

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

SUPPLEMENTARY APPLICATION RECORD

February 11, 2020

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

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(As of February 11, 2020)**

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Tab 1

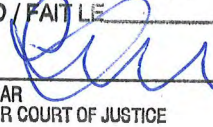
AMENDED THIS Feb. 11/20 PURSUANT TO
 MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (a)

THE ORDER OF _____
 L'ORDONNANCE DU _____

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

DATED / FAIT LE _____


 REGISTRAR / GREFFIER
 SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

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

FRESH AS AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants.
 The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding
 over the Commercial List on **February 12, 2020 at 9:30 AM** at the Court House, 330
 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of
 any step in the application or to be served with any documents in the application, you
 or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in
 Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants'
 lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and
 file it, with proof of service, in this court office, and you or your lawyer must appear
 at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date January 10, 2020 Issued by
~~February 11, 2020~~

C. Irwin
Registrar

Local registrar

Address of court office: 330 University Avenue, 9th Floor
 Toronto, ON M5G 1R8 7

TO: Ontario Graphite, Ltd.
 2142 Forestry Tower Road
 Kearney, ON P0A 1M0

AND TO: SERVICE LIST

APPLICATION

1. The Applicant, Orionis Corporation (“**Orionis**”), makes application for an Order (the “**Initial Order**”) substantially in the form attached as Schedule “A” hereto granting, among other things, the following relief:

- (a) abridging the time for service of this Amended Notice of Application, the Amended Application Record and Factum of the Applicants, declaring that this Application is properly returnable on February 12, 2020, and dispensing with further service thereof;
- (b) declaring that the Respondent, Ontario Graphite, Ltd. (“**OGL**”) is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
- (c) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (in such capacity, the “**Monitor**”) pursuant to s. 11.7 of the CCAA to monitor the assets, business and financial affairs of OGL;
- (d) staying all proceedings taken or that might be taken in respect of the Respondent, its directors and officers or the Monitor;
- (e) authorizing OGL to obtain and borrow under a debtor-in-possession facility (the “**DIP Facility**”) to finance its working capital requirements and other general corporate purposes and post-filing expenses and costs until the Comeback Hearing (as defined below) (the “**Immediate Funding**”);

- (f) granting the following charges (collectively, the “**Charges**”) over the assets, property and undertakings of OGL (the “**Property**”), in order of priority:
- (i) a charge in the amount of \$200,000 (the “**Administration Charge**”) in favour of the Monitor and the Monitor’s counsel, Orionis’s counsel and OGL’s counsel to secure the payment of their respective fees and disbursements incurred in connection with these proceedings, on the terms set out in the draft Initial Order;
 - (ii) a charge (the “**DIP Lender’s Charge**”) in favour of Orionis (in this capacity, the “**DIP Lender**”) to secure all of OGL’s obligations to the DIP Lender under the DIP Facility;
 - (iii) a charge in the amount of \$200,000 (the “**D&O Charge**”) in favour of the directors and officers of OGL; and,
- (g) such further and other relief as counsel may request and this Court may permit.

2. The grounds for the Application are as follows:

A. The Kearney Mine

- (a) OGL is a privately-owned Canadian mining company engaged in the re-commissioning and operation of a mining property near Kearney, Ontario (the “**Kearney Mine**”).

- (b) The Kearney Mine is a graphite mineral resource project that operated from 1989 until its closure in 1994 and since which time it has been (and continues to be) in care and maintenance.
- (c) The Kearney Mine consists of seven mining leases, of which OGL has title to three and a beneficial interest in the remainder, and 116 mining claims, of which OGL has title to 95 and a beneficial interest in the remainder.

B. OGL's Secured Indebtedness to Orionis

- (d) Since at least September 2015, OGL has been suffering from operational and liquidity issues.
- (e) Since that time, Orionis has worked collaboratively with OGL and has advanced funds to OGL pursuant to three secured notes, dated January 19, 2016, July 19, 2017, and March 20, 2019, in each case as may have been amended (collectively, the "**Bridge Notes**").
- (f) The first Bridge Note originally matured in January 2017, which maturity date was subsequently extended to November 30, 2018, pursuant to certain amendments thereto, and the second Bridge Note matured on April 30, 2018.
- (g) As security for repayment of its obligations under the Bridge Notes, OGL issued to Orionis four demand debentures, dated January 19,

2016, July 19, 2017, and two dated March 20, 2019 (collectively, the “**Bridge Debentures**”), which secure the Property.

- (h) Orionis registered the Bridge Debentures pursuant to the *Mining Act* against title to the mining claims owned by OGL.
- (i) Orionis registered a charge in respect of the Bridge Debentures pursuant to the *Land Titles Act* against title to the mining leases owned by OGL.
- (j) Orionis registered a financing statement pursuant to the *Personal Property Security Act* (Ontario) against OGL over collateral classifications of inventory, equipment, accounts, other, and motor vehicles.
- (k) As of January 7, 2020, OGL owed no less than US\$15 million to Orionis under the Bridge Notes on account of principal plus interest accrued thereon (the “**OGL Indebtedness**”).
- (l) Orionis is the principal secured creditor of OGL.

C. Prior Efforts Unsuccessful

- (m) OGL’s efforts to re-open the Kearney Mine have been unsuccessful.
- (n) Since 2017, OGL and its representatives have engaged in various initiatives, and have been in discussions with various potential investors, with a view to achieving an initial public offering and/or an investment in the business through a private transaction.

- (o) Orionis has supported these initiatives and discussions, including through advancing funds under the Bridge Notes and not enforcing on its security after the first and second Bridge Notes matured.
- (p) All capital raising and investment solicitation efforts have not culminated in any meaningful interest or any transactions.

D. Need for Protection under the CCAA

- (q) OGL is insolvent.
- (r) OGL is a company to which the CCAA applies.
- (s) Claims against OGL exceed \$5 million.
- (t) Given its current financial position, OGL is unable to continue operations, including its environmental and maintenance obligations, without obtaining additional funding, in particular:
 - (i) up to a total of \$200,000 to finance the Immediate Funding through to the Comeback Hearing, and
 - (ii) an anticipated amount of approximately \$2.5 million to finance OGL's working capital requirements and post-filing expenses and costs associated with the CCAA proceedings through August 2020 (collectively with the Immediate Funding, the **"CCAA Funding"**);

- (u) Orionis has worked collaboratively with OGL for several years to seek solutions to its financial and liquidity issues, but is no longer prepared to fund OGL outside of a court-supervised process.
- (v) OGL has exhausted its options and no parties are willing to provide further funding outside of a court-supervised process.
- (w) On November 8, 2019, Orionis delivered to OGL a demand for repayment and notice of intention to enforce on security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.
- (x) On January 13, 2020, another secured creditor of OGL, Northern Ontario Heritage Fund Corporation, delivered to OGL a demand for repayment and notice of intention to enforce on security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.
- (y) As at the date of filing this Amended Notice of Application, Orionis has not received payment of the OGL Indebtedness in full.
- (z) Following consultations with OGL and its representatives, Orionis has determined the only realistic path forward is to seek protection under the CCAA as provided for in the Initial Order.
- (aa) If the Initial Order is not granted, significant value may be lost, and an orderly wind down of OGL's operations at the Kearney Mine may not be achievable.

E. The SISP

- (bb) If the Initial Order is granted, a further Order will be sought at a hearing to be heard no later than 10 days after the Initial Order is granted (the “**Comeback Hearing**”) approving, and granting the Monitor the power to conduct, a court-supervised sale and/or investment solicitation process (“SISP”) in order to realize on the Property.
- (cc) A SISP is necessary to facilitate a transparent and efficient disposition of the Property under this Court’s supervision and within a structured process designed to solicit interest from prospective SISP participants and to maximize value.
- (dd) Orionis, OGL and Deloitte are engaged in discussions regarding the precise form and content of the SISP.

F. The Monitor

- (ee) Deloitte has consented to act as Monitor to provide supervision and monitoring during the proceedings.
- (ff) Deloitte is a licenced trustee in bankruptcy and is not subject to any of the restrictions on who may be appointed as Monitor set out in subsection 11.7(2) of the CCAA.
- (gg) Deloitte’s personnel have extensive experience in the mining sector.

- (hh) Deloitte is familiar with OGL's operational and financial circumstances, such that it can achieve certain time and commercial efficiencies if appointed as Monitor that another firm could not.
- (ii) Deloitte, in consultation with OGL and Orionis, has prepared a preliminary cash flow forecast.
- (jj) Deloitte has also agreed to conduct the SISP provided that an Order is made granting the Monitor with the power to do so.
- (kk) The appointment of Deloitte as Monitor and subsequent granting to the Monitor the power to conduct the SISP is just and convenient and will:
 - (i) allow the maximization of the value of the Property, in the context of a stable and transparent Court-supervised process, and
 - (ii) give any party potentially interested in purchasing the Property the benefit of an approval and vesting order for the conveyance of the Property.

G. The DIP Facility

- (ll) The DIP Lender has agreed to provide interim debtor-in-possession financing to OGL under the DIP Facility pursuant to a financing term sheet (the "**DIP Term Sheet**") to finance the CCAA Funding, provided that all such advances are secured by a DIP Lender's Charge and are

made in accordance with the DIP Term Sheet, including the budget attached as a schedule thereto (the “**Budget**”).

- (mm) Further, access to the DIP Facility is conditional upon, *inter alia*:
 - (i) in respect of the Immediate Funding, obtaining an Initial Order in a form satisfactory to the DIP Lender; and
 - (ii) in respect of the balance of the CCAA Funding, obtaining an order approving a SISP in a form satisfactory to the DIP Lender.
- (nn) Without advances under the DIP Facility, OGL will be unable to continue operations and an orderly wind down will not be achievable.
- (oo) Provided OGL has access to the DIP Facility as contemplated in the Budget, it is anticipated that OGL will be able to fund its operations through the CCAA proceedings and the completion of the SISP.

H. The Comeback Hearing

- (pp) In addition to approval of a SISP, at the Comeback Hearing the following relief will be sought, *inter alia*:
 - (i) authorization of OGL to borrow up to a maximum of \$2.75 under the DIP Facility (inclusive of advances under the DIP Facility in respect of the Immediate Funding) to finance the CCAA Funding, subject to the terms and conditions of the DIP Term Sheet, including the Budget;

- (ii) approval of a key employee retention plan (the “**KERP**”) to facilitate and encourage the continued participation of certain key employees (the “**Key Employees**”) in the business during the CCAA proceedings, which Key Employees either possess specialized expertise with respect to OGL’s business operations that would be difficult to replace or are critical for a successful SISF, and which KERP is supported by OGL;
- (iii) a charge over the Property in favour of the Key Employees to secure amounts owing to them under the KERP, ranking in priority to the D&O Charge and subordinate to all other charges in the Initial Order;
- (iv) an extension of the stay;
- (v) granting the Monitor further powers, as may be necessary; and,
- (vi) other terms included in customary CCAA Orders.

I. The Charges

- (qq) The super-priority Charges are fair and reasonable and consistent with the standard of relief set out in the Commercial List CCAA Model Order, and are necessary to ensure funding can be obtained and to secure participation in the restructuring.
- (rr) The Charges are proposed to rank in the following order:
 - (i) the Administration Charge;

- (ii) the DIP Lender's Charge; and,
- (iii) the D&O Charge.

J. Miscellaneous

- (ss) Orionis relies on sections 4-5 of the CCAA and Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*.
- (tt) Such further grounds as this Court may permit.

3. The following documentary evidence will be used at the hearing of the Application:

- (a) the Affidavit of David Yanovich Wancier, sworn January 10, 2020;
- (b) the Second Affidavit of David Yanovich Wancier, sworn February 11, 2020;
- (c) the Report to the Court of Deloitte, to be filed;
- (d) the consent of Deloitte to act as the Monitor; and
- (e) such other material as is required and this Court may permit.

✓ January 10, 2020 ✓
a February 11, 2020 a

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Orionis Corporation**

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

665
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ONTARIO GRAPHITE, LTD.

Respondent

Court File No:

CV-20-00634195-00CL

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

FRESH AS AMENDED NOTICE OF APPLICATION

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Lawyers for the Applicant,
Orionis Corporation

Tab 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

**SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER
(Sworn February 11, 2020)**

I, David Yanovich Wancier, of the City of Bogota in Colombia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of Cerrito Capital in Bogota, Colombia, and in that capacity I am an external advisor acting on retainer of the Applicant, Orionis Corporation (“**Orionis**”), which is a secured creditor of the Respondent, Ontario Graphite, Ltd. (“**OGL**”). I have acted as advisor of Orionis with regards to all matters relating to OGL during the past three years and have been authorized and directed by Orionis to swear this affidavit in support of its application for an initial order (the “**Initial**

Order”) and related relief under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

2. Accordingly, I have knowledge of the facts and matters deposed to herein except where stated to be based on information and belief, including information received from the existing employees of OGL and from professional advisors, including Deloitte Restructuring Inc. (“**Deloitte**”), the proposed CCAA monitor in these proceedings, and where so stated I do verily believe the same to be true. I understand that these professional advisors have, collectively: (i) reviewed certain books and records, legal documentation, contractual arrangements and other documents and information relating to OGL, (ii) attended certain premises of OGL, and (iii) met with and communicated with certain employees of OGL.

3. I previously swore an affidavit on January 10, 2020 (the “**First Yanovich Affidavit**”), in support of Orionis’s original application (the “**Receivership Application**”) for an Order appointing Deloitte as receiver, without security, of all assets, undertakings and properties of OGL (the “**Property**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario). A copy of the First Yanovich Affidavit, without exhibits, is attached as Exhibit “A”. Capitalized terms contained in this affidavit that are not otherwise defined have the meaning ascribed to them in the First Yanovich Affidavit.

4. Except where indicated in this affidavit, the facts described in the First Yanovich Affidavit continue to be true.

RECENT DEVELOPMENTS

5. Since I swore the First Yanovich Affidavit and the Receivership Application was issued and served, Orionis has determined that a receivership is no longer viable and now wishes to obtain an Initial Order, among other things,

- (a) staying proceedings in respect of OGL and the Property (the “**Stay**”),
- (b) appointing Deloitte as monitor (in such capacity, the “**Monitor**”),
- (c) authorizing OGL to borrow from Orionis up to a maximum of \$200,000 under a debtor-in-possession facility (the “**DIP Facility**”) pursuant to a financing term sheet (the “**DIP Term Sheet**”) to finance OGL’s working capital requirements, costs associated with the implementation of the Interim Plan, other general corporate purposes and post-filing expenses and costs through to the date of the Comeback Hearing (as defined below) (the “**Immediate Funding**”), subject to the terms and conditions of the DIP Term Sheet,
- (d) granting the following charges over the Property, in order of priority:
 - (i) a charge in the amount of \$200,000 (the “**Administration Charge**”) in favour of the Monitor and its counsel, Orionis’s counsel, and OGL’s counsel to secure the payment of their respective fees and disbursements incurred in connection with these proceedings,
 - (ii) a charge (the “**DIP Lender’s Charge**”) in favour of Orionis to secure all of OGL’s Obligations (as defined in the DIP Term Sheet) to Orionis under the DIP Facility, and
 - (iii) a charge in the amount of \$200,000 (the “**D&O Charge**”) in favour of the directors and officers of OGL.

6. At a hearing to be heard no later than 10 days after obtaining the Initial Order (the “**Comeback Hearing**”), a motion will be brought to seek a further Order (“**SISP Approval Order**”), *inter alia*:

- (a) approving a Court-supervised sale and/or investment solicitation process (the “**SISP**”),
- (b) granting the Monitor the power to conduct the SISP,
- (c) approving a key employee retention plan (the “**KERP**”) for the benefit of certain of OGL’s key executives and employees (the “**Key Employees**”), and
- (d) granting a charge over the Property (the “**KERP Charge**”) in favour of the Key Employees to secure amounts owing to them under the KERP, ranking in priority to the D&O Charge and subordinate to the Administration Charge and the DIP Lender’s Charge.

7. Further, at the Comeback Hearing a motion will be brought to seek amendments to the Initial Order (the “**Amended and Restated Initial Order**”), *inter alia*:

- (a) extending the Stay,
- (b) authorizing OGL to borrow up to a maximum of \$2.75 million under the DIP Facility (inclusive of advances under the DIP Facility in respect of the Immediate Funding) to finance OGL’s working capital requirements, costs associated with the completion of the Interim Plan, other general corporate purposes and post-filing expenses and costs (including costs associated with the SISP and KERP) through to

August 2020, subject to the terms and conditions of the DIP Term Sheet,

- (c) granting the Monitor further powers, as may be necessary, and
- (d) other terms included in customary CCAA Orders.

A. No agreement with the MECP and ENDM

8. As described in paragraphs 27 and 78 of the First Yanovich Affidavit, at that time Deloitte had indicated it would consent to act as receiver provided it could reach an agreement with the Ontario Ministry of the Environment, Conservation and Parks (the “**MECP**”) and the Ontario Ministry of Energy, Northern Development and Mines (“**ENDM**”) to limit Deloitte’s potential liability in respect of pre-existing environmental issues and the implementation of the Interim Plan required by Director’s Order Number 7328-BEMKE5, issued October 18, 2019, and amended on December 11, 2019 (the “**Environmental Order**”).

9. Deloitte’s discussions with the MECP and ENDM continued after Orionis’s Receivership Application was served. When it became apparent that such an agreement could not be reached prior to the originally scheduled hearing date for the Receivership Application (January 22, 2020), Orionis sought an adjournment of the hearing date to allow the parties to pursue an acceptable arrangement.

10. Deloitte has since advised that it has engaged in discussions with the MECP and ENDM on several occasions and it is now evident that such an agreement cannot be reached in a reasonable time frame.

11. In the absence of such an agreement, Deloitte is not willing to take possession of the Property and therefore will not consent to its appointment as receiver.

B. NOHFC delivers demand

12. After Orionis's Receivership Application was served, NOHFC, another of OGL's secured creditors, delivered to OGL a written demand and a notice of intention to enforce security pursuant to section 244 of the BIA. Copies of NOHFC's demand and notice of intention to enforce security are attached as Exhibit "B".

13. As described in paragraph 74 of the First Yanovich Affidavit, NOHFC, Orionis and OGL are parties to an intercreditor agreement pursuant to which NOHFC postponed and subordinated its security in favour of Orionis up to the maximum amount of US\$6,000,000. A copy of the intercreditor agreement is attached as Exhibit "C".

C. OGL urgently requires funding

14. OGL is insolvent as it cannot meet its liabilities when they come due.

15. OGL remains in need of further funding to continue operations, including payroll, and to satisfy its obligations under the Environmental Order.

16. As will be more fully described in Deloitte's Pre-Filing Report, OGL needs to borrow up to a total of \$200,000 to finance the Immediate Funding through to the Comeback Hearing, and an anticipated amount of approximately \$2.5 million to finance the CCAA proceedings (collectively with the Immediate Funding, the "CCAA

Funding”), as set out more fully in the budget appended as Schedule “A” to the DIP Term Sheet (the “**Budget**”).

RELIEF NOW SOUGHT

17. In light of the foregoing, Orionis has determined that it must take action to preserve OGL’s assets and initiate a Court-supervised SISP. Further, Orionis is no longer willing to fund OGL absent a Court-ordered super-priority charge securing any additional advances. The only practical way forward is to proceed pursuant to the CCAA. OGL and its senior management are supportive of commencing CCAA proceedings.

A. Stay of Proceedings

18. The Stay and other protections provided by the CCAA are necessary to ensure OGL’s assets can be preserved and to allow the SISP to proceed without interruption so as to maximize value for all stakeholders of OGL. It would be detrimental to a SISP if proceedings were commenced or continued or rights and remedies were executed against OGL.

B. The Monitor and the Administration Charge

19. Deloitte has agreed to act as the Monitor of OGL under the CCAA, subject to the Initial Order containing the appropriate protections. A copy of Deloitte’s consent is attached as Exhibit “D”.

20. Deloitte has further agreed to conduct the SISP in its capacity as Monitor, provided the Court authorizes it to do so.

21. Deloitte is preparing a Pre-Filing Report, which it intends to file with the Court prior to the hearing of Orionis's application for the Initial Order. The Pre-Filing Report will include a preliminary cash flow forecast and additional information in respect of the funding of the CCAA proceedings.

22. It is proposed that the Administration Charge on the Property be granted to the Monitor and its counsel, Stikeman Elliott LLP, OGL's counsel, Miller Thomson LLP, and to Orionis's counsel, Osler, Hoskin & Harcourt LLP, as security for their respective fees and disbursements relating to services rendered in respect of the CCAA proceedings, up to a maximum of \$200,000. The Administration Charge is proposed to rank in priority to all other charges granted by the Initial Order.

C. The DIP Facility and DIP Lender's Charge

23. Orionis is prepared to advance the CCAA Funding to OGL under the DIP Facility, provided that all such advances are secured by a DIP Lender's Charge on the Property and are made in accordance with the DIP Term Sheet, including the Budget attached as a schedule thereto. The DIP Term Sheet contemplates a 10% cumulative variance from the \$2.5 million estimated CCAA Funding amount and, accordingly, the DIP Term Sheet authorizes maximum advances of \$2.75 million to OGL, subject to the terms of the DIP Term Sheet.

24. Further, access to the DIP Facility is conditional upon, *inter alia*:

- (a) in respect of the Immediate Funding, obtaining an Initial Order in a form satisfactory to Orionis, and

(b) in respect of the balance of the CCAA Funding, obtaining a SISP Approval Order in a form satisfactory to Orionis.

25. The DIP Lender's Charge is proposed to rank subordinate in priority to the Administration Charge but in priority to all other charges granted by the Initial Order.

26. A copy of the DIP Term Sheet is attached as Exhibit "E".

D. The D&O Charge

27. Orionis is seeking a D&O Charge over the Property to indemnify OGL's directors and officers in respect of liabilities they may incur as directors and officers of OGL during these proceedings up to a maximum principal amount of \$200,000. Orionis believes that the continuing support and insight of OGL's directors and officers will preserve the value of OGL's business and maximize value in the SISP.

28. I am advised by Orionis's legal counsel and believe that, in certain circumstances, directors can be held liable for certain obligations of a company, including those owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, unremitted source deductions, health taxes, workers' compensation and other payroll related obligations.

29. I am advised that OGL maintains director and officer liability insurance (the "**D&O Insurance**") and that OGL has also granted contractual indemnities in favour of its directors and officers. However, the economic value of contractual indemnities granted by an entity that is insolvent is questionable, and I understand that the D&O

Insurance may include contractual contingencies and uncertainty associated with possible coverage related issues.

30. Although OGL intends to comply with applicable laws with respect to matters affecting it (including the Environmental Order), the failure to successfully complete a restructuring creates the prospect of personal liabilities for OGL's directors and officers.

31. Notably, the proposed Initial Order provides that OGL's directors and Officers will only have recourse to the D&O Charge as a "back-stop" in the event that the D&O Insurance (which I believe covers most typical director and officer liabilities) is not available or applicable.

32. The D&O Charge would rank subordinate to all other charges granted by the Court in the Initial Order.

33. The amount sought for the D&O Charge is supported by the proposed Monitor.

ANTICIPATED RELIEF SOUGHT IF INITIAL ORDER IS GRANTED

34. I understand that recent amendments to the CCAA limit the relief that can be included in the Initial Order to what is necessary for a period not to exceed 10 days following the Initial Order.

35. As such, the proposed Initial Order does not include the approval of a SISF or KERF. Further, the proposed Initial Order only authorizes borrowing under the DIP Facility to the extent of the Immediate Funding.

36. If the Initial Order is granted, it is anticipated that motions for the SISP Approval Order and the Amended and Restated Initial Order will be returnable at the Comeback Hearing (to be heard no later than 10 days following the date of the Initial Order).

A. The SISP

37. The proposed SISP contemplates a two-phase process that is expected to last to the end of August 2020, although such time may be extended if appropriate. During the initial phase, the Monitor will solicit non-binding proposals for the sale of OGL's assets, or an investment in the business, from potential bidders to be submitted by April 15, 2020.

38. To the extent any of the non-binding proposals are acceptable to the Monitor, those bidders will continue to the second phase during which the Monitor will solicit binding proposals by June 22, 2020. The SISP further contemplates that Orionis may participate in the second phase without submitting a non-binding proposal.

39. To the extent any binding proposals are received, the Monitor will select the best proposal.

40. It is anticipated that the initial steps in the first phase of the SISP, namely distributing 'teaser letters' to potential bidders and establishing a data room, will be initiated immediately upon appointment of the Monitor, recognizing that Court approval and ratification of the SISP is ultimately required.

41. I understand that a copy of the proposed SISP will be attached to the Pre-Filing Report.

B. The KERP and KERP Charge

42. The Key Employees have considerable experience with OGL and have developed specialized expertise with respect to OGL's business operations and the requirements in the Interim Plan.

43. Replacing the Key Employees during CCAA proceedings would be extremely difficult. Moreover, the Key Employees are essential to a successful SISP and the completion of all steps necessary to complete the Interim Plan and satisfy its obligations under the Environmental Order.

44. To facilitate and encourage the continued participation of the Key Employees, Orionis, Deloitte and OGL have developed a KERP, which offers incentives to the Key Employees to remain in their current positions and assist in the implementation and execution of the SISP and the Interim Plan.

45. The KERP will be more fully described in Deloitte's Pre-Filing Report.

46. It is anticipated that at the Comeback Hearing Orionis will seek a KERP Charge on the Property in favour of the Key Employees as security for their respective fees and disbursements relating to services rendered in respect of the CCAA proceedings. It is further anticipated that the KERP Charge, if granted, will rank in priority to the D&O Charge and subordinate to the Administration Charge and the DIP Lender's Charge.

CONCLUSION

47. For the reasons set out above and in the First Yanovich Affidavit, I believe that granting the Initial Order sought by Orionis is in the best interests of OGL, Orionis and all other interested parties. Without the Stay and the DIP Facility, OGL can no longer fund its operations (i.e. the care and maintenance program for the Kearney Mine) and will be unable to satisfy its obligations under the Environmental Order. Further, the Stay will maintain the “status quo” and permit an orderly SISF, thereby ensuring maximum realization on the Property.

SWORN BEFORE ME at the City of Miami, Florida, United States of America on February 11, 2020



DAYSI MARTINEZ

Notary Public in the State of Florida



DAVID YANOVICH WANCIER

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER,
AFFIRMED BEFORE ME
THIS 11th DAY OF FEBRUARY, 2020.



DAYSI MARTINEZ

Notary Public in the State of Florida



Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED, AND SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3 AS AMENDED**

**AFFIDAVIT OF DAVID YANOVICH WANCIER
(Sworn January 10, 2020)**

I, **David Yanovich Wancier**, of the City of Bogota in Colombia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of Cerrito Capital in Bogota, Colombia, and in that capacity I am an external advisor acting on retainer of the Applicant, Orionis Corporation (“**Orionis**”), which is a secured creditor of the Respondent, Ontario Graphite, Ltd. (“**OGL**”). I have acted as advisor of Orionis with regards to all matters relating to OGL during the past three years and have been authorized and directed by Orionis to swear this affidavit in support of a Court-appointed receiver and to perform all

ancillary duties in connection therewith. Accordingly, I have knowledge of the facts and matters deposed to herein except where stated to be based on information and belief, including information received from the existing employees of OGL and from professional advisors, including Deloitte Restructuring Inc. (“**Deloitte**”), the proposed receiver of OGL, and where so stated I do verily believe the same to be true. I understand that these professional advisors have, collectively: (i) reviewed certain books and records, legal documentation, contractual arrangements and other documents and information relating to OGL, (ii) attended certain premises of OGL, and (iii) met with and communicated with certain employees of OGL.

2. I swear this Affidavit in support of an application for an Order (the “**Appointment Order**”) appointing Deloitte as receiver (in such capacity, and not in its personal or corporate capacity, the “**Receiver**”), without security, of all assets, undertakings and properties of the Respondent, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).

3. If appointed, the Receiver will seek Court approval of and commence a sale and investment solicitation process in respect of OGL’s business and assets (the “**SISP**”). Orionis has agreed to fund the costs of the receivership and the SISP, all in accordance with an agreed upon budget, described in greater detail below (the “**Proposed Budget**”), and the terms of the proposed Appointment Order.

4. The information in this affidavit is organized in the following manner:

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OVERVIEW

5. OGL is a privately-owned Canadian mining company committed to the re-commissioning and operation of a mining property near Kearney, Ontario (the “**Kearney Mine**”).

6. I understand that the Kearney Mine is one of the largest confirmed graphite mineral resource projects in North America and among the largest individual deposits in the world.

7. The Kearney Mine was first constructed in 1989 and remained operational until June 1994, during which time it achieved a peak sustained production rate of 10,000 tons per annum of flake graphite product. The Kearney Mine has been in care and maintenance since its closure in 1994. The Kearney Mine was forced to suspend production as a result of certain mechanical failures and did not restart given the dynamics of the graphite market at that time.

8. Since at least September 2015, OGL has been suffering from operational and liquidity issues.

9. As set out in greater detail below, (i) OGL has in excess of \$26 million in liabilities, including approximately US\$15 million in secured debt owed to Orionis, and (ii) is in default of its repayment obligations to Orionis.

10. Further, efforts to raise equity (including most recently over the summer and fall of 2019) have not culminated in any transactions.

11. OGL has exhausted its options and no parties are willing to fund a sale or investment solicitation process outside of a receivership process. The parties believe that a Court-supervised SISP can provide the requisite stability and certainty necessary to facilitate a transparent and efficient process that maximizes realizations.

12. Orionis requires the assistance of an experienced court-officer to run a formal, Court-supervised SISP, as prior investment solicitations have failed. Accordingly, Orionis delivered to OGL a demand for repayment and notice of intention to enforce on security pursuant to section 244 of the BIA (the “**Demand and Section 244 Notice**”) with a view to commencing receivership proceedings and a SISP with the support of OGL. A copy of the Demand and Section 244 Notice are attached hereto as **Exhibit “A”**.

THE RESPONDENT

13. OGL was incorporated under the Ontario *Business Corporations Act* on March 17, 2006 and operates out of Kearney, Ontario. A copy of OGL’s corporate profile report dated November 7, 2019 is attached as **Exhibit “B”** to this Affidavit.

14. OGL is a wholly-owned subsidiary of Ontario Graphite Ltd., which is incorporated under the laws of the Cayman Islands (“**OGL Cayman**”). OGL Cayman was incorporated in 2007 for the purpose of acquiring OGL, then named iCarbon Canada Ltd. OGL Cayman was and remains the sole shareholder of OGL.

THE APPLICANT

15. Orionis is a special purpose investment vehicle incorporated in the Cayman Islands for the sole purpose of funding, and acquiring certain ownership interests in, OGL.

16. Orionis is the largest shareholder in OGL Cayman. Orionis first became involved with OGL in 2011, when it acquired shares in OGL Cayman.

17. Orionis has invested an aggregate of at least \$50 million (inclusive of accrued and unpaid interest) in OGL in several different capacities: (1) as indirect shareholder of OGL through its 46% shareholding of OGL Cayman, (2) as unsecured lender indirectly through OGL Cayman, and (3) as secured lender pursuant to the Bridge I Secured Note, the Bridge II Secured Note, and the Bridge III Secured Note (each as defined below).

MINE & FACILITIES

A. Kearney Mine

18. The Kearney Mine is located 26 kilometres north-east of Kearney, Ontario (which is approximately 250 kilometres north of Toronto). The Kearney Mine consists of seven mining leases (the “**Mining Leases**”) covering an area of approximately 435 hectares and 116¹ mining claims (the “**Mining Claims**”).²

¹ I am advised that Ontario recently amended its system for identifying mining claims. As a result of the amendments, the claims (known as legacy claims) included in the Kearney Mine (27 in total) were converted into 116 claims under the new system.

² I am advised that, generally speaking, in Ontario, a mining claim grants the claim holder mineral rights in naturally occurring metallic and non-metallic minerals. A claim holder is entitled to engage in exploration activities, but is not entitled to extract a mineral and produce a product for sale unless it has ‘brought the mining claim to lease’ in accordance with the *Mining Act*. Generally

19. Since 2011, OGL has undertaken a re-engineering and re-commissioning process with a view to bringing the Kearney Mine back into production.

20. To date, OGL's efforts to re-open the Kearney Mine have been unsuccessful and it remains in care and maintenance, the on-going costs of which, among other items, are included in the Proposed Budget, as discussed below.

B. Environmental Matters

21. Environmental matters at the Kearney Mine are regulated primarily by the Ontario Ministry of Energy, Northern Development and Mines ("**ENDM**") and the Ontario Ministry of the Environment, Conservation and Parks (the "**MECP**").

22. ENDM and MECP have issued various licences, permits and approvals in respect of the Kearney Mine, and ENDM has approved a mine closure plan prepared by OGL on February 13, 2012. ENDM has received from OGL approximately \$2 million in respect of the closure obligations contained in the mine closure plan, which obligations have a total cost of \$4.9 million.

23. On January 26, 2016, the MECP issued a Director's Order Number 8555-A6ESGE (the "**MECP Order**") due to the temporary suspension of acidic runoff water at the Kearney Mine, resulting in low-pH effluent discharge that had the potential to cause adverse effects to the natural environment and that was inconsistent with the requirements of one of MECP's approvals. Between January 31, 2018, and

speaking, in order to bring a claim to lease, a rights holder must complete sufficient assessment work and file an application with the applicable fee, an agreement in respect of compensation for surface rights, and a plan of survey.

April 12, 2019, the MECP issued three amendments to the MECP Order, in each instance requiring OGL to address matters related to the low-pH effluent from the Kearney Mine. OGL has also been the subject of several Environmental Penalty Orders issued by the MECP related to the effluent being discharged from the Kearney Mine, and one prosecution by the MECP.

24. OGL subsequently appealed the most recent amendment to the MECP Order and the most recent Environmental Penalty Order to the Ontario Environmental Review Tribunal.

25. On October 5, 2019, OGL, along with certain officers and directors named in the MECP Order, entered into a settlement agreement with the MECP, which settlement was subsequently approved by the Environmental Review Tribunal. Simultaneously, OGL reached a plea agreement with MECP prosecutors.

26. Pursuant to the settlement, the MECP Order was revoked and replaced with a new order, Director's Order Number 7328-BEMKE5, issued October 18, 2019, and amended on December 11, 2019, which requires OGL to implement an interim plan to treat the pH of the effluent from the Kearney Mine using more effective equipment, provide real-time pH monitoring and weekly pH reporting to the MECP, and undertake dredging of a polishing pond to create more treatment capacity (the "**Interim Plan**"). When the Interim Plan is fully implemented, the most recent Environmental Penalty Order will be revoked and OGL will plead guilty to reduced charges for an agreed fine of \$75,000. Implementation of the Interim Plan has been estimated to cost approximately \$520,000, and is included in the Proposed Budget, as discussed below.

27. As noted below, Deloitte is currently engaging with the MECP and the ENDM with respect to potential liability that Deloitte may incur for pre-existing environmental issues should it be appointed Receiver. Deloitte has indicated it will consent to act as Receiver provided it reaches an agreement with the MECP and the ENDM to limit Deloitte's potential liability in respect of pre-existing environmental issues..

C. Key Suppliers

28. In the ordinary course of its operations, OGL has engagements with, among others, environmental management and engineering consultants, environmental and toxicity monitors and testers, and suppliers of environmental additives, fuel and various equipment.

ASSETS & LIABILITIES

29. Attached hereto as **Exhibit "C"** is the audited, consolidated financial statements of OGL for the year ending November 30, 2018, dated October 29, 2019 (the "**Financial Statements**").

30. I understand that the Financial Statements are the most recent annual financial statements of OGL. However, neither I nor Deloitte have confirmed the accuracy of the information in the Financial Statements. Accordingly, OGL's assets and liabilities may have a significantly different book value than that set out in the Financial Statements, although I am not personally aware of any information suggesting that the Financial Statements are materially misstated.

31. Further, the Financial Statements do not reflect loans recently advanced (i.e. after the date of the Financial Statements) by Orionis to OGL under the Bridge III Secured Note (as defined below) to fund ongoing operating expenses.

32. I understand from representatives of OGL that, as at the date hereof, OGL has approximately \$0.5 million in immediately available funds. Further, Orionis is the only party currently funding OGL having last made an advance under the Bridge III Secured Note (as defined below) on November 7, 2019.

A. Mining Claims and Leases

33. OGL has title to three of the seven Mining Leases and 95³ of the 116 Mining Claims (the “**OGL-Owned Leases**” and the “**OGL-Owned Claims**”, respectively, and collectively the “**OGL-Owned Properties**”). OGL also has beneficial interests in the other four Mining Leases and 21⁴ Mining Claims (the “**Beneficially-Owned Leases**” and the “**Beneficially-Owned Claims**”, respectively, and collectively the “**Beneficially-Owned Properties**”). A listing of the OGL-Owned Properties and the Beneficially-Owned Properties is attached hereto as **Exhibit “D”**. Parcel Registers for the OGL-Owned Leases and the Beneficially-Owned Leases, with a currency date of January 9, 2020, are attached hereto as **Exhibits “E”** and **“F”**, respectively. Orionis’s counsel, Osler, Hoskin & Harcourt LLP, has copies of mining claim abstracts (and

³ Prior to the amendments to the system for identifying claims, OGL had title to 15 mining claims. Those legacy claims were converted into the 95 OGL-Owned Claims.

⁴ Prior to the amendments to the system for identifying claims, OGL had a beneficial interest in 12 mining claims. Those legacy claims were converted into the 21 Beneficially-Owned Claims.

legacy mining claim abstracts) for the OGL-Owned Claims and Beneficially-Owned Claims, which are available upon request.

34. The Beneficially-Owned Properties are held in trust by a third party solicitor and are subject to royalty agreements with two third-party claim holders (the “**Claim Holders**”). OGL acquired its beneficial interests in the Beneficially-Owned Properties by exercising its rights under option agreements with each of the Claim Holders. Pursuant to certain contractual arrangements, the Beneficially-Owned Properties are to be held in trust until the satisfaction of certain conditions, including that all Beneficially-Owned Claims pursuant to the agreements are brought to ‘lease’ in accordance with the *Mining Act* (Ontario). OGL is required to make annual royalty payments to the Claim Holders in accordance with the terms of the option agreements.

B. Machinery, Equipment & Facilities

35. OGL also owns and leases various pieces of machinery and equipment necessary in the re-commissioning and ongoing operation of the Kearney Mine, including, from time-to-time, an excavator, grader, pumps, hoses and motor vehicles, as well as certain facilities and structures, including a mill building and maintenance shop.

MATERIAL INDEBTEDNESS

A. Secured Indebtedness to Orionis

(i) *Bridge I*

36. Pursuant to a Secured Note dated January 19, 2016 attached hereto as **Exhibit “G”** (as amended by the Bridge I Amendments (as defined below), the “**Bridge I Secured Note**”), Orionis advanced US\$5,300,000 to OGL for the purpose of completing various studies related to the development of the Kearney Mine in Kearney, Ontario, and to fund operating expenses, working capital and to reduce corporate indebtedness.

37. The Bridge I Secured Note was subsequently amended by five amending agreements, copies of which are attached as **Exhibits “H”, “I”, “J”, “K”, and “L”** (collectively, the “**Bridge I Amendments**”). Pursuant to the Bridge I Amendments, among other things, the authorized principal under the Bridge I Secured Note was incrementally increased to US\$8,000,000 and various advances were made such that the principal amount outstanding under the Bridge I Secured Note is currently US\$8,000,000, as evidenced by the grid attached as Schedule 1(a) to the Bridge I Secured Note.

38. Advances made pursuant to the Bridge I Secured Note continue to accrue interest at a rate of 15% per annum (or US\$3,288 per diem), and approximately US\$3,942,909 of interest was outstanding as at January 7, 2020.

39. As security for the Bridge I Secured Note obligations, OGL executed and delivered to Orionis a Demand Debenture dated January 19, 2016, which is attached

hereto as **Exhibit “M”** (the “**Bridge I Debenture**”). The Bridge I Debenture secures all of OGL’s present and after acquired undertaking, property, and assets, including, but not limited to, (i) real and immovable property interests, which includes mining rights, mining claims (whether patented or unpatented), mining leases (including leasehold or other interests created pursuant to such mining lease), and (ii) personal property, including all tangible and intangible personal property, but excluding consumer goods, the last date of the term of any lease, and certain restricted property more particularly set out in the Bridge I Secured Note.

40. On April 10, 2014, Orionis registered a financing statement (registration number 20140410 1553 1590 0289) pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) against OGL (the “**Orionis-OGL PPSA Registration**”) for a period of five years over collateral classifications of inventory, equipment, accounts, other, and motor vehicles. Pursuant to a financing change statement registered on March 14, 2019, the term of the Orionis-OGL PPSA Registration was extended by an additional three years. A certified PPSA search against OGL with a currency date of November 12, 2019, and an uncertified PPSA search with a currency date of January 9, 2020, are attached hereto as **Exhibit “N”**.

41. On January 22, 2016, Orionis registered the Bridge I Debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims in the amount of \$8,000,000 (received as Transaction No. M1690.0017).

42. On May 18, 2016, Orionis registered a charge in respect of the Bridge I Debenture pursuant to the *Land Titles Act* (the “**LTA**”) against title to the OGL-Owned Leases in the amount of \$8,000,000 (received as Instrument No. GB91682). Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

43. In connection with the closing of the Bridge I Secured Note transaction, Orionis also received a guarantee from OGL Cayman dated January 19, 2016 (the “**Parent Guarantee**”) pursuant to which OGL Cayman has guaranteed all debts, liabilities and obligations of OGL in favour of Orionis at any time arising from all agreements, undertakings and contracts in force between the parties. The Parent Guarantee is secured by a pledge agreement also dated January 19, 2016 pursuant to which OGL Cayman pledged all securities held in the capital of OGL and all shareholder loans or other indebtedness owing by OGL to OGL Cayman. A copy of the Parent Guarantee is attached as **Exhibit “O”**. A copy of the Pledge Agreement is attached as **Exhibit “P”**.

(ii) **Bridge II**

44. Pursuant to a Secured Note dated July 19, 2017 (as amended by the Bridge II Amendments (as defined below), the “**Bridge II Secured Note**”), Orionis agreed to provide additional funding to OGL on a *pari passu* basis with Boulevard Asia Trading Limited (“**BATL**”), a shareholder of OGL Cayman, subject to the terms of the Intercreditor Agreement (as defined below). A copy of the Bridge II Secured Note is attached as **Exhibit “Q”**.

45. The Bridge II Secured Note was subsequently amended by six amending agreements, copies of which are attached as **Exhibits “R”, “S”, “T”, “U”, “V”, and “W”** (collectively, the **“Bridge II Amendments”**). Pursuant to the Bridge II Amendments, among other things, the authorized principal under the Bridge II Secured Note was increased to US\$1,414,921 and various advances were made such that the principal amount outstanding under the Bridge II Secured Note is currently US\$1,414,921, as evidenced by the grid attached as Schedule 1(A) to the Bridge II Secured Note.

46. Advances made pursuant to the Bridge II Secured Note continue to accrue interest at a rate of 15% per annum (or US\$581 per diem), and approximately US\$397,175 of interest was outstanding as at January 7, 2020.

47. As security for the Bridge II Secured Note obligations, OGL executed and delivered to Orionis a Demand Debenture dated July 19, 2017, which is attached hereto as **Exhibit “X”** (the **“2017 Bridge II Debenture”**). The 2017 Bridge II Debenture is in substantially the same form as the Bridge I Debenture and secures all of OGL’s present and after acquired undertaking, property, and assets, including, but not limited to, (i) real and immovable property interests, which includes mining rights, mining claims (whether patented or unpatented), mining leases (including leasehold or other interests created pursuant to such mining lease), and (ii) personal property, including all tangible and intangible personal property, but excluding consumer goods, the last date of the term of any lease, and certain restricted property more particularly set out in the Bridge II Secured Note.

48. The 2017 Bridge II Debenture was subsequently amended by five supplemental debentures, copies of which are attached as Exhibits “Y”, “Z”, “AA”, “BB”, and “CC” (collectively, the “**2017 Bridge II Supplemental Debenture Amendments**”).

49. As security for the Bridge II Secured Note obligations, OGL also executed and delivered to Orionis a Demand Debenture dated March 20, 2019, which is attached hereto as **Exhibit “DD”** (the “**2019 Bridge II Debenture**”). The 2019 Bridge II Debenture is in substantially the same form as the Bridge I Debenture and the 2017 Bridge II Debenture. The maximum principal amount secured by the 2017 Bridge II Debenture and the 2019 Bridge II Debenture together exceeds the aggregate principal amount of the advances under the Bridge II Secured Note.

50. On August 18, 2017, Orionis registered the 2017 Bridge II Debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims in the amount of \$230,000 (receipted as Transaction No. T1790.00421). On April 16, 2019, Orionis registered the 2019 Bridge II Debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims in the amount of \$1,500,000 (receipted as Event No. 593949).

51. On November 10, 2017, Orionis registered a charge in respect of the 2017 Bridge II Debenture pursuant to the LTA against title to the OGL-Owned Leases in the amount of \$230,000 (receipted as Instrument No. GB107465). On May 22, 2019, Orionis registered a charge in respect of the 2019 Bridge II Debenture pursuant to the LTA against title to the OGL-Owned Leases in the amount of \$1,500,000 (receipted

as Instrument No. GB121123). Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

(iii) Bridge III

52. Pursuant to a Secured Note dated March 20, 2019 (the “**Bridge III Secured Note**”), Orionis agreed to provide additional funding to OGL subject to the terms of the Intercreditor Agreement (as defined below). A copy of the Bridge III Secured Note is attached as **Exhibit “EE”**.

53. The authorized principal under the Bridge III Secured Note is US\$8,000,000 and various advances were made such that the principal amount outstanding under the Bridge III Secured Note is currently US\$1,600,854, as evidenced by the grid attached as Schedule 1(A) to the Bridge III Secured Note.

54. As security for the Bridge III Secured Note obligations, OGL executed and delivered to Orionis a Demand Debenture dated March 20, 2019, which is attached hereto as **Exhibit “FF”** (the “**Bridge III Debenture**”). The Bridge III Debenture is in substantially the same form as the Bridge I Debenture and secures all of OGL’s present and after acquired undertaking, property, and assets, including, but not limited to, (i) real and immovable property interests, which includes mining rights, mining claims (whether patented or unpatented), mining leases (including leasehold or other interests created pursuant to such mining lease), and (ii) personal property, including all tangible and intangible personal property, but excluding consumer goods, the last date of the term of any lease, and certain restricted property more particularly set out in the Bridge III Secured Note.

55. On April 16, 2019, Orionis registered the Bridge III Debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims in the amount of \$8,000,000 (received as Event No. 593948).

56. On May 22, 2019, Orionis registered a charge in respect of the Bridge III Debenture pursuant to the LTA against title to the OGL-Owned Leases in the amount of \$8,000,000 (received as Instrument No. GB121124). Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

57. Advances made pursuant to the Bridge III Secured Note continue to accrue interest at a rate of 15% per annum (or US\$658 per diem), and approximately US\$105,569 of interest was outstanding as at January 7, 2020.

(iv) ***Bridge Note Defaults***

58. The Bridge I Secured Note originally matured in January 2017 and a demand was made and notice of intention to enforce on security under s. 244 of the BIA was issued to OGL on April 7, 2017. Since that time, the Bridge I Secured Note has been amended to provide for additional advances to be made to OGL that are secured by the Bridge I Debenture. Pursuant to the Bridge I Amendments, the maturity date of the Bridge I Secured Note was extended to November 30, 2018. OGL is currently in default of its repayment and other obligations contained in the Bridge I Secured Note.

59. The Bridge II Secured Note matured on April 30, 2018. OGL is currently in default of its repayment and other obligations contained in the Bridge II Secured Note.

60. The Bridge III Secured Note is a demand facility. Orionis issued a demand for repayment and a notice of intention to enforce on security under s. 244 of the BIA to OGL on November 8, 2019 (defined above as the Demand and 244 Notice and attached hereto as **Exhibit “A”**). On November 8, 2019, OGL acknowledged receipt of the Demand and 244 Notice, waived the ten-day period of notice required under s. 244(2) of the BIA and consented to the immediate enforcement of the security referred to in the Demand and 244 Notice. A copy of OGL’s consent and waiver is attached hereto as **Exhibit “GG”**.

(v) ***Intercreditor Agreement***

61. Orionis, OGL, and BATL are party to an intercreditor agreement dated March 20, 2019 (the “**Intercreditor Agreement**”) executed in connection with the delivery to Orionis of the Bridge III Secured Note. The Intercreditor Agreement replaced an earlier intercreditor agreement entered into in connection with the execution of the Bridge II Secured Note and the BATL Bridge II Secured Note (as defined below). A copy of the Intercreditor Agreement is attached as **Exhibit “HH”**.

62. Pursuant to the Intercreditor Agreement, the secured loans by Orionis and BATL have been given the following priority:

- (a) First – Bridge I Secured Note;
- (b) Second – Bridge III Secured Note; and
- (c) Third – Bridge II Secured Note and BATL Bridge II Secured Note, on a *pari passu* basis.

63. The priority of the security established by the Intercreditor Agreement is effective notwithstanding, among other things, timing of any advances, the time of any defaults, the perfection or lack of perfection of any security, or the validity or lack of validity or enforceability or unenforceability of any provision of any of the relevant documentation.

64. The Intercreditor Agreement also included a standstill provision against BATL, pursuant to which BATL is precluded from commencing an enforcement action until such time as provided therein.

B. Other Secured Indebtedness

65. I am advised by Osler that a review of a certified PPSA search against OGL, Parcel Registers for the OGL-Owned Leases, and mining claim abstracts for the OGL-Owned Claims, indicate that other than the security interests in favour of Orionis, no other security interests are registered against OGL, the OGL-Owned Leases or the OGL-Owned Claims, except as described below.

(i) BATL

66. Pursuant to a Secured Note dated July 19, 2017 (as amended by the BATL Bridge II Amendments, the “**BATL Bridge II Secured Note**”), BATL agreed to provide additional funding to OGL on a *pari passu* basis with loans made by Orionis pursuant to the Bridge II Secured Note.

67. I understand from OGL’s management that, pursuant to a series of amendments to the BATL Bridge II Secured Note, the authorized principal amount is US\$1.66 million.

68. As security for the BATL Bridge II Secured Note obligations, OGL executed and delivered to BATL a Demand Debenture dated July 19, 2017 (the “**BATL Bridge II Demand Debenture**”) that is in substantially the same form as the 2017 Bridge II Debenture.

69. On August 18, 2017, BATL registered the BATL Bridge II Demand Debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims (received as Transaction No. T1790.00420).

70. On November 10, 2017, BATL registered a charge in respect of the BATL Bridge II Demand Debenture pursuant to the LTA against title to the OGL-Owned Leases in the amount of \$1,100,000 (received as Instrument No. GB107466). Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

(ii) *Miller Thomson LLP*

71. Miller Thomson LLP is counsel to OGL and is owed \$597,125.77 on account of legal fees owing in the ordinary course of business (inclusive of interest). Miller Thomson LLP is registered under the Ontario PPSA (registration Number 20191112 0806 1862 1995) against inventory, equipment, accounts, motor vehicle and other. Miller Thomson LLP also registered a debenture pursuant to the *Mining Act* against title to the OGL-Owned Claims (received as Event No. 855640). A certified PPSA search against OGL is attached hereto as **Exhibit “N”**.

(iii) *DRA Americas Inc.*

72. OGL is in arrears of \$1,005,904.34 under a Technical Services Agreement with DRA Americas Inc. (“**DRA**”). DRA registered a construction lien against title to the

OGL-Owned Leases on January 7, 2015 (received as Instrument No. GB79259) and subsequently registered a certificate of action relating to the construction lien on February 17, 2015 (received as Instrument No. 80060). Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

(iv) *NOHFC*

73. OGL received funding from Northern Ontario Heritage Fund Corporation (“**NOHFC**”) in the aggregate amount of \$1,000,000, pursuant to a Loan and Conditional Contribution Agreement between the parties dated November 15, 2013 (the “**NOHFC Loan Agreement**”). The funding is comprised of a \$500,000 non-revolving loan (“**NOHFC Loan**”) and a conditional contribution of \$500,000 (the “**NOHFC Contribution**”). The unpaid balance of the NOHFC Loan, which was approximately \$138,394.33 as of December 2019, is repaid by OGL on a monthly basis through blended interest and principal repayments over a 96-month period scheduled to terminate in January 2022. The NOHFC Contribution will be forgiven in certain circumstances though may, if demand is made by NOHFC, become due and owing upon the occurrence of an Event of Default (as defined in the NOHFC Loan Agreement). The NOHFC Loan and NOHFC Contribution are secured pursuant to a security agreement dated November 15, 2013. NOHFC has registered pursuant to the Ontario PPSA against OGL (registration number 20131113 1613 1862 8968) against certain equipment consisting of one semi-autogenous grinding mill unit (serial number BU2570) and associated equipment (the “**NOHFC Collateral**”). NOHFC has also registered a Notice of Security Interest in respect of the NOHFC Collateral against title to the OGL-Owned Leases (received as Instrument No. GB69175). A certified

PPSA search against OGL is attached hereto as **Exhibit “N”**. Parcel Registers for the OGL-Owned Leases are attached hereto as **Exhibit “E”**.

74. NOHFC, Orionis and OGL are party to an intercreditor agreement whereby NOHFC postponed and subordinated its security in favour of Orionis to the maximum amount of US\$6,000,000.

C. Other Material Liabilities

75. I am advised by OGL’s Chief Financial Officer and interim Chief Executive Officer that based on the books and records of OGL, it appears that as at November 8, 2019, OGL owed approximately \$700,000 to trade creditors. In addition, OGL owes US\$490,741.36 to Caterpillar Financial Services Limited.

NEED FOR RECEIVER

A. Prior Efforts Unsuccessful

76. Since 2017, OGL and its representatives have engaged in various initiatives and have been in discussions with various potential investors with a view to achieving an initial public offering or investment in the business through a private transaction. All capital raising and/or investment solicitation efforts have not culminated in any meaningful interest or any transactions.

77. The most recent attempt to raise capital, undertaken through the summer and fall of 2019, was funded by BATL. BATL has advised that it is no longer willing to provide any additional funding to OGL to fund its operations or to continue to pursue a potential investment.

78. Orionis requires the assistance of an experienced Court officer. Deloitte is a licensed trustee, as defined in the BIA, with extensive experience in Canadian insolvency proceedings, including receiverships related to mining companies. Deloitte has indicated that it will consent to act as Receiver in this proceeding, provided certain conditions are met, including that Deloitte can reach an agreement with the MECP and the ENDM limiting Deloitte's potential liability in respect of pre-existing environmental issues and the implementation of the Interim Plan. Deloitte has advised it has commenced discussions with the MECP and the ENDM in this regard.

79. Deloitte has experience marketing and selling mining properties, including the following:

- (a) Sage Gold, a gold mine in Timmins, Ontario;
- (b) Aurbec Mines Inc., a gold mine in rural Quebec;
- (c) Grande Cache Coal, a coal mine in Alberta; and,
- (d) Mercator Minerals Ltd., a copper and molybdenum miner with assets in a number of jurisdictions.

80. It is anticipated that the Receiver will be able to leverage market intelligence acquired through the prior capital raising processes to streamline and expedite any process for the solicitation of bids from potential purchasers or strategic investors. Deloitte will similarly rely on its global network of offices to identify purchasers that may be interested in acquiring the Kearney Mine. I further understand that Deloitte

intends to provide additional qualifications in a report to the Court that it intends to file prior to the hearing of the application (the “**Pre-Filing Report**”).

81. The Proposed Budget contemplates that if no offer satisfactory to Orionis, in consultation with the Receiver, can be obtained, the Receiver and Orionis may agree on a process for abandonment of the Kearney Mine.

82. Further, as will be described in the Pre-Filing Report, the Proposed Budget contemplates the engagement of certain OGL employees as independent consultants.

B. SISP

83. It is anticipated that the Receiver will seek Court approval of a SISP as soon as possible following its proposed appointment. The proposed SISP contemplates a two-phase process that is expected to last several months during the winter and spring of 2020, with a target closing in the spring or summer of 2020.

84. During the initial phase, the Receiver will solicit non-binding proposals for the sale of OGL’s assets, or an investment in the business, from potential bidders.

85. To the extent any of the non-binding proposals are acceptable to the Receiver, those bidders will continue to the second phase during which the Receiver will solicit binding proposals.

FINANCING DURING THE RECEIVERSHIP

86. Given the limited cash resources of OGL, it is expected that the Receiver (if appointed) will require additional funding to pay Deloitte's fees and expenses that are necessary to perform its powers and duties as Receiver, including the fees and disbursements of Deloitte's independent counsel, and to fund the Interim Plan and the continued operation of the business during the receivership, as provided for in the Proposed Budget. A copy of the Proposed Budget will be included with the Pre-Filing Report.

87. In that regard, if the Receiver is appointed, Orionis is prepared to advance the amounts contemplated in the Proposed Budget provided that Orionis is granted a Court-ordered charge over OGL's assets and such advances are made in accordance with the Proposed Budget.

88. Accordingly, Orionis is requesting the Court to grant the proposed Receiver the power to borrow from Orionis or such other lender as may be identified up to a maximum of \$3.5 million on security of a Court-ordered charge (the "**Receiver's Borrowings Charge**"), which is proposed to have priority over all other charges and security interests, other than the Receiver's Charge (defined below).

89. The proposed Appointment Order expressly authorizes the Receiver to retain Stikeman Elliott LLP as its independent counsel to advise and represent it in these proceedings. It is proposed that the fees and expenses of the Receiver and its independent legal counsel in carrying out the Receiver's duties, once appointed, will be secured by a Court-ordered charge over all the assets and undertakings of OGL (the

“Receiver’s Charge”). The Receiver’s Charge is proposed to have priority over all other charges and security interests.

CONCLUSION

90. For the reasons set out above, I believe that it is just and convenient and in the interest of Orionis, OGL, and other stakeholders that Deloitte is appointed as Receiver on the terms set out in the proposed Appointment Order.

SWORN BEFORE ME at the City of Miami, Florida, United States of America on January 10, 2020

DAYSI MARTINEZ

DAVID YANOVICH WANCIER

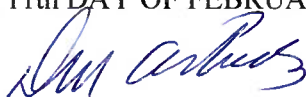
Notary Public in the State of Florida



THIS IS **EXHIBIT "B"** REFERRED TO IN THE
SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER,

AFFIRMED BEFORE ME

THIS 11th DAY OF FEBRUARY, 2020.



DAYSI MARTINEZ

Notary Public in the State of Florida



January 13, 2020

BY REGISTERED MAIL AND BY E-MAIL ldault@ontargiographite.com

TO: Ontario Graphite, Ltd.
2142 Forestry Tower Road
P.O. Box 138
Kearney, ON P0A 1M0
ATTN: Ellerton J. Castor and Lynette Dault

Re: Demand for Payment of Loan and Conditional Contribution made by Northern Ontario Heritage Fund Corporation (“NOHFC”) to Ontario Graphite, Ltd. (the “Recipient”) – File No. 910972

We refer to that certain loan and conditional contribution agreement dated November 15, 2013, between the Recipient and NOHFC (as amended from time to time, the “**Agreement**”).

The Recipient is indebted to NOHFC in the outstanding principal amount of \$639,105.89, comprising the sum of the outstanding balance of the Loan (being \$139,105.89) and the Conditional Contribution (being \$500,000.00) referred to above, together with interest thereon to the date of January 13, 2020 in the amount of \$260.75 (such principal and interest, collectively, the “**Indebtedness**”) under the Agreement. Interest continues to accrue on the Indebtedness at 3.5% per annum, calculated and payable monthly, not in advance, at a per diem interest rate of \$13.55.

The Indebtedness is secured by a security interest over certain personal property of the Recipient granted by the Recipient to NOHFC pursuant to a security agreement dated November 15, 2013 (the “**Security**”) in respect of which we have filed a financing statement in the Ontario personal property security registry under reference file no. 691844958, and in respect of which a Notice of Security Interest was registered in favour of NOHFC, bearing instrument no. GB69175 in Land Registry Office #42, against the premises described therein.

The Indebtedness has become due and payable under the Agreement due to the occurrence and continuance of the following Events of Default:

- (a) The Recipient has become subject to the appointment of a receiver for it or for all or substantially all of its assets. Pursuant to subsection 8.1(f) of the Agreement, this constitutes an Event of Default under the Agreement.
 - (b) An event has occurred (being the event described in (a) above) that has or could reasonably be expected to have a Material Adverse Effect (as that term
-

is defined in the Agreement). Pursuant to subsection 8.1(h) of the Agreement, this constitutes an Event of Default under the Agreement.

- (c) The Recipient has failed to pay the principal of or interest on outstanding indebtedness for borrowed money in excess of \$50,000 when such payment was due or such other event has occurred which has accelerated such indebtedness. Pursuant to subsection 8.1(i) of the Agreement, this constitutes an Event of Default under the Agreement.

This letter also serves as notice that NOHFC has not received the following items in respect of the Recipient: (i) internally generated financial statements within 45 days of the end of each of the first three fiscal quarters of each fiscal year in accordance with subsection 7.1(a) of the Agreement, (ii) reviewed financial statements within 90 days of the end of each fiscal year in accordance with subsection 7.1(b) of the Agreement, (iii) compliance certificates in accordance with subsection 7.1(c) of the Agreement, (iv) the final project report in accordance with subsection 7.1(d) of the Agreement, and (v) operating and capital expenditure budgets within 30 days prior to the beginning of each fiscal year in accordance with subsection 7.1(f) of the Agreement. Failure to provide all such items within 20 days of delivery of this letter will constitute Events of Default in accordance with subsection 8.1(e) of the Agreement.

NOHFC hereby formally demands that the Recipient pay to NOHFC the full amount of the Indebtedness, being \$639,366.64 together with per diem interest as set forth above, by certified cheque delivered to NOHFC's offices at Suite 200, Roberta Bondar Place, 70 Foster Drive, Sault Ste. Marie, Ontario on or before 5:00 p.m. on January 27, 2020.

If payment of the Indebtedness is not received, NOHFC shall take whatever steps it may consider necessary or appropriate to recover the Indebtedness, including, without limitation, enforcing its Security or commencing legal proceedings in the Ontario Superior Court of Justice, in which case NOHFC shall also be seeking all costs incurred in so doing.

In the interim, we reserve the right to take appropriate action to preserve and protect our interest in the property subject to the Security.

Yours truly,

NORTHERN ONTARIO HERITAGE FUND CORPORATION

By: MNP LLP, its Agent

Per: D. Covello
Dave Covello

cc: Legal Services Branch, Ministry of Energy, Northern Development and Mines

NOTICE OF INTENTION TO ENFORCE SECURITY
(Section 244 of the *Bankruptcy and Insolvency Act* (Canada))

January 13, 2020

BY REGISTERED MAIL AND EMAIL ldault@ontargiographite.com

Ontario Graphite, Ltd.
2142 Forestry Tower Road
P.O. Box 138
Kearney, ON P0A 1M0
ATTN: Ellerton J. Castor and Lynette Dault

TAKE NOTICE THAT:

1. **Northern Ontario Heritage Fund Corporation (“NOHFC”)**, a secured creditor, intends to enforce its security on the property of **Ontario Graphite, Ltd.** (the “**insolvent person**”) described in Schedule “A” attached hereto.
2. The security that is to be enforced (the “**Security**”) is in the form of:
 - (a) a security interest in the equipment of the insolvent person described in Schedule “A” (and all proceeds thereof) granted by the insolvent person in favour of NOHFC pursuant to a security agreement made November 15, 2013 in respect of which a financing statement was registered under the *Personal Property Security Act* (Ontario) (“**PPSA**”) bearing reference file no. 691844958, registration no. 20131113 1613 1862 8968, and in respect of which a Notice of Security Interest was registered in favour of NOHFC, bearing instrument no. GB69175 in Land Registry Office #42, against the premises described therein.
3. As of January 13, 2020, the total amount of outstanding indebtedness and other obligations secured by the Security was in the amount of \$639,366.64, comprising the sum of the outstanding balance of a loan in the principal amount of \$139,105.89 and a conditional contribution in the amount of \$500,000.00, in each case together with interest thereon to the date of January 13, 2020 in the amount of \$260.75 (such principal (including the conditional contribution) and interest, collectively, the “**Indebtedness**”) under that certain loan and conditional contribution agreement dated November 15, 2013, as amended from time to time, between the insolvent person and NOHFC. Interest continues to accrue on the indebtedness at 3.5% per annum, calculated and payable monthly, not in advance, at a per diem interest rate of \$13.55.
4. The secured creditor will not have the right to enforce the security until after the expiry of ten days after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Thunder Bay, Ontario, on January 13, 2020.

**NORTHERN ONTARIO HERITAGE FUND
CORPORATION**

By: MNP LLP, its Agent

Per: D Covello
Dave Covello

Schedule "A" attached

SCHEDULE "A"

One (1) SAG Mill (semi-autogenous grinding mill) unit (serial number BU2570), related mechanical feeder screens, mechanical feed flow divide, major lines, hydraulic drives, tail pumps, conveyors and associated equipment, including the following:

G/L Account	Name	Invoice No.
162241 · CIPSAGMill Mech.Feeders Screens	Derrick Corporation	C52640-1
162242 · CCIP SAG MillMechFeedFlowDivide	Derrick Corporation	C55095
162251 · CIP SAG Mill Mech. Major Liners	Tega Industries	TC/183/959
162253 · CIP SAGMillMechMHydraulic Drive	Bosch Rexroth Canada Corp	
162253 · CIP SAGMillMechMHydraulic Drive	Bosch Rexroth Canada Corp	9404308610
162253 · CIP SAGMillMechMHydraulic Drive	Bosch Rexroth Canada Corp	9404325703
162253 · CIP SAGMillMechMHydraulic Drive	Bosch Rexroth Canada Corp	9404325704
162253 · CIP SAGMillMechMHydraulic Drive	Bosch Rexroth Canada Corp	
162254 · CIP SAG Mill Mech SAGMill Unit	Bateman Engineered Technologies	18575, 18704, 18741, 18791
162256 · CIPSAGMillMechSAGMillDrConcrete	Western Mechanical	J047272
162261 · CIPSAG Mill MechSAG& Tail Pumps	KAD Industrial Services	KAD-1233-INV

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER,

AFFIRMED BEFORE ME

THIS 11th DAY OF FEBRUARY, 2020.



DAYSI MARTINEZ

Notary Public in the State of Florida



INTERCREDITOR AGREEMENT

This Agreement is made as of the 19th day of _____ January _____, 2016,

Among:

ONTARIO GRAPHITE, LTD.,

a corporation existing under the laws of the Province of Ontario
(the “**Recipient**”)

- and -

NORTHERN ONTARIO HERITAGE FUND CORPORATION,

a corporation existing under the laws of the Province of Ontario

(“**NOHFC**”)

- and -

ORIONIS CORPORATION,

a company formed pursuant to the laws of the British Virgin Islands

(“**ORIONIS**”)

Whereas:

- (a) pursuant to a loan and conditional contribution agreement dated as of November 13, 2013 between NOHFC and the Recipient, NOHFC has agreed to provide up to CAD\$1,000,000.00 financial assistance to the Recipient, such assistance to take the form of a conditional contribution of up to CAD\$500,000.00 (the “**NOHFC Conditional Contribution**”) and a non-revolving term loan of up to CAD\$500,000.00 (the “**NOHFC Term Loan**”);
- (b) pursuant to secured note made among ORIONIS, the Recipient et al, ORIONIS has agreed to make a loan to the Recipient of the principal amount of US\$5,300,00;
- (c) the parties wish to enter into this Agreement to establish the relative priorities of the NOHFC Security and the ORIONIS Security (as those terms are hereinafter defined) and the indebtedness secured thereby;

Now therefore for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** In this Agreement, “account”, “collateral”, “equipment”, “money”, “intangible”, “inventory”, “proceeds” and “securities” have the meanings assigned by the *Personal Property Security Act* (Ontario). Unless there is something in the subject matter or context inconsistent therewith:
 - (a) “**Business Day**” means a day other than a Saturday, Sunday or any statutory holiday in the Province of Ontario;

- (b) “**NOHFC Obligations**” means all present and future indebtedness of the Recipient to NOHFC up to a maximum principal amount of CAD\$1,000,000.00, together with interest, fees and similar charges and costs of enforcement;
 - (c) “**NOHFC Security**” means all present and future security granted by the Recipient to NOHFC to secure the payment and performance of the NOHFC Obligations;
 - (d) “**ORIONIS Obligations**” means all present and future indebtedness of the Recipient to ORIONIS;
 - (e) “**ORIONIS Security**” means all present and future security granted by the Recipient to ORIONIS to secure the payment and performance of the ORIONIS Obligations;
 - (f) “**Lenders**” means collectively NOHFC and ORIONIS, and “**Lender**” means any one of them; and
 - (g) “**Lenders’ Security**” means collectively the NOHFC Security and the ORIONIS Security.
2. **Priority.** The Lenders’ Security shall rank in descending order of priority as follows:
- (a) firstly, the ORIONIS Security to the extent of the ORIONIS Obligations up to a maximum of six million US dollars (US\$6,000,000.00);
 - (b) secondly, the NOHFC Security to the extent of the NOHFC Obligations; and
 - (c) thirdly, the ORIONIS Security to the extent of the balance of the ORIONIS Obligations.
3. **Subordination.** The NOHFC Obligations and the rights of NOHFC under the NOHFC Security are hereby postponed and subordinated to the extent necessary to effectuate the priority ranking set out in this Agreement.
4. **Applicability of Priorities.** The respective priorities of the Lenders’ Security set out in this Agreement and all other rights established, altered or specified herein, are applicable irrespective of the time, place or order of creation, execution, delivery, attachment or perfection thereof, the method of perfecting, the time, place or order of registration or filing of financing statements or recording of mortgages or other instruments, assignments or agreements, the giving of or failure to give notice of the acquiring of any charge, lien or security interest or the date or dates of any advance or advances, the date or dates of any default by the Recipient or any other relevant party or the date of the taking of enforcement proceedings (including possession).
5. **Lenders Not to Amend.** NOHFC agrees not to increase the maximum principal amount of the NOHFC Obligations without the prior written consent of the ORIONIS.
6. **Agreement by Recipient.** The Recipient hereby agrees with the provisions hereof and further agrees that so long as any of the Lenders’ Security is outstanding, it will stand possessed of its properties and assets thereby mortgaged, charged or assigned for the Lenders in accordance with the priorities herein set out.
7. **No Additional Rights.** Nothing in this Agreement shall be construed so as to entitle any Lender to receive any proceeds of realization upon any of the property or assets of the Recipient in respect of which such Lender does not have any security or in respect of which such Lender’s security is

invalid or unenforceable as against third parties. Nothing contained in this Agreement shall be construed as conferring any rights upon the Recipient or any party not a party to this Agreement.

8. **Rights to Proceeds.** If any of the property or assets of the Recipient are dealt with, damaged, destroyed, lost or expropriated so as to give rise to proceeds (including amounts payable under insurance policies), the relative priority of claims of the Lenders against such proceeds shall be determined as if the claims were made against the original collateral which gave rise to such proceeds.
9. **Lenders to Furnish Information.** Each of the Lenders shall provide to the others from time to time, upon request, full information and particulars as to the amounts owing to such the Recipient, the performance by the Recipient of the terms and conditions of its agreements and obligations to such Lender and any other information which the party requesting the same deems material, and the Recipient consents to such disclosure.
10. **Agreement Not to Affect Payments.** Nothing in this Agreement shall prevent the Recipient from making payment of principal or interest to the Lenders until the bankruptcy, liquidation or winding-up of the Recipient or any other distribution of the property and assets of the Recipient for the purpose of winding up its affairs or until any of the Lenders shall have commenced to enforce their respective security over any of the property and assets of the Recipient.
11. **Notice.** Any demand, notice, direction or other communication to be made or given hereunder (in each case, "**Communication**") shall be in writing and shall be made or given by personal delivery, by courier, by facsimile transmission, or sent by registered mail, charges prepaid, addressed to the respective parties as follows:

- (i) if to the Recipient:

Ontario Graphite, Ltd.
2142 Forestry Tower Road
P.O. Box 138
Kearney ON V9A 1M6
Attention: Ellerton J. Castor:
Fax No.: 305-455-3999

- (ii) if to NOHFC:

Deloitte LLP
Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 200, Toronto ON M5H 0A9
Attention: Joelle Gott, Associate Partner, Financial Advisory
Fax: (416)-601-6690

With a copy to:

Northern Ontario Heritage Fund Corporation
Suite 200, Roberta Bondar Place,
70 Foster Drive, Sault Ste. Marie, Ontario P6A 6V8
Attention: Executive Director
Fax: (705) 945-6701

(iii) if to ORIONIS:

Orionis Corporation
Trident Chambers, P.O. Box 146
Road Town, Tortola, British Virgin Islands
Attention: Mario Scarpetta Gnecco
Telecopier (Fax) No.:
E-mail: mario@azurita.co

or to such other address or facsimile number as any party may from time to time designate in accordance with this Section. Any Communication made by personal delivery or by courier shall be conclusively deemed to have been given and received on the day of actual delivery thereof or if such day is not a Business Day, on the first Business Day thereafter. Any Communication made or given by facsimile on a Business Day before 4:00 p.m. (local time of the recipient) shall be conclusively deemed to have been given and received on such Business Day and otherwise shall be conclusively deemed to have been given and received on the first Business Day following the transmittal thereof. Any Communication that is mailed shall be conclusively deemed to have been given and received on the fifth Business Day following the date of mailing but if, at the time of mailing or within five Business Days thereafter, there is or occurs a labour dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any Communication shall be delivered or transmitted by any other means provided for in this Section.

12. **Amendments.** This Agreement may not be amended or otherwise modified except by an instrument in writing executed by all the parties hereto.
13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each such provision shall be interpreted in such a manner as to render them valid, legal and enforceable to the greatest extent permitted by applicable law. Each provision of this Agreement is declared to be separate, severable and distinct.
14. **Successors and Assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
15. **Execution in Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the effective date set forth above.
16. **Electronic Execution.** Delivery of an executed copy of a signature page to this Agreement by facsimile or electronic transmission (including via PDF attached to an e-mail) shall be effective as delivery of a manually executed copy of this Agreement and each party hereto undertakes to provide each other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.
17. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements, representations, warranties, understandings, conditions or collateral agreements, whether oral or written, express or implied, with respect to the subject matter hereof.
19. **Further Assurances.** Each of the parties hereto shall forthwith, at its own expense and from time to time, do or file, or cause to be done or filed, all such things and shall execute and deliver all such agreements, certificates and instruments reasonably requested by any other party hereto as may be necessary or desirable to complete the transactions contemplated by this Agreement and carry out its provisions and intention.

This Agreement has been executed by the parties as of the date first stated above.

ONTARIO GRAPHITE, LTD.

By: _____

Name: WILLERTON CASTOR

Title: CFO/CAO.

NORTHERN ONTARIO HERITAGE FUND CORPORATION

By: _____

Name: Bruce Strapp

Title: Executive Director

ORIONS CORPORATION

By: _____

Name: _____

Title: _____


18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements, representations, warranties, understandings, conditions or collateral agreements, whether oral or written, express or implied, with respect to the subject matter hereof.
19. **Further Assurances.** Each of the parties hereto shall forthwith, at its own expense and from time to time, do or file, or cause to be done or filed, all such things and shall execute and deliver all such agreements, certificates and instruments reasonably requested by any other party hereto as may be necessary or desirable to complete the transactions contemplated by this Agreement and carry out its provisions and intention.

This Agreement has been executed by the parties as of the date first stated above.

ONTARIO GRAPHITE, LTD.

By: _____
 Name:
 Title:

**NORTHERN ONTARIO HERITAGE FUND
 CORPORATION**

By:  _____
 Name: Bruce Strapp
 Title: Executive Director
For

ORIONIS CORPORATION

By: _____
 Name:
 Title:

THIS IS **EXHIBIT "D"** REFERRED TO IN THE
SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER,
AFFIRMED BEFORE ME
THIS 11th DAY OF FEBRUARY, 2020.



DAYSI MARTINEZ

Notary Public in the State of Florida



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

MONITOR'S CONSENT

Deloitte Restructuring Inc. hereby consents to act as Monitor of the Applicant in the within proceedings.

Dated as of February 12, 2020

Deloitte Restructuring Inc.

Per:



Name: Philip J. Reynolds

Title: Senior Vice President

ORIONIS CORPORATION
Applicant

and
ONTARIO GRAPHITE, LTD.
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT: TORONTO

MONITOR'S CONSENT

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Tel: (416) 869-5236
E-mail: ataylor@stikeman.com

Sanja Sopic LSO#: 66487P
Tel: (416) 869-6825
Email: ssopic@stikeman.com
Fax: (416) 947-0866

Lawyers for the Monitor

THIS IS **EXHIBIT "E"** REFERRED TO IN THE
SECOND AFFIDAVIT OF DAVID YANOVICH WANCIER,
AFFIRMED BEFORE ME
THIS 11th DAY OF FEBRUARY, 2020.



DAYSI MARTINEZ

Notary Public in the State of Florida

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 SISP;
- (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 SISP;
- (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 SISP 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@millერთomson.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

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

SECOND AFFIDAVIT OF
DAVID YANOVICH WANCIER
(Sworn Feb. 11, 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)

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Email: jmacdonald@osler.com

Sandra Abitan (BQ# 189023-9)

Tel: 514.904.5648

Email: sabitan@osler.com

Mark Sheeley (LSO# 664730)

Tel: 416.862.6791

Email: mshееley@osler.com

Sean Stidwill (LSO# 71078J)

Tel: 416.862.4871

Email: ssidwill@osler.com

Fax: 416.862.6666

Lawyers for the Applicant,
Orionis Corporation

Tab 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	WEDNESDAY, THE 12 TH
)	
JUSTICE)	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

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of David Yanovich Wancier sworn January 10, 2020 and February 11, 2020 (the "**Second Yanovich Affidavit**") and the exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, counsel for Deloitte Restructuring Inc. ("**Deloitte**"), no one appearing although duly served as appears from the affidavit of service of ● sworn February ●, 2020 and on reading the

pre-filing report of the proposed monitor dated February 11, 2020 (the “**Pre-Filing Report**”) and the consent of Deloitte to act as the Monitor,

SERVICE

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

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

3. **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.

4. **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.

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

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

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

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

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtor in connection with the sale of goods and services by the Debtor, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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.

8. **THIS COURT ORDERS** that, from and after the date of this Order, 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.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Debtor is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtor to any of its creditors as of this date; (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.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor, and that the Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

16. **THIS COURT ORDERS** that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any

officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

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

18. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Debtor’s directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 16 of this Order.

APPOINTMENT OF MONITOR

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

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

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

22. **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 anything done in pursuance of the Monitor’s duties and powers under this 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. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purposes of this Order, the term “**Adverse Environmental Condition**” shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of this Order.

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

24. **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, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

25. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtor as part of the costs of these proceedings. The Debtor is hereby

authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Debtor on a periodic basis.

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

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

DIP FINANCING

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

29. **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 ● appended as Exhibit E to the Second Yanovich Affidavit (the "**DIP Term Sheet**").

30. **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.

31. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 34 and 36 hereof.

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

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

33. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed

under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Second – DIP Lender’s Charge; and

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

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

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

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

38. **THIS COURT ORDERS** that the Directors’ Charge, the Administration Charge, the Definitive Documents and the DIP Lender’s Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited

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

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

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

SERVICE AND NOTICE

40. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtor of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it

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

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

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

43. 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.

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

COMEBACK MOTION

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

GENERAL

46. **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.

47. **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.

48. **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.

49. **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.

50. **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.

51. **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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT: TORONTO

INITIAL ORDER

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Lawyers for the Applicant,
Orionis Corporation

Tab 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST-)

THE HONOURABLE)	WEEKDAY, <u>WEDNESDAY</u> , THE # <u>12TH</u>
)	
JUSTICE)	DAY OF MONTH, 20YR <u>FEBRUARY</u> ,
		<u>2020</u>

BETWEEN:**ORIONIS CORPORATION**Applicant

- and -

ONTARIO GRAPHITE, LTD.Respondent

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

~~AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF [APPLICANT'S NAME] (the "Applicant")~~

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~affidavit~~ affidavits of ~~[NAME]~~ David Yanovich Wancier sworn ~~[DATE]~~ January 10, 2020 and February 11, 2020 (the ~~Exhibits~~ "Second Yanovich Affidavit") and the exhibits thereto, and on being advised that the secured creditors who are likely to be affected

by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], the Applicant, counsel for the Respondent, counsel for Deloitte Restructuring Inc. (“Deloitte”), no one appearing for [NAME]¹—although duly served as appears from the affidavit of service of [NAME]● sworn [DATE]February ●, 2020 and on reading the pre-filing report of the proposed monitor dated February 11, 2020 (the “Pre-Filing Report”) and the consent of [MONITOR’S NAME]Deloitte to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

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

PLAN OF ARRANGEMENT

~~3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”).~~

POSSESSION OF PROPERTY AND OPERATIONS

~~4.3. THIS COURT ORDERS that the ApplicantDebtor shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever,~~

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

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

and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the ~~Applicant Debtor~~ shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. ~~The Applicant Debtor~~ is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5.4.~~ **THIS COURT ORDERS** that the ~~Applicant Debtor~~ shall be entitled to continue to utilize the central cash management system³ currently in place ~~as described in the Affidavit of [NAME] sworn [DATE]~~ or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant Debtor~~ of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant Debtor~~, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the Plan~~ any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~†.~~

~~6.5.~~ **THIS COURT ORDERS** that the ~~Applicant Debtor~~ shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the Budget (as defined in the Second Yanovich Affidavit), as may be amended from time to time:

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

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

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 ApplicantDebtor in respect of these proceedings, at their standard rates and charges.

7.6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the ApplicantDebtor 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 ApplicantDebtor in carrying on the Business in the ordinary course after this Order, 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 directorsdirectors' and officersofficers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the ApplicantDebtor following the date of this Order.

8.7. THIS COURT ORDERS that the ApplicantDebtor shall ~~remit~~, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ApplicantDebtor in connection with the sale of goods and services by the ApplicantDebtor, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 ~~Applicant~~Debtor.

~~9. — THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated]⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“Rent”), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.~~

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

~~10.9.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant~~Debtor is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Debtor to any of its creditors as of this date; (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.

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

RESTRUCTURING

11. ~~THIS COURT ORDERS that the Applicant 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 \$● in any one transaction or \$● in the aggregate]**⁵~~
- ~~(b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];** and~~
- ~~(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,~~

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

12. ~~THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period~~

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

~~provided for in Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

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

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

~~14.~~10. **THIS COURT ORDERS** that until and including ~~[DATE—MAX. 30 DAYS],~~February 22, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the ~~Applicant~~Debtor or the Monitor, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Debtor and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

~~15.~~11. **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 ~~Applicant~~Debtor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Debtor and the Monitor, or leave of this Court, provided that nothing in this Order shall (i)a) empower the ~~Applicant~~Debtor to carry on any business which the ~~Applicant~~Debtor is not lawfully entitled to carry on, (ii)b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1

of the CCAA, (~~iii~~c) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

~~16.12.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the [ApplicantDebtor](#), except with the written consent of the [ApplicantDebtor](#) and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

~~17.13.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the [ApplicantDebtor](#) or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the [ApplicantDebtor](#), are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the [ApplicantDebtor](#), and that the [ApplicantDebtor](#) shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the [ApplicantDebtor](#) in accordance with normal payment practices of the [ApplicantDebtor](#) or such other practices as may be agreed upon by the supplier or service provider and each of the [ApplicantDebtor](#) and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

~~18.14.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any

monies or otherwise extend any credit to the [ApplicantDebtor](#). Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

~~19.15.~~ **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 [ApplicantDebtor](#) with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the [ApplicantDebtor](#) 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 [ApplicantDebtor](#), if one is filed, is sanctioned by this Court or is refused by the creditors of the [ApplicantDebtor](#) or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

~~20.16.~~ **THIS COURT ORDERS** that the [ApplicantDebtor](#) shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the [ApplicantDebtor](#) after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

~~21.17.~~ **THIS COURT ORDERS** that the directors and officers of the [ApplicantDebtor](#) shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")⁸ on the

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

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

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

Property, which charge shall not exceed an aggregate amount of ~~\$.~~\$200,000, as security for the indemnity provided in paragraph ~~[20]~~16 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~[38]~~34 and ~~[40]~~36 herein.

~~22.~~18. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~Debtor's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]~~16 of this Order.

APPOINTMENT OF MONITOR

~~23.~~19. **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Debtor with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Debtor and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Debtor pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

~~24.~~20. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Debtor's receipts and disbursements and the Debtor's compliance with the Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the ~~Applicant~~Debtor, to the extent required by the ~~Applicant~~Debtor or the DIP Lender, in its dissemination, ~~to the DIP Lender and its counsel on a [TIME INTERVAL]~~basis of financial and other information to the DIP Lender and its counsel

- as ~~agreed to between the Applicant and the DIP Lender which~~ may reasonably be used ~~in these proceedings including reporting on a basis to be agreed with~~ requested by the DIP Lender;
- (d) advise the Applicant Debtor in its preparation of the Applicant's Debtor's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender ~~and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to~~ as may reasonably be requested by the DIP Lender;
- ~~(e) — advise the Applicant in its development of the Plan and any amendments to the Plan;~~
- ~~(f) — assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~
- ~~(g)~~(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant Debtor, to the extent that is necessary to adequately assess the Applicant's Debtor's business and financial affairs or to perform its duties arising under this Order;
- ~~(h)~~(f) 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)~~(g) perform such other duties as are required by this Order or by this Court from time to time.

~~25.21.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

~~26.22.~~ **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 anything done in pursuance of the Monitor’s duties and powers under this 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. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purposes of this Order, the term “Adverse Environmental Condition” shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of this Order.

27.23. THIS COURT ORDERS that that the Monitor shall provide any creditor of the **ApplicantDebtor** and the DIP Lender with information provided by the **ApplicantDebtor** 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 **ApplicantDebtor** 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 **ApplicantDebtor** may agree.

28.24. 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, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

~~29.25.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~Debtor as part of the costs of these proceedings. The ~~Applicant~~Debtor is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~Debtor on a periodic basis.

~~30.26.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~31.27.~~ **THIS COURT ORDERS** that the ~~Monitor, Debtor's~~ counsel ~~to the Monitor, if any, and,~~ the Applicant's counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of ~~\$●, \$200,000,~~ as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~[38] and [40]~~³⁴ and ³⁶ hereof.

DIP FINANCING

~~32.28.~~ **THIS COURT ORDERS** that the ~~Applicant~~Debtor is hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~Orionis Corporation (the "DIP Lender") in order to finance the ~~Applicant's~~Debtor's working capital requirements, costs associated with the Interim Plan (as defined in the Second Yanovich Affidavit) and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed ~~\$●~~\$200,000 unless permitted by further Order of this Court.

~~33.29.~~ **THIS COURT ORDERS** ~~THAT~~that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~debtor-in-possession financing term sheet between the ~~Applicant~~Debtor and the DIP Lender dated as of ~~[DATE]~~ (February ● appended as

Exhibit E to the “Commitment Letter”), ~~filed.~~Second Yanovich Affidavit (the “DIP Term Sheet”).

~~34.~~30. **THIS COURT ORDERS** that the ~~Applicant~~Debtor is hereby authorized and empowered to execute and deliver such ~~credit~~-agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the “**Definitive Documents**”), as ~~are~~may be contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant~~Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents (collectively, the “DIP Obligations”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

~~35.~~31. **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, ~~which~~ as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs ~~[38]~~34 and ~~[40]~~36 hereof.

~~36.~~32. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon ~~•~~five business days notice to the ~~Applicant~~Debtor and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~Debtor or the Property under or pursuant to the ~~Commitment Letter~~, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the ~~Applicant~~Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~Debtor against the obligations of the ~~Applicant~~Debtor to the DIP Lender under ~~the Commitment Letter~~,

the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Debtor and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Debtor; and

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

~~37.33.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise ~~filed by the Applicant~~ under the CCAA, or any proposal filed ~~by the Applicant~~ under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

~~38.34.~~ **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 follows⁹:

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).

~~39.35.~~ **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

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

and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents shall create or

- be deemed to constitute a breach by the ~~Applicant~~Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~Debtor entering into the ~~Commitment Letter~~DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~Applicant~~Debtor pursuant to this Order, ~~the Commitment Letter or~~ the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

~~43.39.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Debtor's interest in such real property leases.

SERVICE AND NOTICE

~~44.40.~~ **THIS COURT ORDERS** that the Monitor shall ~~(ia)~~ without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, ~~(ib)~~ within five days after the date of this Order, ~~(A)~~ make this Order publicly available in the manner prescribed under the CCAA, ~~(B)~~ send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~Debtor of more than \$1000, and ~~(C)~~ prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

~~41.~~ **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/~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/)

shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

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

~~45.43.~~ 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.

~~46.44.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant, the Debtor and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant's~~Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

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

GENERAL

~~47.~~46. **THIS COURT ORDERS** that the Applicant, the Debtor or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~their powers and duties hereunder.

~~48.~~47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Debtor, the Business or the Property.

~~49.~~48. **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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Debtor and the Monitor and their respective agents in carrying out the terms of this Order.

~~50.~~49. **THIS COURT ORDERS** that each of the Applicant, the Debtor and the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~51.~~50. **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~Debtor and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

~~52.~~51. **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.



ORIONIS CORPORATION

Applicant

and

ONTARIO GRAPHITE, LTD.

Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT: TORONTO

INITIAL ORDER

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Our Matter No. 1165915

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

ORIONIS CORPORATION

and

ONTARIO GRAPHITE, LTD.

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

Applicant

Respondent

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

SUPPLEMENTARY APPLICATION RECORD

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Our Matter No. 1165915