regime or real property system.

Without limiting the foregoing, as security for the payment and performance of the Obligations, the Debtor hereby grants, assigns, transfers, sets over, mortgages, charges, and pledges to the Lender, and hereby creates a general and continuing security interest in favour of the Lender in and to all of the Debtor’s right, title and interest in and to all present and after-acquired property, assets and undertaking of the Debtor of every kind and nature whatsoever, wherever located, whether now existing or hereafter from time to time arising or acquired, including, but not limited to:

- (a) all real and immoveable property, both freehold and leasehold, surface and/or subsurface, as the case may be, and any other interests and rights in any real or immoveable property, including such property situate at that certain mining property commonly referred to as the Obligor's Kearney mine in Kearney, Ontario,

(b) all rights, mining rights, mining claims (whether patented or unpatented), mining leases (including the leasehold or other interest created pursuant to any such mining lease, including without limitation the leasehold and unpatented mining claims,

(c) accounts, equipment, fixtures, goods, intangibles, intellectual property, documents of title, chattel paper, securities, investment property, money, rights to the payment of money, motor vehicles, and

(d) all proceeds of the foregoing, including insurance proceeds or other compensation for loss,

but excluding consumer goods (as defined in the Ontario *Personal Property Security Act*) and the last day of the term of any lease or agreement to lease held by the Debtor now or in the future. The parties have not agreed to postpone the time for attachment of any security interest in this Term Sheet.

8. REPAYMENT:

Unless otherwise agreed in writing by the Debtor and the Lender, the Obligations shall be due and payable on demand and, if not demanded, shall be repaid to the Lender as follows:

- (a) upon the sale or other disposition of any Assets, repayment of 100% of the net cash proceeds of such sale or disposition;
- (b) insurance proceeds in respect of any of the collateral secured by the DIP Lender's Charge;
- (c) in full,
 - i. on the expiry of the Initial Term (as defined below), subject to any Extended Term (as defined below),
 - ii. on the date on which the stay under the Initial Order (as may be extended) is lifted or set aside, in whole or in part, without the prior written consent of the Lender,
 - iii. at the termination of the CCAA Proceedings,
 - iv. on the date on which any of the following occurs: (I) an assignment into bankruptcy is made by the Debtor or an assignment in bankruptcy is made by a Debtor under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"); (II) a

bankruptcy order is issued in respect of a Debtor pursuant to the BIA; (III) a notice of intention to make a proposal under the BIA is filed by or on behalf of a Debtor; (IV) a receiver or receiver and manager is appointed by any court of competent jurisdiction in respect of a Debtor or any of its assets, undertakings or properties, in each case without the prior written consent of the Lender, or

- v. after the occurrence of an Event of Default (as defined below).

All payments received by the Lender shall be applied: (i) first, to any fees due hereunder; (ii) second, to accrued and unpaid interest; (iii) third, after all fees and interest are brought current, to repay any principal amounts outstanding in respect of the DIP Facility.

9. TERM:

Subject to the terms and conditions hereof, the DIP Facility will be available to the Debtor for a period of 29 weeks ending on August 28, 2020, in accordance with the Budget (the “**Initial Term**”).

Upon expiry of the Initial Term, subject to any Extended Term (as defined below), the DIP Facility shall be terminated and cancelled and all Obligations (including interest thereon) shall be repaid to Lender.

Prior to the expiry of the Initial Term, the Lender may elect, in its sole discretion, to provide additional availability under the DIP Facility. If the Lender so elects to provide additional funding, such additional funding is to be provided for a period of time to be agreed upon by the Lender and the Debtor (the “**Extended Term**”) in accordance with a revised budget to be agreed upon between the Lender and the Debtor, in consultation with the Monitor.

Notwithstanding the foregoing, the Lender may terminate the DIP Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired. The Initial Term shall also be deemed to have expired if at any time the Lender, acting reasonably, determines that there is no reasonable prospect that a sale of the Assets, satisfactory to the Lender, will be identified or completed through the SISP.

**10. CONDITIONS
PRECEDENT:**

The Lender will not be obliged to make any Advance under the DIP Facility unless, at the time such Advance is to be made, the following conditions precedent have been satisfied or waived (the “Conditions Precedent:

- (a) the Debtor has executed and returned a copy of this Term Sheet;
- (b) the Initial Order has been issued in form and substance satisfactory to the Lender (the “**Immediate Funding Condition**”);
- (c) the Initial Order has been issued in form and substance satisfactory to the Lender and is a final Order;
- (d) the SISP shall have been approved by Order of the Court (the “**SISP Order**”) in form and substance satisfactory to the Lender and is a final Order;
- (e) no amendment or modification has been made to the Initial Order, any other Order of the Court, or the SISP, unless consented to by the Lender;
- (f) no motion to amend, vary or stay any Order made in the CCAA Proceedings shall have been made or threatened in a manner materially adverse to the Lender, as determined by the Lender in its sole discretion;
- (g) the Debtor has delivered an Advance Request in accordance with the terms hereof;
- (h) no Event of Default has occurred;
- (i) there shall be no liens, security interests, claims, encumbrances or charges on the Assets ranking in priority to the DIP Lender’s Charge, other than the Administration Charge, unless otherwise consented to by the Lender;
- (j) the aggregate amount of all Advances shall not have exceeded the Maximum Advance Amount;
- (k) the Debtor’s compliance with the Budget shall be satisfactory to the Lender, in its sole discretion; and
- (l) no Material Adverse Effect (as defined herein below) shall have occurred after the date of the Initial Order, in the Lender’s sole discretion.

“Material Adverse Effect” means: (a) any effect which is or could reasonably be expected to be adverse to the: (i) status or conditions (financial or otherwise), properties, assets, ownership, capital, liabilities, obligations (whether absolute, accrued, conditional or otherwise), business operations or results of operations of the Debtor that, in the Lender’s sole opinion, is material; or (ii) ability of the Debtor to perform or discharge its obligations under this Term Sheet or any of the other documents relating hereto which, in the Lender’s sole opinion, is material or (b) any event which would constitute an Event of Default or any event which, with the giving of notice of the lapse of time or otherwise, could constitute an Event of Default.

**11. AFFIRMATIVE
COVENANTS:**

The Debtor covenants and agrees to:

- (a) maintain, or cause an affiliate to maintain, in good standing at all times all insurance coverage as is customarily carried by companies which are engaged in the same or similar business to the business of the Debtor or as otherwise may be required by the Lender;
- (b) if and as requested, provide to the Lender an oral or brief written status update regarding the CCAA Proceedings and the SISF;
- (c) use reasonable efforts to keep the Lender apprised on a timely basis of all material developments with respect to the CCAA Proceedings and the SISF;
- (d) consult in advance with the Lender in connection with any plan of compromise or arrangement and any such plan shall be satisfactory to and subject to the approval of the Lender;
- (e) consult with the Lender with respect to any proposed sale of any of the Assets outside of the ordinary course;
- (f) comply with the provisions of all Orders of the Court made in connection with the CCAA Proceedings;
- (g) use the proceeds of the DIP Facility only in accordance with the Budget, subject to the Cumulative Permitted Variance Threshold;
- (h) pay when due, all principal, prepayment obligations, interest, fees and other amounts payable by the Debtor

under this Term Sheet and under any other agreements related hereto;

- (i) forthwith notify the Lender and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may constitute an Event of Default or a material adverse change from the Budget;
- (j) forthwith notify the Lender and the Monitor of the commencement of any action, suit, investigation, litigation or proceeding before any court or governmental authority;
- (k) permit the Lender, and its agents, to inspect the collateral subject to the DIP Lender's Charge and the books and records of the Debtor upon no less than three (3) business days advance written notice; and
- (l) provide to the Lender at least five (5) business days in advance of the earlier of service or filing, copies or drafts of all petitions, pleadings, motions, affidavits, reports, applications, judicial information, financial information and other documents to be filed by or on behalf of the Debtor with the Court, which shall be in form and substance satisfactory to the Lender prior to any such service or filing.

**12. NEGATIVE
COVENANTS:**

The Debtor covenants and agrees not to (other than with the prior written consent of the Lender):

- (a) except as permitted by the Initial Order or further order of the Court, make any payment of principal or interest in respect of any indebtedness outstanding as at the date of the Initial Order;
- (b) disclaim, resiliate or terminate any material contract; merge, amalgamate, consolidate, reorganize, or complete any sale of any Assets outside of the ordinary course of business, other than sales of redundant or non-material assets, in each case as permitted pursuant to the Initial Order or further order of the Court;
- (c) make any acquisitions, investments or loans to any party or guarantee the obligations of any party, other than as contemplated in the Budget;
- (d) incur or enter into any debts, liabilities or obligations, including, without limitation, guarantees and contingent obligations, except in the ordinary course of business or

as may otherwise be approved by the Monitor and the Lender;

- (e) make or permit any dividends, distributions, or other payments to its shareholder;
- (f) enter into any agreement, initiate any process or put forward or participate in any plan or arrangement or motion that contemplates any amendment or waiver of the Lender's rights under this Term Sheet or that may otherwise adversely affect the Lender; and
- (g) contest, challenge, or deny the validity, perfection, priority, enforceability, or quantum of any of the Secured Notes, the Demand Debentures, the Loan Documents or the Secured Note Debt.

13. ADDITIONAL DOCUMENTS

At the Lender's request, the Debtor shall provide such other documentation, instruments, or agreements relating to the DIP Facility in form and substance satisfactory to the Lender.

The Debtor shall execute and deliver to the Lender such documents and assurances as the Lender may request that are reasonably necessary to give full force and effect to this Term Sheet. At the reasonable request of the Lender, the Debtor shall execute and deliver such acknowledgments, mortgages, security agreements, charges and other ancillary documents as the Lender may from time to time request to give full force and effect to this Term Sheet.

14. RESTRICTIONS:

Notwithstanding anything to the contrary herein, none of the proceeds of the Advances may be used in connection with (a) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, motions, applications, actions, or other litigation against the Lender, including any matters set forth in 12(g), above, or (b) the initiation or prosecution of any claims, causes of action, motions, applications, actions, or other litigation against the Lender in such capacity in respect of this Term Sheet.

15. EVENTS OF DEFAULT:

The occurrence of any one or more of the following constitutes an "Event of Default" under this Term Sheet:

- (a) failure by the Debtor to pay any principal, interest, fees, prepayment obligations or any other amounts, in each case when due and owing hereunder;
- (b) any payment is made by the Debtor that is not contemplated by or in compliance with the Budget

(subject to the Cumulative Permitted Variance Threshold);

- (c) the Debtor shall default in the observance or performance of any covenant or obligation hereunder, which, if curable, is not cured within five (5) business days after written notice from the Lender;
- (d) any termination of, or modification to, the stay of proceedings contained in the Initial Order, without the express written consent of the Lender;
- (e) the issuance of an order granting a lien or charge on any of the Assets which is senior to or *pari passu* with the DIP Lender's Charge, other than the Administration Charge, without the prior written consent of the Lender;
- (f) the issuance of an order staying, reversing, vacating or otherwise modifying the DIP Lender's Charge or, any order in the CCAA Proceedings in a manner which adversely impacts the rights and interests of the Lender;
- (g) any termination of the CCAA Proceedings;
- (h) a final order is entered whereby any Order of the Court made in the CCAA Proceedings, including without limitation the Initial Order and the SISF Order, is reversed, stayed, modified or amended without the prior consent of the Lender;
- (i) borrowings under the DIP Facility exceed the Maximum Advance Amount;
- (j) any breach by the Debtor of any Order of the Court granted in the CCAA Proceedings;
- (k) Deloitte Restructuring Inc. is replaced as the Monitor in the CCAA Proceedings without the Lender's prior written consent;
- (l) a Court order is made without the consent of the Lender, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Debtor, that could cause a Material Adverse Effect;
- (m) in the Lender's sole opinion there has been a Material Adverse Effect;

- (n) the Lender in good faith believes the prospect of payment of the Obligations or the performance of the Debtor's other obligations hereunder or under any of the security granted in connection herewith is impaired or that any of the Assets are or are about to be placed in jeopardy.

16. REMEDIES:

Upon the occurrence of an Event of Default, and at any time thereafter while an Event of Default is continuing, the Lender may refrain from making any further Advances and/or declare, after giving notice to the Debtor, that the DIP Facility is terminated and cancelled.

In addition, and subject to the terms of the Initial Order, the Lender shall have the right to exercise all other customary remedies under applicable law, including, without limitation, the right to realize on all collateral securing the Obligations.

For greater certainty, nothing shall prevent the Lender from applying to the Court for such relief as the Lender may determine is necessary or appropriate at any time.

No failure or delay by the Lender in exercising any of its rights hereunder or at law shall be deemed a waiver of any kind, and the Lender shall be entitled to exercise such rights in accordance with this Term Sheet at anytime.

17. CURRENCY:

Unless otherwise specified herein, all references to dollar amounts (without further description) shall mean Canadian Dollars.

18. ENTIRE AGREEMENT

This Term Sheet constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating thereto.

19. AMENDMENTS, WAIVERS, ETC.:

No amendment or waiver of any provision of this Term Sheet will be effective unless it is in writing, and then the amendment, modification, waiver or consent will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given.

20. FURTHER ASSURANCES:

The Debtor shall from time to time promptly, upon the request of the Lender, take or cause to be taken such action, and execute and deliver such further instruments, agreements, and other documents as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Term Sheet.

- 21. ASSIGNMENT:** Neither this Term Sheet nor any right and obligation hereunder or related hereto may be assigned by the Debtor without the prior written approval of the Lender.
- 22. GOVERNING LAW:** This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 23. SEVERABILITY:** Any provision in this Term Sheet that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 24. NO THIRD PARTY BENEFICIARY:** No person, other than the Debtor and the Lender, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any party not a signatory hereto.
- 25. NOTICE:** Any notice or request required or permitted to be given in connection with this Term Sheet shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery, or, if transmitted, by email):

(a) in the case of the Debtor at:

Ontario Graphite, Ltd.
2142 Forestry Tower Road
Kearney
Ontario
POA 1M0

Attention: Ellerton Castor
Email: ecastor@ontariographite.com

with a copy to:

Miller Thomson LLP
40 King Street West
Suite 5800
Toronto, ON
M5H 3S1

Attention: Craig Mills
Email: cmills@millერთhompson.com

(b) in the case of the Lender at:

Orionis Corporation
Trident Chambers, P.O. Box 146
Road Town, Tortola, British Virgin
Islands

Attention: Francisco Rivera Mojica
Email: frivera@azurita.co

with a copy to:

Osler Hoskin & Harcourt LLP
1000 rue de la Gauchetière O., Suite 2100
Montreal, QC
H3B 4W5

Attention: Sandra Abitan & Sean Stidwill
Email: sabitan@osler.com & sstidwill@osler.com

26. COUNTERPARTS:

This Term Sheet may be executed in any number of counterparts and may be transmitted by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Term Sheet by signing any counterpart of it.

[Signature Page Follows]

If the above terms and conditions contained herein are acceptable to the Debtor, please execute and return a copy of this Term Sheet.

ORIONIS CORPORATION

By: _____
Name:
Title:

We acknowledge and accept the within terms and conditions as of the date first written above.

ONTARIO GRAPHITE, LTD.

By: _____
Name:
Title:

SCHEDULE "A"

Budget

(see attached)

Ontario Graphite Limited
Cash Flow Forecast to August 28, 2020
USD

Week ending	14-Feb-20	21-Feb-20	28-Feb-20	6-Mar-20	13-Mar-20	20-Mar-20	27-Mar-20	3-Apr-20	10-Apr-20	17-Apr-20	24-Apr-20
<i>Receipts</i>											
Orionis funding - MECP work	-	75,000	-	-	-	-	-	-	-	-	-
Orionis fundibng - Operating	300,000	-	-	225,000	-	-	-	225,000	-	-	-
Total receipts	300,000	75,000	-	225,000	-	-	-	225,000	-	-	-
<i>Disbursements</i>											
Payroll and benefits	(25,926)	(28,929)	-	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)	-
Mine operations	(58,647)	(4,500)	(4,500)	(60,588)	(4,500)	(4,500)	(4,500)	(58,713)	(4,500)	(4,500)	(4,500)
General and administrative	(22,977)	(29,250)	(28,125)	(22,977)	-	-	-	(22,977)	-	-	-
MECP costs	-	(51,158)	-	-	-	-	-	-	-	-	-
Professional fees	(92,500)	-	-	(71,250)	-	-	-	(71,250)	-	-	-
Total disbursements	(200,050)	(113,837)	(32,625)	(180,741)	(4,500)	(33,429)	(4,500)	(178,866)	(4,500)	(33,429)	(4,500)
Net cash flow	99,950	(38,837)	(32,625)	44,259	(4,500)	(33,429)	(4,500)	46,134	(4,500)	(33,429)	(4,500)
Opening bank balance	-	99,950	61,113	28,488	72,748	68,248	34,819	30,319	76,453	71,953	38,524
Net cash flow	99,950	(38,837)	(32,625)	44,259	(4,500)	(33,429)	(4,500)	46,134	(4,500)	(33,429)	(4,500)
Closing cash balance	99,950	61,113	28,488	72,748	68,248	34,819	30,319	76,453	71,953	38,524	34,024

Ontario Graphite Limited
Cash Flow Forecast to August 28, 2020
USD

Week ending	1-May-20	8-May-20	15-May-20	22-May-20	29-May-20	5-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20	3-Jul-20	10-Jul-20
<i>Receipts</i>											
Orionis funding - MECP work	50,000	50,000	75,000	75,000	-	-	-	-	-	-	-
Orionis fundibng - Operating	325,000	-	-	-	-	250,000	-	-	-	350,000	-
Total receipts	375,000	50,000	75,000	75,000	-	250,000	-	-	-	350,000	-
<i>Disbursements</i>											
Payroll and benefits	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)
Mine operations	(58,713)	(4,500)	(4,500)	(4,500)	(41,374)	(21,839)	(4,500)	(4,500)	(41,374)	(24,464)	(4,500)
General and administrative	(22,977)	-	-	-	(6,990)	(15,987)	-	-	(6,990)	(15,987)	-
MECP costs	(60,517)	(60,517)	(60,517)	(60,517)	-	-	-	-	-	-	-
Professional fees	(93,750)	-	-	-	-	(93,750)	-	-	-	(93,750)	-
Total disbursements	(261,883)	(65,017)	(93,946)	(65,017)	(74,290)	(131,576)	(33,429)	(4,500)	(74,290)	(134,201)	(33,429)
Net cash flow	113,117	(15,017)	(18,946)	9,983	(74,290)	118,424	(33,429)	(4,500)	(74,290)	215,799	(33,429)
Opening bank balance	34,024	147,141	132,123	113,177	123,159	48,869	167,293	133,864	129,364	55,075	270,874
Net cash flow	113,117	(15,017)	(18,946)	9,983	(74,290)	118,424	(33,429)	(4,500)	(74,290)	215,799	(33,429)
Closing cash balance	147,141	132,123	113,177	123,159	48,869	167,293	133,864	129,364	55,075	270,874	237,445

Ontario Graphite Limited
Cash Flow Forecast to August 28, 2020
USD

Week ending	17-Jul-20	24-Jul-20	31-Jul-20	7-Aug-20	14-Aug-20	21-Aug-20	28-Aug-20	Total
<i>Receipts</i>								
Orionis funding - MECP work	-	-	-	-	-	50,000	-	375,000
Orionis fundibng - Operating	-	-	-	475,000	-	-	-	2,150,000
Total receipts	-	-	-	475,000	-	50,000	-	2,525,000
<i>Disbursements</i>								
Payroll and benefits	-	(25,926)	-	(28,929)	-	(25,926)	(100,000)	(509,911)
Mine operations	(4,500)	(4,500)	(41,374)	(21,839)	(4,500)	(4,500)	(41,374)	(551,297)
General and administrative	-	-	(14,945)	(8,032)	-	-	(14,945)	(233,159)
MECP costs	-	-	-	-	-	(56,391)	-	(349,619)
Professional fees	-	-	(93,750)	-	-	-	(232,500)	(842,500)
Total disbursements	(4,500)	(30,426)	(150,069)	(58,800)	(4,500)	(86,817)	(388,819)	(2,486,486)
Net cash flow	(4,500)	(30,426)	(150,069)	416,200	(4,500)	(36,817)	(388,819)	38,514
Opening bank balance	237,445	232,945	202,519	52,450	468,650	464,150	427,333	-
Net cash flow	(4,500)	(30,426)	(150,069)	416,200	(4,500)	(36,817)	(388,819)	38,514
Closing cash balance	232,945	202,519	52,450	468,650	464,150	427,333	38,514	38,514

Appendix “C”

SISP

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; andit 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 SISF 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 SISF 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 and 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.

Appendix “D”

DIP Facility Termination

April 17, 2020

VIA ELECTRONIC MAIL

Ontario Graphite, Ltd.
2142 Forestry Tower Road
Kearney, Ontario
POA 1M0

Attention: Ellerton Castor
Email: ecastor@ontariographite.com

Miller Thomson LLP
40 King Street West
Suite 5800
Toronto, Ontario
M5H 3S1

Attention: Kyla Mahar & Craig Mills
Email: kmahar@millerthomson.com &
cmills@millerthomson.com

Deloitte Restructuring Inc., in its capacity as
Monitor of Ontario Graphite, Ltd.
8 Adelaide Street West
Bay Adelaide East Tower
Toronto, Ontario
M5H 0A9

Attention: Phil Reynolds & Todd Ambachtsheer
Email: philreynolds@deloitte.ca &
tambachtsheer@deloitte.ca

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Suite 3400
Toronto, Ontario
M5H 4E3

Attention: Alex MacFarlane
Email: amacfarlane@blg.com

Re: Notice of Event of Default and Termination of DIP Facility

Dear Sirs/Madams:

As you are aware, Orionis Corporation (the “**Lender**”) brought an application pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on February 12, 2020 in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a sale and investment solicitation process (the “**SISP**”) in respect of OGL’s assets, undertakings and properties, real and personal (the “**Assets**”).

Following the hearing of the foregoing application, the Court granted an Initial Order (as amended and restated, the “**Initial Order**”) that, among other things, approved the CCAA Debtor-In-Possession Financing Term Sheet dated February 10, 2020 (the “**DIP Term Sheet**”) between OGL and the Lender and authorized OGL to request advances from the Lender on the terms and conditions thereof, which advances the Lender was authorized to provide, in its sole discretion. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as CCAA monitor of OGL (in such capacity, the “**Monitor**”).

On February 20, 2020, the Court granted an Order that, among other things, approved the SISP. As set out in the SISP and subject to the terms thereof, the deadline for the delivery of

Non-Binding Indications of Interest (as defined in the SISP) to the Monitor was 5:00 pm (Toronto Time) on April 15, 2020 (the “**Phase I Bid Deadline**”).

The Lender has been advised that the Monitor received three bids (the “**Bids**”) prior to the Phase I Bid Deadline. Following a review of the information provided by the Monitor regarding the Bids, the Lender is of the view that (i) none of the Bids is compliant with the requirements set forth in the SISP, in particular Section 4.2(1) thereof, (ii) there is no reasonable prospect that a sale of the Assets, satisfactory to the Lender, will be completed through the SISP, and (iii) the prospect of payment of the Obligations (as defined in the DIP Term Sheet) is impaired.

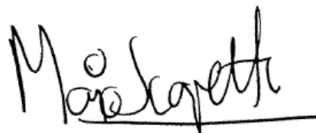
This letter serves as formal notice that an event of default under Section 15(n) of the DIP Term Sheet has occurred and, accordingly, the Obligations (as defined in the DIP Term Sheet), which includes advances of principal and accrued interest in the aggregate amount of not less than US\$626,713 as at the date hereof, have become due and payable in accordance with Section 8(c) of the DIP Term Sheet. This letter also serves as the Lender’s notice to terminate the DIP Facility (as defined in the DIP Term Sheet) pursuant Section 9 of the DIP Term Sheet and in accordance with the Initial Order.

This letter is provided under an express reservation of all rights, remedies, and recourses available to the Lender at law, in equity or otherwise, and nothing contained herein should be interpreted as a waiver of any right, an extension of any time period, and this letter is without any admission whatsoever.

Yours truly,

ORIONIS CORPORATION

By:



Name: Mario Scarpetta Gnecco

Title: Director

Appendix “E”

MAC Notice

(without appendices)

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

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

NOTICE OF MATERIAL ADVERSE CHANGE

DATED APRIL 21, 2020

INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, brought an application pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the “**CCAA**”) in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”). That same day, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an initial order (the “**Initial Order**”) pursuant to the CCAA in respect of OGL (the proceedings commenced thereby, the “**CCAA Proceeding**”).
2. Pursuant to the Initial Order:
 - (a) Deloitte Restructuring Inc. was appointed as monitor (the “**Monitor**”) of OGL;
 - (b) OGL was granted a stay of proceedings through February 22, 2020 (the “**Initial Stay Period**”);
 - (c) OGL’s directors and officers were granted a charge in the amount of CAD\$200,000;
 - (d) the Monitor, its counsel, counsel to Orionis and counsel to OGL were granted an administration charge in respect of their fees and expenses in the amount of CAD\$200,000; and
 - (e) the Court approved the CCAA Debtor-In-Possession Financing Term Sheet dated February 10, 2020, between OGL and Orionis (the “**DIP Term Sheet**”) pursuant to which OGL was authorized to borrow funds under a debtor-in-possession credit facility (the “**DIP Facility**”), subject to the terms and conditions thereof. The

quantum of approved borrowings under the DIP Facility was limited by the Initial Order to CAD\$200,000.

Attached as appendix “A” hereto is a copy of the DIP Term Sheet.

3. On February 20, 2020 (the “**Comeback Date**”), the Court granted an Order that, among other things:
 - (a) extended the Initial Stay Period to April 29, 2020; and
 - (b) increased the authorized borrowings under the DIP Facility to USD\$2.75 million.
4. Absent the DIP Facility or other third-party financing, OGL has no sources of cash flow or liquidity to pay for any obligations that it incurred during the CCAA Proceeding.
5. On the Comeback Date, the Court also approved a sale and investor solicitation procedure (the “**SISP**”). Phase 1 of the SISP required that non-binding indications of interest be submitted to the Monitor by 5:00 p.m. on April 15, 2020 (the “**Phase 1 Bid Deadline**”). The Monitor has administered the SISP in accordance with its terms.
6. After the receipt of Phase 1 bids, as required pursuant to section 4.3 of the SISP, the Monitor provided Orionis with a summary of the bids received by the Phase 1 Bid Deadline shortly after such deadline.
7. Orionis has given the Monitor and OGL notice that following its review of the information provided by the Monitor regarding the Phase 1 bids, Orionis is of the view that (i) none of the Phase 1 bids are compliant with the requirements set forth in the SISP, in particular Section 4.2(1) thereof, (ii) there is no reasonable prospect that a sale of the Assets, satisfactory to Orionis, will be completed through the SISP, and (iii) the prospect of payment of the Obligations (as defined in the DIP Term Sheet) is impaired.

8. As such, Orionis provided written notice (the “**Lender Notice**”) to the Monitor and OGL that Orionis determined that an event of default under section 15(n) of the DIP Term Sheet occurred and, accordingly, the Obligations became due and payable in accordance with section 8(c) of the DIP Term Sheet. The Lender Notice also served as Orionis’s notice to terminate the DIP Facility pursuant to section 9 of the DIP Term Sheet and in accordance with the Amended and Restated Initial Order made in the CCAA Proceeding on February 20, 2020. Sections 8, 9 and 15(n) of the DIP Term Sheet are reproduced below in part (all capitalized terms as defined in the DIP Facility):

Section 8 (Repayment): *“Unless otherwise agreed in writing by the Debtor and the Lender, the Obligations shall be due and payable on demand and, if not demanded, shall be repaid to the Lender as follows: [...] (c) in full, (i) on the expiry of the Initial Term (as defined below), subject to any Extended Term (as defined below), [...] or (v) after the occurrence of an Event of Default (as defined below). [...]”*

Section 9 (Term): *“[...] the Lender may terminate the DIP Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired. The Initial Term shall also be deemed to have expired if at any time the Lender, acting reasonably, determines that there is no reasonable prospect that a sale of the Assets, satisfactory to the Lender, will be identified or completed through the SISP.”*

Section 15 (Events of Default): *“(n) the Lender in good faith believes the prospect of payment of the Obligations or the performance of the*

Debtor's other obligations hereunder or under any of the security granted in connection herewith is impaired or that any of the Assets are or are about to be placed in jeopardy."

Attached as Appendix "B" is a copy of the Notice of Event of Default and Termination of DIP Facility dated April 17, 2020 delivered by Orionis.

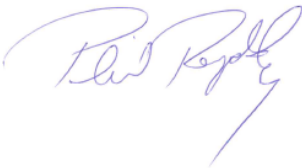
9. As a result of the termination of the DIP Facility, OGL will not be able to continue its operations during the CCAA Proceeding. The Monitor is of the view that the termination of the DIP Facility constitutes a material adverse change for the following reasons:
- (a) The termination has a significant adverse effect on OGL's projected cash flow;
 - (b) The termination significantly impairs OGL's ability to carry on operations;
 - (c) The termination significantly impairs the likelihood of OGL proposing any plan of arrangement that would be acceptable to OGL's creditors; and
 - (d) The termination prejudices OGL's post-filing creditors as there is no source of liquidity to pay for any of these obligations.

Dated at Toronto, Ontario the 21st day of April, 2020.

Deloitte Restructuring Inc.

Solely in its capacity as court appointed Monitor of Ontario Graphite, Ltd. and not in its personal capacity

Per:



Philip J. Reynolds, LIT
Senior Vice-President