

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-11-063053-231
DATE: October 27, 2023

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

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

STORNOWAY DIAMONDS (CANADA) INC.

-and-

11272420 CANADA INC.

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

SISP APPROVAL ORDER

- [1] **ON READING** the *Application for the issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief* dated October 26, 2023 (the "**Application**") of the Debtors pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the affidavits and the exhibits filed in support thereof and the report of the Monitor in its capacity as proposed monitor;
- [2] **CONSIDERING** the notification of the Application;
- [3] **CONSIDERING** the submissions of the attorneys present at the hearing of the Application and the testimony of the witnesses heard;
- [4] **CONSIDERING** the provisions of the CCAA;

THE COURT:

[5] **GRANTS** the Application.

DEFINITIONS

[6] **DECLARES** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the *Procedures for the Sale and Investment Solicitation Process* attached hereto as Schedule "A" (the "**Bidding Procedures**").

SERVICE

[7] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

[8] **PERMITS** the service of the present Order (this "**Order**") at any time and place and by any means whatsoever.

SISP

[9] **APPROVES** and **RATIFIES** the SISP set forth in the Bidding Procedures.

[10] **AUTHORIZES** the Debtors, in consultation with the Monitor and the SISP Agent, to conduct and implement the SISP and to take such steps and execute such documentation as may be necessary or incidental thereto, the whole in accordance with the Bidding Procedures.

[11] **ORDERS** that the Debtors, the Monitor, the SISP Agent and their respective affiliates, related persons or entities, partners, directors, employees, advisors, lawyers, agents and controlling persons, as applicable, shall incur no liability whatsoever with respect to any losses, claims, damages or liability of any nature or kind to any person or entity in connection with or as a result of performing their duties under the SISP.

[12] **DECLARES** that in addition to any other protections afforded under any Order of this Court, no action or other proceedings shall be commenced against the SISP Agent or any of its affiliates, related persons or entities, partners, directors, employees, advisors, lawyers, agents and controlling persons, as applicable, in connection with the SISP Agent's mandate under the SISP its conduct as SISP Agent or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least ten (10) days' notice to the SISP Agent, the Monitor and the latter's counsel.

PERSONAL INFORMATION

[13] **ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and 18(6) of the *Quebec Act respecting the Protection of Personal Information in the Private Sector*, the Debtors, the Monitor and the SISP Agent are hereby authorized and permitted to disclose and provide to each Potential Bidder, personal information of identifiable individuals, including employees of any of the Debtors, but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each Potential Bidder to whom

such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Debtors, the Monitor or the SISP Agent, as applicable, or, in the alternative, destroy all such information and provide confirmation of its destruction to the Debtors and the Monitor. Any Successful Bidder shall maintain the privacy of such information and, upon closing of the Transaction contemplated in the Successful Bid, shall be entitled to use the personal information provided to it that is related to the Business acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Debtors or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Debtors and the Monitor.

GENERAL

- [14] **ORDERS** that the Debtors and the Monitor may from time to time apply to this Court for advice and directions in connection with the discharge of their respective powers and duties under the SISP or any matter related to the SISP.
- [15] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Debtors, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby requested to make such orders and to provide such assistance to the Debtors and the Monitor as may be necessary or desirable to give effect to this Order.
- [16] **ORDERS** the provisional execution of this Order notwithstanding any appeal.



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

PROCEDURES FOR THE SALE AND INVESTMENT SOLICITATION PROCESS

Preamble

- A. On October 27, 2023, Stornoway Diamonds (Canada) Inc. and 11272420 Canada Inc. (the “**Debtors**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Superior Court of Québec (Commercial Division) in the District of Montréal (the “**Court**”) pursuant to an initial order granted by the Court on the same day (as amended and restated, the “**Initial Order**”). On the same day, the Court also issued a SISP Approval Order (the “**SISP Order**”) that, among other things, authorized the Debtors to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof.
- B. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives involving the shares and/or the business, property and assets of the Debtors (collectively, the “**Business**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought. Such transactions may include, among other things, a sale of some or all of the Business’s shares, assets and/or business and/or an investment in the Business, each of which shall be subject to all terms set forth in this SISP.
- C. The SISP shall be conducted by the Debtors under the oversight of Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of Deloitte Corporate Finance Inc. (the “**SISP Agent**”).
- D. Parties who wish to have their bids considered shall be required to participate in the SISP as conducted by the Debtors and the SISP Agent in accordance with the present bidding procedures set governing the solicitation of offers or proposals for the acquisition of the Business or some portion thereof (the “**Bidding Procedures**”).

Defined Terms

1. Capitalized terms used in these Bidding Procedures shall have the meanings ascribed to them in Appendix A.

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Business; and/or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Debtors or all or part of the Business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Debtors as a going concern or a sale or partial sale of all, substantially all, or a certain part of the Business, or a combination thereof (the “**Opportunity**”).
3. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Debtors and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite

approvals to be sought from the Court in connection therewith. The Debtors, the Monitor and the SISP Agent shall conduct the SISP in the manner set forth herein and shall: (i) consult with the Secured Creditors with respect to all matters relating to the SISP and provide to them any information or documents reasonably requested by any of them in relation thereto, and (ii) in the circumstances indicated in these Bidding Procedures, shall obtain the prior written consent of the Secured Creditors.

4. The Debtors, in consultation with the Monitor and the SISP Agent, but with the prior written approval of the Secured Creditors, may at any time and from time to time, modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court, provided that they determine that such modification, amendment, variation or supplement are useful in order to give effect to the substance of the SISP, the Bidding Procedures, the SISP Order and the Initial Order.
5. The Monitor shall post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and the Debtors or the SISP Agent shall inform the bidders impacted by such modifications.
6. In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:¹

<u>Event</u>	<u>Date</u>
1. <u>Approval of Bidding Procedures</u>	October 27, 2023
Phase 1	
2. <u>Solicitation Letter</u> SISP Agent to distribute Solicitation Letter, to potentially interested parties	Starting on November 3, 2023
3. <u>CIM and VDR</u> Debtors to prepare and have available for parties having executed the NDA (Potential Bidders) the CIM and VDR	By no later than November 10 2023
4. <u>Phase 1 Bid Deadline</u> Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 16 of the Bidding Procedures)	By no later than January 19, 2024, at 5:00 p.m. (prevailing Eastern Time)
5. <u>Phase 1 Satisfactory Bid</u> SISP Agent to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid	By no later than January 26, 2024, at 5:00 p.m. (prevailing Eastern Time)

¹ All capitalized terms not already defined are defined further below. Titles in the chart are for presentation purposes only.

<u>Event</u>	<u>Date</u>
Phase 2	
6. <u>Phase 2 Bid Deadline</u> Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 26 of the Bidding Procedures)	By no later than February 23, 2024, at 5:00 p.m. (prevailing Eastern Time)
7. <u>Auction(s)</u> Auction(s) (if needed)	Week of February 26, 2024
8. <u>Selection of Successful Bid(s)</u> Deadline for selection of final Successful Bid(s)	By no later than March 8, 2024, at 5:00 p.m. (prevailing Eastern Time)
9. <u>Definitive Documentation</u> Deadline for completion of definitive documentation in respect of Successful Bid(s)	By no later than March 22, 2024
10. <u>Approval Application</u> Deadline for filing of Approval Application in respect of Successful Bid(s)	By no later than March 29, 2024
11. <u>Closing</u> Anticipated deadline for closing of Successful Bid(s)	April 5, 2024 or such earlier date as is achievable.
12. <u>Outside Date</u> Outside Date by which the Successful Bid must close	April 19, 2024

Solicitation of Interest: Notice of the SISP

7. As soon as reasonably practicable after the granting of the SISP Order:
 - (a) a notice of the SISP and such other relevant information which the Debtors, in consultation with the Monitor and the SISP Agent, considers appropriate shall be published in *La Presse+* and *The Globe & Mail* and such other publications as may be considered appropriate; and
 - (b) a press release setting out the notice and such other relevant information regarding the Opportunity as may be considered appropriate, shall be issued with *Canada Newswire* designating dissemination in Canada.

8. The SISP Agent shall send to potential bidders, as soon as practical after the granting of the SISP Order, a letter describing the Opportunity (a "**Solicitation Letter**"), outlining the salient elements of the SISP and inviting recipients of the Solicitation Letter to express their interest pursuant to the SISP.

Virtual Data Room

9. As soon as practicable, a confidential virtual data room (the “VDR”) in relation to the Opportunity will be made available by Debtors and/or the SISP Agent to Potential Bidders that have executed an NDA (as defined below) in accordance with paragraph 10 herein. Following the completion of “Phase 1”, but prior to the completion of “Phase 2”, additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Debtors and the Opportunity. The Debtors, in consultation with the Monitor, may establish or cause the SISP Agent to establish separate VDRs (including “clean rooms”), if the Debtors reasonably determine that doing so would further the Debtors’ and any Potential Bidders’ compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Debtors, in consultation with the Monitor, may also limit the access of any Potential Bidder to any confidential information in the VDR where the Debtors determine that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

10. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the SISP Agent an executed non-disclosure agreement in form and substance satisfactory to the Debtors, in consultation with the Monitor and the SISP Agent (each, an “NDA”), which shall enure to the benefit of any Successful Bidder that closes a transaction contemplated by its Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the Debtors, a “**Potential Bidder**”), each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the consent of the Monitor, in consultation with the Debtors. Notwithstanding the foregoing, the Secured Creditors shall be entitled to communicate with any Potential Bidder, including any Potential Bidder having submitted an LOI, a Phase 1 Qualified Bid or a Binding Offer, as the case may be, it being understood, however, that they will inform the Debtors, the Monitor and the SISP Agent prior to engaging in any exchanges, discussions and/or negotiations with any Potential Bidder.
11. Prior to the Debtors executing an NDA with any potential bidder, such potential bidder may be required to provide evidence, reasonably satisfactory to the Debtors, in consultation with the SISP Agent, of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a “**Financing Party**”) shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Debtors in the event that it elects to act as a Potential Bidder.
12. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 7, will be deemed a “**Phase 1 Qualified Bidder**” and will be promptly notified of such classification by the SISP Agent.

13. The Debtors and the SISP Agent will prepare and send to each Phase 1 Qualified Bidder a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") as soon as practicable. The Debtors, the SISP Agent, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
14. The SISP Agent shall provide any Phase 1 Qualified Bidder with access to the VDR. The Debtors, the SISP Agent and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR.
15. If a Phase 1 Qualified Bidder wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") to the SISP Agent at the address specified in Appendix B hereto (including by email) so as to be received by the SISP Agent not later than 5:00 p.m. (prevailing Eastern Time) on **January 19, 2024** or such other date or time as may be agreed by the Debtors, with the consent of the Monitor (the "**Phase 1 Bid Deadline**").
16. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" if the LOI complies at a minimum with the following:
 - (a) it has been duly executed by all required parties;
 - (b) it is received by the Phase 1 Bid Deadline;
 - (c) it contains an agreement by the Phase 1 Qualified Bidder to be bound by the terms of the SISP;
 - (d) it provides written evidence, satisfactory to the Monitor, in consultation with the Debtors, of the ability to fully fund and consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;
 - (e) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
 - (f) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;
 - (g) an outline of the due diligence completed to the date of submission of the LOI and any additional due diligence required to be conducted in order to submit a binding offer;
 - (h) it clearly indicates:
 - (i) that the Phase 1 Qualified Bidder is seeking to acquire all or substantially all of the Business, whether through an asset purchase, a share purchase

or a combination thereof or some other portion of the Business (a “**Sale Proposal**”); and/or

- (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Debtors or their business (an “**Investment Proposal**”); and
- (i) it contains such other information as may be reasonably requested by the Debtors, in consultation with the SISP Agent and the Monitor;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) any contemplated purchase price adjustment;
 - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets expected to be excluded;
 - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) a description of the anticipated tax planning, if any;
 - (vi) information sufficient for the Monitor, in consultation with the Debtors, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
 - (vii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (k) in the case of an Investment Proposal, it identifies the following:
 - (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Debtors or their business;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;
 - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

- (v) information sufficient for the Monitor, in consultation with the Debtors, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
 - (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.
17. The Debtors, with the prior written consent of the Monitor and of the Secured Creditors, may waive compliance with any one or more of the requirements specified in paragraph 12 and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.

Assessment of Phase 1 Qualified Bids and Subsequent Process

18. The Debtors will inform the Secured Creditors in writing as soon as practicable of any material development in connection with Phase 1 of the SISP and remit copies to the Secured Creditors of any LOIs received.
19. The Debtors, in consultation with the Monitor, the SISP Agent and the Secured Creditors, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
20. Following the Phase 1 Bid Deadline, the Debtors shall, in consultation with the Monitor, the SISP Agent and the Secured Creditors, assess any LOI(s) received in accordance with the requirements of paragraph 16. Based on such assessment, the Debtors will consult with the Monitor, the SISP Agent and the Secured Creditors to determine whether pursuing the SISP is in the best interest of the Debtors and their stakeholders, including the Secured Creditors. The SISP may not be pursued unless the Secured Creditors approve of same, acting reasonably.
21. If the Debtors, in consultation with the Monitor and the SISP Agent, and with the prior written approval of the Secured Creditors, determine that the SISP should be pursued based on their assessment of any LOI(s) received, the Debtors, in consultation with the Monitor, the SISP Agent and the Secured Creditors shall determine (i) whether any of the LOI(s) received constitutes a Phase 1 Qualified Bid, and, if so, (ii) which of the Phase 1 Qualified Bid(s) are the most favourable and should be deemed a **“Phase 1 Satisfactory Bid(s)”** and which Phase 1 Qualified Bidder(s) accordingly should be deemed a **“Phase 2 Qualified Bidder(s)”**. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Satisfactory Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder.
22. Only Phase 2 Qualified Bidders – being those that have submitted a Phase 1 Satisfactory Bid – shall be permitted to proceed to Phase 2 of the SISP. However, the Secured Creditors shall be deemed to be Phase 2 Qualified Bidders even if they do not submit an LOI or a Phase 1 Qualified Bid and the Streamers or Diaquem, alone or together, shall be permitted to submit a Binding Offer by way of credit bid for an amount up to their respective Secured Claims Amount at any time during the SISP, including after the Phase 2 Bid Deadline, in accordance with Section 42.
23. The SISP Agent shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Satisfactory Bid – such that it is a Phase 2

Qualified Bidder – within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Debtors deem appropriate, in consultation with the Monitor and the SISP Agent.

24. In the event that no Phase 1 Satisfactory Bid is selected, the Secured Creditors, acting reasonably, will advise the Debtors, the Monitor and the SISP Agent whether to terminate the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

25. Any Phase 2 Qualified Bidder that wishes to make a formal offer with respect to its Sale Proposal or Investment Proposal shall submit a binding offer (a “**Binding Offer**”) comprising: (a) in the case of a Sale Proposal, a purchase agreement; or (b) in the case of an Investment Proposal, a plan, restructuring support or other agreement in form and substance satisfactory to the Debtors, in consultation with the Monitor (each, such Binding Offer submitted in accordance with paragraph 26 below, a “**Phase 2 Qualified Bid**”) in each case to the SISP Agent, so as to be received by the SISP Agent not later than 5:00 p.m. (prevailing Eastern Standard Time) on **February 23, 2024**, or such other date or time as may be agreed by the Debtors, with the consent of the Monitor (as may be extended the “**Phase 2 Bid Deadline**”).
26. A Binding Offer will only be considered as a Phase 2 Qualified Bid if the Binding Offer :
- (a) has been received by the Phase 2 Bid Deadline;
 - (b) is a Binding Offer that consist in a Sale Proposal or an Investment Proposal;
 - (c) identifies all executory contracts of the Debtors that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
 - (d) is not subject to any due diligence or financing conditions;
 - (e) contains evidence of authorization and approval from the Phase 2 Qualified Bidder’s board of directors (or comparable governing body) and, if necessary to complete the transaction, Phase 2 Qualified Bidder’s equityholder(s);
 - (f) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
 - (g) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or

regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;

- (h) the Binding Offer must be accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Debtors by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two Business Days after the date of closing of the Successful Bid; and (B) the Outside Date;
 - (i) does not provide for any break fee, expense reimbursement or similar type of payment;
 - (j) is accompanied by a cash deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 39 below;
 - (k) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before April 5, 2024, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than April 19, 2024 (the "**Outside Date**");
 - (l) contemplates that the Phase 2 Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid, is agreeing to refrain from and waive any assertion or request for reimbursement on any basis.
27. The Debtors, with the prior written consent of the Monitor and of the Secured Creditors, may waive compliance with any one or more of the requirements specified in paragraph 26 and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

Selection of Successful Bid(s)

28. The Debtors will inform the Secured Creditors in writing as soon as practicable of any material development in connection with Phase 2 of the SISP and remit copies to the Secured Creditors of any Binding Offers received.
29. The Debtors, in consultation with the Monitor, the SISP Agent and the Secured Creditors, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
30. The Debtors and the SISP Agent, in consultation with the Monitor and the Secured Creditors, will review and evaluate each Phase 2 Qualified Bid with respect of, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in item (i) above; (iii) the likelihood of the Phase 2 Qualified Bidder's ability to close a transaction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; financial wherewithal to meet all

commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Phase 2 Qualified Bid as a Successful Bid, (v) the net benefit to the Debtors and its stakeholders, and (vi) any other factors the Debtors may deem relevant;

31. Following such review and evaluation, the Debtors and the SISP Agent, in consultation with the Monitor and the Secured Creditors, will identify the highest or otherwise best non-overlapping bids, and, with the prior written approval of the Secured Creditors, not to be unreasonably withheld, select one or more successful bid(s) (the "**Successful Bid(s)**", and the Phase 2 Qualified Bidder(s) making such Successful Bid(s), the "**Successful Bidder(s)**"). Any Successful Bid shall be subject to approval by the Court. For greater certainty, a Binding Offer may not be selected as a Successful Bid unless the Secured Creditors have approved of such Binding Offer, acting reasonably.
32. In order to identify and select one or more Successful Bid(s), the Debtors, in consultation with the SISP Agent and the Monitor, and with the prior written consent of the Secured Creditors, may: (a) continue negotiations with a selected number of Phase 2 Qualified Bidders (collectively, the "**Selected Bidders**") with a view to finalizing an agreement with one or more of the Selected Bidders and declaring such bids to constitute Successful Bids, or (b) conduct one or more auctions (the "**Auction(s)**") to determine the highest or otherwise best non-overlapping Sale Proposals or Investment Proposals, pursuant to Auction rules to be determined by the Debtors, in consultation with the SISP Agent and the Monitor.
33. In an event that an Auction or Auctions will be held, all Phase 2 Qualified Bidders who submitted a Phase 2 Qualified Bid that the Debtors determine, in consultation with the SISP Agent, the Monitor and the Secured Creditors, entitles such Phase 2 Qualified Bidder to participate in the Auction, will be promptly advised by the SISP Agent of such determination, and informed of the procedures applicable to such Auction.
34. The Successful Bid(s) shall be selected by no later than March 8, 2024 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than March 22, 2024, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Debtors, in consultation with the Monitor, and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date.
35. In the event no Phase 2 Qualified Bidder submits a Phase 2 Qualified Bid, the Secured Creditors, acting reasonably, will advise the Debtors, the Monitor and the SISP Agent whether to terminate the SISP.

Approval of Successful Bid(s)

36. The Debtors shall apply to the Court (the "**Approval Application**") for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid(s), as applicable, so as to vest title to any purchased assets in the name of the Successful Bidder(s) and/or vesting unwanted liabilities out of one or more of the Debtors ("**Approval Order(s)**").

37. The hearing of the Approval Application will be held on a date to be scheduled by the Debtors on or before March 29, 2024, subject to Court availability. With the consent of the Monitor and the Successful Bidder(s), the Approval Application may be adjourned or rescheduled by the Debtors without further notice, by an announcement to the service list of the CCAA Proceedings prior to the hearing of the Approval Application. The Debtors shall consult with the Monitor, the Successful Bidder and the Secured Creditors regarding the application material to be filed by the Debtors for the Approval Application.
38. Any Phase 2 Qualified Bid (other than a Successful Bid(s) as the case may be) shall be deemed rejected on and as of the date of the closing of an overlapping Successful Bid, with no further or continuing obligation of the Debtors to such unsuccessful Phase 2 Qualified Bidder.

Deposits

39. The Deposit(s):
- (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;
 - (b) received from the Successful Bidder(s), shall:
 - (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of an Approval Order, upon closing of the approved transaction;
 - (ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Debtors and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid; and
 - (c) received from a Phase 2 Qualified Bidder that is not an overlapping Successful Bidder shall be fully refunded, to the Phase 2 Qualified Bidder that paid the Deposit as soon as practical following the closing of the transaction contemplated by the Successful Bid of such Successful Bidder and in any event no later than February 7, 2023.

"As is, Where is"

40. Any sale(s) or investment(s) made pursuant to this SISF will be on an "as is, where is" basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings. Any such representations and warranties provided for in the definitive documents shall not survive closing.

Credit Bidding

41. Any party or parties holding a valid and enforceable security interest or hypothec that may be set up against third parties and which encumbers any of the property forming part of the Business (an "Enforceable Lien") may, subject in all respects to such party's compliance with the SISF Procedures, credit bid the amount of debt secured by such

Enforceable Lien as part of any transaction contemplated by the SISP Procedures; provided, however, that such transaction shall also provide for the repayment in full in cash on the date of closing of any and all obligations secured by an Enforceable Lien against Property that is to be acquired under such transaction that are senior to the Enforceable Lien held by the party submitting such credit bid unless the holder of any such senior Enforceable Lien otherwise agrees. Nothing contained in this paragraph 41 is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

42. In accordance with paragraph 22, the Secured Creditors shall be entitled, at any time during the SISP, to credit bid up to the amount of their respective debt secured by one or more Enforceable Liens in an amount not exceeding the Secured Claims Amount. The Secured Creditors shall not be entitled to submit any bid under which the consideration offered exceeds the value of the Secured Claims Amount.

Further Orders

43. At any time during the SISP, the Debtors, or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP or the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

Additional Terms

44. In addition to any other requirement of these Bidding Procedures:
- (a) The Debtors and the SISP Agent, as applicable, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any the Debtors' stakeholders as a high potential bidder.
 - (b) Any consent, approval or confirmation to be provided by the Debtors and/or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email shall be deemed to have been provided in writing for the purposes of this paragraph.
 - (c) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.
 - (d) The Secured Creditors shall be granted full access to all material information and documents in connection with the SISP, including copies of all LOIs, Phase 1 Qualified Bids, Phase 1 Satisfactory Bids and all Binding Offers, as the case may be.

APPENDIX A DEFINED TERMS

“**Approval Application**” shall have the meaning set forth in paragraph 36.

“**Approval Order(s)**” shall have the meaning set forth in paragraph 36.

“**Auction(s)**” shall have the meaning set forth in paragraph 32.

“**Bidding Procedures**” shall have the meaning set forth in the preamble.

“**Binding Offer**” shall have the meaning set forth in paragraph 25.

“**Bridge Financing Agreement**” means the bridge financing agreement dated as of June 10, 2019, between, *inter alia*, the Secured Creditors and the Debtors, as amended from time to time.

“**Bridge Secured Claims Amount**” means the aggregate amount owing to the Secured Creditors under the Bridge Financing Agreement.

“**Business**” shall have the meaning set forth in the preamble.

“**Business Day**” means a day on which banks are open for business in Montréal but does not include a Saturday, Sunday or statutory holiday in the Province of Québec.

“**CCA**” shall have the meaning set forth in the preamble.

“**CCA Proceedings**” shall have the meaning set forth in the preamble.

“**CIM**” shall have the meaning set forth in paragraph 9.

“**Court**” shall have the meaning set forth in the preamble.

“**Debtors**” shall have the meaning set forth in the preamble.

“**Deposit**” shall have the meaning set forth in paragraph 26(j).

“**Diaquem**” means Diaquem Inc.

“**Diaquem Loan Agreement**” means the amended and restated credit agreement dated as of November 1, 2019 between Diaquem and Stornoway Diamonds (Canada) Inc., as amended from time to time.

“**Diaquem Loan Secured Claims Amount**” means the aggregate amount owing to Diaquem under the Bridge Financing Agreement.

“**Diaquem Royalty Agreement**” means the restated royalty agreement dated as of November 1, 2019 between Diaquem and Stornoway Diamonds (Canada) Inc., as amended from time to time.

“**Diaquem Royalty Secured Claims Amount**” means the aggregate amount owing to Diaquem under the Diaquem Royalty Agreement.

“**Enforceable Lien**” shall have the meaning set forth in paragraph 41.

“**Financing Party**” shall have the meaning set forth in paragraph 7.

“**Initial Order**” shall have the meaning set forth in the preamble.

“**Investment Proposal**” shall have the meaning set forth in paragraph 16(h)(i).

“**LOI**” shall have the meaning set forth in paragraph 15.

“**Monitor**” shall have the meaning set forth in the preamble.

“**NDA**” shall have the meaning set forth in paragraph 7.

“**Opportunity**” shall have the meaning set forth in paragraph 2.

“**Outside Date**” shall have the meaning set forth in paragraph 26(k).

“**Phase 1 Bid Deadline**” shall have the meaning set forth in paragraph 15.

“**Phase 1 Qualified Bid**” shall have the meaning set forth in paragraph 15.

“**Phase 1 Qualified Bidder**” shall have the meaning set forth in paragraph 12.

“**Phase 1 Satisfactory Bid**” shall have the meaning set forth in paragraph 20.

“**Phase 2 Bid Deadline**” shall have the meaning set forth in paragraph 25.

“**Phase 2 Qualified Bid**” shall have the meaning set forth in paragraph 25.

“**Phase 2 Qualified Bidder**” shall have the meaning set forth in paragraph 20.

“**Potential Bidder**” shall have the meaning set forth in paragraph 7.

“**Sale Proposal**” shall have the meaning set forth in paragraph 16(h)(i).

“**Secured Claims Amount**” means the aggregate of the Stream Secured Claims Amount, the Bridge Secured Claims Amount, the Diaquem Loan Secured Claims Amount, the Working Cap Secured Claims Amount and the Diaquem Royalty Secured Claims Amount.

“**Secured Creditors**” means collectively, the Streamers and Diaquem, or any purchaser or assignee of the Diaquem Loan Agreement and/or the Stream Agreement and/or the Bridge Financing Agreement and/or the Working Cap Financing Agreement and/or the Diaquem Royalty Agreement, related security documents and indebtedness outstanding thereunder.

“**Selected Bidders**” shall have the meaning set forth in paragraph 32.

“**SISP**” shall have the meaning set forth in the preamble.

“**SISP Order**” shall have the meaning set forth in the preamble.

"Solicitation Letter" shall have the meaning set forth in paragraph 5.

"Stream Agreement" means the Second Amended and Restated Purchase and Sale Agreement dated as of November 1, 2019, between, *inter alia*, Stornoway Diamonds (Canada) Inc. and each of the Streamers, as amended from time to time.

"Stream Secured Claims Amount" means the aggregate amount owing to the Streamers under the (a) Stream Agreement (including the Uncredited Balance of the Deposit and the other Stream Obligations, and further including the Settlement Amount in circumstances where (i) the Stream Agreement is terminated or (ii) the Stream Secured Claims Amount is being quantified in connection with a Sale Proposal to be implemented pursuant to a process constituting an Insolvency Event and such Sale Proposal does not contemplate the assumption of the Stream Obligations (all capitalized terms in this definition that are not otherwise defined herein, have the meanings ascribed to them in the Stream Agreement)).

"Streamers" means the "Buyers" as defined in the Stream Agreement and when a decision or consent is to be provided by the Streamers pursuant to the terms of this Order, such consent or approval shall be provided in accordance with the required majority or support of the "Buyers" for such decision set forth in the Stream Agreement.

"Successful Bid" shall have the meaning set forth in paragraph 30.

"Successful Bidder" shall have the meaning set forth in paragraph 30.

"Target Closing Date" shall have the meaning set forth in paragraph 26(k).

"VDR" shall have the meaning set forth in paragraph 9.

"Working Cap Financing Agreement" means the amended and restated working cap facility Agreement dated as of November 1, 2019, between, *inter alia*, the Working Cap Lenders and the Debtors, as amended from time to time.

"Working Cap Lenders" means Diaquem, Osisko Gold Royalties Ltd, CDPQ Ressources Inc. (as assignee of Caisse de Dépôt et Placement du Québec) and TF R&S Canada Ltd. (as assignee of Triple Flag Mining Finance Bermuda Ltd.).

"Working Cap Secured Claims Amount" means the aggregate amount owing to the Working Cap Lenders under the Working Cap Financing Agreement.