

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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**FIFTH REPORT OF THE MONITOR**

**DATED FEBRUARY 24, 2022**

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## INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, commenced a proceeding (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”).
2. As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (as amended and restated on February 20, 2020, the “**Initial Order**”, attached hereto as Appendix “**A**”) that among other things:
  - (a) Appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
  - (b) Granted a stay of proceedings in respect of OGL through to April 29, 2020;
  - (c) Approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000 (the “**Directors’ Charge**”);
  - (d) Approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000 (the “**Administration Charge**”); and
  - (e) Approved a debtor-in-possession credit facility (the “**DIP Facility**”) established under a CCAA Debtor-In-Possession Financing Term Sheet dated February 10,

2020 (the “**DIP Term Sheet**”) between OGL and Orionis (the “**DIP Lender**”) and also approved a charge in favour of Orionis in respect of such DIP Facility.

3. On February 20, 2020, the Court granted a further Order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation procedure (the “**SISP**”) to identify bidders or investors for the Assets. The SISP was to be administered by the Monitor and was summarized in the first report of the Monitor dated February 19, 2020 (the “**First Report**”). A copy of the First Report (without appendices) is attached hereto as Appendix “**B**”. A copy of the SISP Approval Order is attached hereto as Appendix “**C**”.
4. Despite the onset of the COVID-19 pandemic and with the concurrence of the DIP Lender, the Monitor administered the SISP in accordance with its terms. At the conclusion of Phase 1 of the SISP (as such term is defined in the SISP), the Monitor received three bids and shared a summary of same with Orionis. Orionis subsequently advised that it did not find any of the three bids to be compliant with the terms of the SISP or to provide sufficient value and, as a result, issued a notice terminating the DIP Facility.
5. The DIP Facility was OGL’s only source of liquidity and, as a result of its termination, OGL had no ongoing source of funding. Given this fact, the Monitor issued a notice of material adverse change (the “**MAC Notice**”) and filed its second report, dated April 21, 2020 (the “**Second Report**”) with the Court. A copy of the Second Report (without appendices) is attached hereto as Appendix “**D**”.
6. The Monitor subsequently issued a supplement to its Second Report on April 28, 2020 (the “**Supplemental Second Report**”). The Supplemental Second Report (attached hereto as Appendix “**E**”) provided details in respect of the following:



- (a) The request for an order in respect of the termination of OGL’s CCAA Proceedings (the “**Termination Order**”) subject to the Monitor filing a certificate (the “**Termination Certificate**”), certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed. A copy of the Termination Order is attached hereto as Appendix “**F**”;
  - (b) The request for Court approval of the conduct, fees and disbursements of the Monitor and its counsel, Borden Ladner Gervais LLP (“**BLG**”) from the commencement of the CCAA Proceedings up to and including April 29, 2020 and April 26, 2020, respectively;
  - (c) Maintaining various charges and protections for the Monitor and its counsel that were granted by the Court during the CCAA Proceedings; and
  - (d) Providing the Monitor with a release in respect of its activities related to the CCAA Proceedings.
7. As of March 2021, the Monitor had not filed the Termination Certificate as the management of OGL (“**Management**”) was working to identify a party or parties that may have an interest in purchasing the Assets with the approval of the Court (and after consulting with the DIP Lender).
8. As set out in greater detail in the Third Report (as defined below), two parties approached the Monitor in the intervening period regarding a potential purchase of the Assets. One was a third party, Bold Global Advisory Ltd. (“**Bold**”) and the other was an entity called North American Carbon Solutions, Inc. (“**NACS**”). The Monitor understands that one of the principals of NACS was a member of Management.

9. Bold provided the Monitor with a letter of intent to purchase the Assets on March 23, 2021 (the “**Bold LOI**”). NACS had not submitted a letter of intent for the Assets as of that date.
10. Given the competing interest in the Assets and with Orionis’s support, the Monitor provided a short additional period for NACS to submit a bid in respect of OGL’s Assets or business (the “**NACS Offer Deadline**”). NACS ultimately submitted a bid for the Assets prior to the NACS Offer Deadline on March 29, 2021. The circumstances leading up to the selection of the preferred bidder for the Assets were set out in detail in the third report of the Monitor dated April 21, 2021 (the “**Third Report**”). A copy of the Third Report, without appendices, is attached hereto as Appendix “**G**”.
11. After reviewing the bids received from NACS and Bold, the Monitor, in consultation with Orionis, determined that the Bold offer was superior and proceeded to provide the Bold LOI to Management. Management executed the Bold LOI on behalf of OGL on April 16, 2021.
12. Given that a member of Management is a principal of NACS and that NACS was a competing bidder, the Monitor determined, in consultation with Orionis, that it would be beneficial to ask the Court to grant it additional powers to allow the Monitor to advance a transaction for the sale of the Assets. The Monitor filed a Motion seeking such expanded powers on April 21, 2021 and the Court issued an Order approving such request on April 26, 2021 (the “**Expansion of the Powers of the Monitor Order**”).
13. Counsel for NACS appeared at the hearing on April 26, 2021 wherein the Monitor was seeking the Expansion of the Powers of the Monitor Order. Despite initially raising concerns related to the draft Expansion of the Powers of the Monitor Order that the Monitor

was seeking, NACS did not ultimately object to the Expansion of the Powers of the Monitor Order being granted. Orionis was supportive of the relief that was requested.

14. The Expansion of the Powers of the Monitor Order provided the Monitor, among other things, the power to:
  - (a) Execute documents on behalf of OGL in furtherance of a sale transaction for the Assets (a “**Transaction**”);
  - (b) Engage persons or entities to assist the Monitor in advancing a Transaction; and
  - (c) Meet and direct Management, OGL or OGL’s counsel solely with regard to advancing a Transaction.
15. The Expansion of the Powers of the Monitor Order also, among other things:
  - (a) Increased the Administration Charge to CAD\$1 million;
  - (b) Approved the Third Report and the Monitor’s conduct described therein; and
  - (c) Extended the Stay Period to September 30, 2021. The Court further extended the Stay Period to March 31, 2022 on September 23, 2021.

A copy of the Expansion of the Powers of the Monitor Order is attached hereto as Appendix “**H**”.

*Status of OGL’s mining claims*

16. On September 23, 2021, the Court issued an Order (the “**Stay Extension Order**”) pursuant to which the Court extended the Stay Period to March 31, 2022. A copy of the Stay Extension Order is attached hereto as Appendix “**I**”.
17. In addition to obtaining an extension of the Stay Period to March 31, 2022, the Monitor also requested that the Court grant the Monitor the power to preserve and to manage certain

mining claims of OGL, which were scheduled to expire (the “**Expiring Mining Claims**”). Absent the Monitor’s intervention to preserve the Expiring Mining Claims, these claims were scheduled to expire in December 2021. The resultant effect would have been to significantly decrease the value of OGL’s asset base available for sale and would have consequently negatively affected the purchase consideration for the sale of the Assets. All Expiring Mining Claims have now been extended into 2022. The next tranche of Expiring Mining Claims does not occur until July 2022. A copy of the Fourth Report of the Monitor dated September 21, 2021, (the “**Fourth Report**”), in which the Monitor explains the situation with regard to the Expiring Mining Claims, is attached hereto (without appendices) as Appendix “**J**”.

## **PURPOSE**

18. The Monitor files this Fifth Report in respect of its motion returnable March 4, 2022 (the “**Motion**”). The Monitor seeks an order for the following relief:
  - (a) Approving the SPA (as defined below) and a transaction whereby G6 Energy Corp. (the “**Bold Purchaser**”), an entity affiliated with Bold, will acquire a 100% interest in a new class of OGL shares (the “**New OGL Shares**”) via a “reverse vesting order” (an “**RVO**”) transaction (the “**Bold Transaction**”);
  - (b) Vesting the New OGL Shares in the Bold Purchaser, free and clear of any Claims and Encumbrances, except Permitted Encumbrances (as defined in the SPA);
  - (c) Authorizing the Monitor to execute certain ancillary agreements for Bold’s benefit (the “**Basserman Amendment Agreements**”) as a step in the closing of the Transaction. Such agreements modify current option agreements between OGL and a third party in respect of mining lease options, provide for additional payments

to the counterparties to the agreements (which will be paid by OGL at closing), and confirm that OGL has certain rights in respect of such properties. The Basserman Amendment Agreements will be effective upon the closing of the Bold Transaction. The Monitor and the Bold Purchaser are working to obtain signatures to the Basserman Amendment Agreements;

- (d) Adding ExcludedCo (as defined herein) as an applicant in these CCAA Proceedings;
- (e) Vesting the Excluded Assets and Excluded Liabilities (as defined in the SPA, which is defined below) in ExcludedCo and providing that any related Claims and Encumbrances are discharged from the OGL Property;
- (f) Declaring that OGL ceases to be a Respondent in the CCAA Proceedings;
- (g) Granting the Monitor and any officer or director appointed in respect of ExcludedCo protection from personal liability with regard to managing and administering ExcludedCo for the benefit of OGL's creditors;
- (h) Sealing the agreement between Bold and OGL until after the Bold Transaction closes;
- (i) Authorizing a distribution to the Ontario Ministry of Northern Development, Mines, Natural Resources and Forestry ("NDMNR") in the amount of approximately CAD\$2.4 million plus additional amounts incurred since December of 2021 and authorizing the discharge of the related registration on the property in the name of OGL and the property in the name of Robert James Basserman upon payment of such amounts; and

- (j) Approving the Fifth Report and the activities of the Monitor as described therein.

## TERMS OF REFERENCE

19. In preparing this Fifth Report and making the comments herein, the Monitor has been provided with, and has relied upon certain unaudited financial information, books, records and financial information prepared by OGL and other third-party sources (collectively, the “**Information**”). Except as described in this Fifth Report:
- (a) The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the *CPA Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Monitor express no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
  - (b) Some of the information referred to in this Fifth Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the CPA Handbook, has not been performed.
20. Future oriented financial information referred to in this Fifth Report was prepared based on estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize and the variations could be significant.

21. Deloitte has prepared this Fifth Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the Motion. Parties using the Fifth Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
22. Unless otherwise stated, all dollar amounts contained in this Fifth Report are expressed in U.S. dollars, OGL's reporting currency.

## **DEVELOPMENTS SINCE THE FOURTH REPORT WAS ISSUED**

### *Status of the Bold Transaction*

23. As of the date of the Fourth Report, the Monitor was continuing discussions with Bold regarding the Bold Transaction. Since that time, Bold has completed its due diligence and its nominee, the Bold Purchaser, has executed a share purchase agreement with the Monitor on behalf of OGL dated February 23, 2022 (the "SPA"). The Monitor is now seeking the Court's approval for the Bold Transaction. Further details are set out below.
24. A redacted copy of the SPA is attached hereto as Appendix "K". The only information that has been redacted is the purchase consideration, and the Court will be provided with an unredacted version of the SPA. The Monitor is seeking an Order from the Court to seal the unredacted version of the SPA until after the Bold Transaction has closed to avoid the negative consequences to the estate of OGL, especially with regard to any future sale consideration that might be received by the Monitor for a sale of the Assets should the Bold Transaction not close.
25. The SPA and the Bold Transaction contain the following significant provisions:

- (a) The Bold Purchaser will acquire a new class of shares to be issued by OGL at closing and the current class of shares held by OGL's parent company, being all of the currently issued and outstanding shares in the capital of OGL, will be cancelled. This will have the economic result of the Bold Purchaser acquiring all of OGL's business and assets with the exception of any assets or liabilities that the Bold Purchaser chooses not to retain.
- (b) These excluded assets and liabilities are detailed in the schedules to the SPA and will be vested into an entity to be incorporated by the Monitor ("**ExcludedCo**"). OGL shall issue a promissory note in the amount of the Purchase Consideration (defined below) upon the transfer. As contemplated by the SPA, ExcludedCo shall be added as a debtor in OGL's CCAA Proceeding, and the Monitor is currently seeking this relief from the Court;
- (c) The Purchase Consideration paid by the Bold Purchaser for the purchase of the New OGL Shares will be paid to the Monitor, on behalf of OGL (the "**Purchase Consideration**"). Subsequent to the closing of the Bold Transaction, the Monitor will make a motion in which it will seek Court approval for its recommended distribution of the Purchase Consideration to OGL's creditors. The Purchase Consideration is composed of (i) funds currently on deposit with the Monitor; and (ii) additional cash to be paid by the Bold Purchaser to the Monitor upon Closing of the Bold Transaction;
- (d) Pursuant to the terms of the Bold LOI, the non-refundable deposit (the "**Non-Refundable Deposit**") paid by Bold to the Monitor shall only be repayable to Bold if the Monitor, on behalf of OGL, terminates the Bold Transaction prior to the



closing of the Bold Transaction and has entered into an agreement for the sale of the Assets or the shares of OGL to another party unconnected to the Bold Transaction;

- (e) The representations made to the Bold Purchaser by the Monitor, on behalf of OGL pursuant to the Bold Transaction are limited since the share purchase transaction is on an “as is, where is” basis;
- (f) The Bold Purchaser has the right to add or exclude other assets or liabilities at its sole discretion but there shall be no change to the Purchase Consideration for any such change;
- (g) ExcludedCo shall formally assume any liabilities that are vested out of OGL;
- (h) The SPA provides that the agreement may be terminated if not closed within 30 days of Court approval, which date can be extended by up to 60 days by the Bold Purchaser;
- (i) The Monitor, subject to Court approval, shall have executed the Basserman Amendment Agreements on behalf of OGL substantially in the forms attached to the SPA, but such agreements are conditional upon the closing of the Bold Transaction;
- (j) The charges laid by MECP against OGL and two individuals associated with OGL pursuant to the *Environmental Protection Act (Ontario)* (the “EPA”) and the *Ontario Water Resources Act* (the “OWRA”) shall be dismissed against OGL as a condition precedent to the closing of the Bold Transaction; and

- (k) The Court shall have granted an approval and vesting Order in respect of the Bold Transaction, which is acceptable to both the Monitor and Bold. A draft of the proposed RVO is attached hereto as Appendix “L”.

*Payment to NDMNRF*

26. As of December 24, 2021, NDMNRF has incurred costs of CAD\$2,410,109.80 in respect of safeguarding the Kearney Mine pursuant to Minister’s Direction 2020-003 (the “**Direction**”). NDMNRF will continue to incur costs (together with the CAD\$2,410,109.80 incurred, the “**Ministry Costs**”) pursuant to the Direction until such time as the Bold Transaction closes at which time the Bold Purchaser becomes responsible for any such additional expenses.
27. In order to facilitate the closing of the Bold Transaction, the Monitor requests the approval from the Court to reimburse NDMNRF for the Ministry Costs immediately following the closing of the Bold Transaction from the Purchase Consideration. The Monitor has requested NDMNRF to provide an updated estimate of the Ministry Costs, but such amount is not yet known with certainty since the closing date for Bold Transaction is not known.
28. The payment of the Ministry Costs is necessary in order to discharge NDMNRF’s liens against any real property in which OGL has an interest (both owned and subject to various leases) and which will be conveyed to the Bold Purchaser pursuant to the Bold Transaction.

**RATIONALE FOR RELIEF SOUGHT**

29. The Monitor is of the opinion that the Court should authorize the Monitor, on behalf of OGL, to enter into and consummate the Bold Transaction for the following reasons:
- (a) OGL’s assets were broadly marketed multiple times prior to the commencement of these CCAA proceedings and including as part of the SISP, which was approved

by the Court and administered by the Monitor according to its terms. The SISIP did not generate any meaningful offers for OGL's assets or business nor that were acceptable to Orionis, OGL's primary secured lender. However, Orionis is supportive of the Bold Transaction;

- (b) Other than NACS, no party has expressed an interest in acquiring OGL's business or assets prior to OGL entering into the Bold LOI in April 2021. In the Monitor's view, the offer presented by NACS was inferior to that contemplated by the Bold LOI. Orionis has advised that it concurs with this assessment. The Monitor is further of the view that NACS was provided a reasonable opportunity to submit its best offer for OGL but that such offer was not superior to the Bold LOI;
- (c) The Purchase Price is being held by the Monitor in escrow and has been since shortly after the Bold LOI was executed. The Purchase Price includes the Non-Refundable Deposit. Additional purchase consideration has been negotiated and that will be paid to the Monitor on closing as part of the Purchase Consideration;
- (d) The Monitor is not aware of any salary or wages for services rendered that may be due to any of OGL's former employees, all of whom have either been terminated or resigned from their employment;
- (e) The Bold Transaction is expected to close within 30 days of obtaining the RVO, but the closing date may be extended in certain circumstances;
- (f) The economic effect of the share purchase pursuant to the Bold Transaction combined with a reverse vesting order is consistent with the intended effect of an asset sale with a conventional vesting order;

- (g) The RVO structure is appropriate because neither Bold nor the Bold Purchaser were prepared to proceed with the Bold Transaction by way of an asset purchase agreement due to the regulatory challenges, delays and uncertainty with the requirements associated with a traditional asset sale and the need to obtain NDMNRF approvals;
- (h) In the Monitor's view, no stakeholders will be prejudiced by the reverse vesting order structure because, among other things, the Bold Purchaser will continue to be bound by the closure plan;
- (i) Should the Bold Transaction close, there will be significant funds paid to OGL's principal secured creditors. A payment of such an amount would be unlikely should OGL be forced into bankruptcy, because in those circumstances the assets of OGL could only be sold for liquidation value and would be subject to the priority charges of the NDMNRF for the Ministry Costs. Given the limited interest in the Assets, there is no guarantee that a purchaser would have been identified in a bankruptcy or that such a purchaser would have had the financial ability to undertake the environmental and regulatory obligations associated with the mine. As such, in the Monitor's opinion, the Bold Transaction provides a significantly better outcome for the creditors of OGL, including the NDMNRF and the MECP, than would be realized if OGL were to become a bankrupt. The Monitor intends to return to Court in or to obtain a separate distribution Order once the Bold Transaction closes;
- (j) Orionis has been consulted during the process of negotiating the SPA with Bold. Orionis is supportive of the Bold Transaction;

- (k) Both the Monitor and Bold have had discussions with the Ministry with regard to the key considerations of the Bold Transaction as they affect the mine and the Monitor had provided the Ministry with draft copies of the Fifth Report and the RVO prior to serving; and
  - (l) Based on the SISP and the process leading up to the expected consummation of the Bold Transaction, the Monitor is of the view that the approval of the SPA and the Bold Transaction by the Court is justified, in the circumstances, on account of, *inter alia*, (a) OGL's business and assets were broadly canvassed pursuant to the SISP administered by the Monitor and supervised by the Court, however, the offers that were submitted for the purchase of the Assets were not acceptable to Orionis; (b) the Purchase Consideration to be paid by Bold is reasonable and fair; and, (c) OGL has no available liquidity in order to be able undertake a further sales process.
30. Similarly, the Monitor is of the view that an RVO is appropriate in these circumstances for the following reasons:
- (a) The RVO structure allows the Bold Purchaser to acquire all of OGL's mining rights (OGL has an interest in excess of 90 mining parcels) and other permits (issued by both MECP and NDMNRF) in a seamless transaction, without the requirement to seek formal approval from the MECP and NDMNRF for such a transfer. Notwithstanding the foregoing, the Monitor and Bold Purchaser have been in active discussions with MECP and NDMNRF and has incorporated comments on the transaction documents.
  - (b) The RVO structure will ensure that the Bold Transaction closes on an expeditious time frame and will enhance creditor recoveries because the Bold Purchaser will

assume responsibility for the mine operations on a more timely basis thereby avoiding any further dissipation of the Purchase Consideration because of increased costs by and reimbursement to NDMNRF with respect to maintaining the mine site.

The Monitor is of the view that the RVO structure is the preferred and optimal mechanism to accomplish the best recovery for OGL creditors;

- (c) The Bold Transaction is expected to provide the best opportunity available at this time to keep the Assets productive, provide employment for Ontarians and address any environmental and mining rehabilitation obligations going forward;
- (d) No stakeholder will be worse off as a result of using the RVO structure for the Bold Transaction. Orionis, MECP and NDMNRF have all been consulted during the negotiation of the SPA and have not raised any material objections to the proposed RVO structure. The Monitor is of the view that canvassing the stakeholders with a principal economic interest in the Bold Transaction was sufficient and appropriate in the circumstances; and,
- (e) The Monitor is not aware of any other objections to the proposed RVO structure and Bold Transaction.

## **RECOMMENDATION**

31. For the reasons set out above, the Monitor is of the opinion that Bold Transaction is the single best option for the creditors of OGL in the circumstances. Accordingly, the Monitor respectfully recommends that the Court approve the relief that the Monitor is seeking with respect to the Bold Transaction and grant the RVO, attached as attached as Appendix “L” to this Fifth Report.

32. The Monitor also recommends that the Court approve this Fifth Report and the activities of the Monitor as described herein.

All of which is respectfully submitted this 24<sup>th</sup> day of February 2022.

**Deloitte Restructuring Inc.**

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

Per:

A handwritten signature in blue ink, appearing to read "Todd Ambachtsheer".

Todd Ambachtsheer, LIT  
Senior Vice-President

**Appendix “A”**  
**Amended and Restated Initial Order**

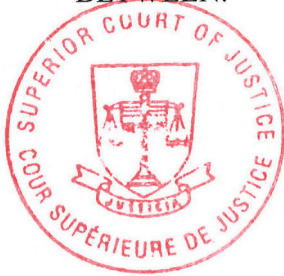


Court File No. CV-20-00634195-00CL

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

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

BETWEEN:



**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

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

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

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**ON READING** the affidavits of David Yanovich Wancier sworn January 10, 2020 (the “**First Yanovich Affidavit**”) and February 11, 2020 (the “**Second Yanovich Affidavit**”) and the exhibits thereto, the affidavit of Ellerton Castor, sworn February 18, 2020 (the “**Castor Affidavit**”), and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, and counsel for Deloitte Restructuring Inc. (“**Deloitte**”), and on being advised that those parties listed in the affidavits of service filed were given notice of this Motion, and on reading the First Report of the Monitor, dated February 18, 2020 (the “**First Report**”),

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

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

#### **SERVICE**

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

#### **APPLICATION**

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

#### **PLAN OF ARRANGEMENT**

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

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## **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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

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

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

#### **RESTRUCTURING**

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

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



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

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

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

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

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

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

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

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

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

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Debtor's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.



**APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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

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

#### **DIP FINANCING**

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

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

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



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

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

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

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

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

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

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

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

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

Second – DIP Lender’s Charge; and

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

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

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

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

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

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

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

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

#### **SERVICE AND NOTICE**

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

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



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

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

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

#### **GENERAL**

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

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

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

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

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

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

  
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**Appendix “B”**

**First Report**

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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**FIRST REPORT OF THE MONITOR**

**DATED FEBRUARY 19, 2020**

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## INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”) commenced a proceeding (the “**CCAA Proceeding**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”). As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Initial Order**”) in respect of OGL.
2. Among other things, the Initial Order:
  - (a) appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
  - (b) granted a stay of proceedings in respect of OGL through February 22, 2020 (the “**Stay Period**”);
  - (c) approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000 (the “**Directors’ Charge**”);
  - (d) approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000 (the “**Administration Charge**”); and
  - (e) approved a debtor-in-possession credit facility (the “**DIP Facility**”) to be provided by Orionis and also approved a charge in favour of Orionis in respect of such DIP Facility (the “**DIP Lender’s Charge**”). The quantum of the approved borrowings were limited to CAD\$200,000 with the expectation that further borrowings (to a limit of USD\$2.75 million) (the “**Increased Borrowings Authorization**”) would

be approved at a hearing to be held prior to the expiry of the Stay Period (the “**Comeback Hearing**”).

3. Deloitte, in its capacity as proposed monitor of OGL, filed a report with the Court dated February 11, 2020 (the “**Pre-filing Report**”). The Pre-filing Report contains background with respect to OGL and the causes of its insolvency. A copy of the Pre-filing Report, without appendices, is included in this report (the “**First Report**”) as Appendix “A”.

## **PURPOSE**

4. The Monitor files this First Report in respect of certain matters to be addressed at the Comeback Hearing and to provide the Court with a summary of its activities since the commencement of these CCAA Proceedings.
5. This First Report includes information in respect of Orionis’ motion seeking, among other things:
  - (a) Court approval in respect of the Increased Borrowings Authorization;
  - (b) Court approval in respect of the incentive and retention plan (the “**IRP**”) and the related charge on OGL’s assets (the “**IRP Charge**”) to secure certain retention payments contemplated thereunder;
  - (c) Court approval in respect of the proposed sale and investment solicitation procedure (the “**SISP**”), a summary of which was provided in the Pre-Filing Report and is attached in full to this First Report as Appendix “**B**”;
  - (d) an Order deeming that all references to currency in the DIP Term Sheet (as defined below) represent U.S. dollars (unless otherwise specified); and
  - (e) an extension of the Stay Period to April 29, 2020.



6. This First Report also contains information in respect of the Monitor's review of the Cash Flow Forecast.

#### **TERMS OF REFERENCE**

7. In preparing this First Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, OGL's books and records, discussions with management of OGL ("**Management**"), discussions with Orionis and its legal counsel, and information from third-party sources (collectively, the "**Information**"). Except as described in this First Report:
  - (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
  - (b) Deloitte has prepared this First Report in its capacity as Monitor to provide background to the Court for its consideration of the relief being sought. Parties using the First Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
8. Unless otherwise stated, all dollar amounts contained in this First Report are expressed in **U.S. dollars.**

## THE MONITOR'S ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDINGS

9. Since its appointment pursuant to the Initial Order, the Monitor has conducted the following activities:
- (a) established a protocol for monitoring and monitored OGL's receipts and disbursements;
  - (b) held a number of calls with OGL staff to provide guidance to them with respect to these CCAA Proceedings;
  - (c) sent notice, on February 14, 2020, to all known creditors of OGL with claims exceeding CAD\$1,000 and arranged for the publication of a notice of the CCAA Proceedings in the *Globe and Mail* (National Edition) in accordance with the Initial Order. Such advertisements will be published once per week for two weeks in accordance with the Initial Order;
  - (d) established the Monitor's case website, which can be found at [www.deloitte.insolvencies.ca/ca-en/ogl](http://www.deloitte.insolvencies.ca/ca-en/ogl) (the "**Website**");
  - (e) established an email inbox ([ogl@deloitte.ca](mailto:ogl@deloitte.ca)) and telephone hotline (1-844-966-0778) for interested parties to obtain information from the Monitor;
  - (f) filed certain statutory documents with the Office of the Superintendent of Bankruptcy;
  - (g) drafted certain marketing materials related to the proposed SISP;
  - (h) worked with OGL, Orionis and its counsel to, among other things, design the IRP including sizing the IRP Charge, and the SISP;

- (i) reviewed draft motion materials relating to the Comeback Hearing; and
- (j) prepared this First Report.

## DIP FINANCING

10. As set out in the Pre-filing Report, Orionis has agreed to provide OGL with a DIP Facility in the maximum amount of \$2.75 million, subject to the terms and conditions contained in the DIP Term Sheet. The purpose of the DIP Facility is to provide OGL with funds for general working capital needs and to fund the costs of this CCAA Proceeding, including the costs of the SISP and the payment to suppliers in respect of environmental remediation work (the “**Ordered Work**”) that is being undertaken pursuant to an order (the “**Second Director’s Order**”) issued by the Ministry of the Environment, Conservation and Parks (the “**MECP**”). Additional information in respect of both the Ordered Work and the Second Director’s Order can be found in the Pre-Filing Report. A copy of the DIP Term Sheet is attached to this First Report as Appendix “C”.
11. The Initial Order authorized funding in the amount of CAD\$200,000 to OGL ahead of the Comeback Hearing with the full quantum of the DIP Facility to be approved, should the Court see fit to do so, at the Comeback Hearing. Orionis is now seeking Court approval to provide the DIP Facility up to its stated maximum of \$2.75 million.
12. Given OGL’s lack of operational funding, it is dependent on advances from Orionis to fund all operations related to the Ordered Work and these CCAA Proceedings, including the SISP. For this reason, the Monitor is supportive of the Court granting the Increased Borrowings Authorization in the amount of \$2.75 million. Under the circumstances, it is

the Monitor's view that any attempt to locate alternate lending arrangements through another financier would be futile and costly.

### **PROPOSED IRP AND IRP CHARGE**

13. Orionis is currently seeking Court approval of the IRP and the approval of the IRP Charge. Both of these were detailed in the Pre-filing Report and in Orionis' CCAA filing materials, although they were previously identified as the KERP and the KERP Charge, respectively, in such materials. The Monitor understands that one of the beneficiaries of the proposed plan is an independent contractor and not an employee of OGL. Accordingly, the names of the plan and the related charge have been revised to more accurately reflect the nature of the beneficiaries.
14. As detailed in the Pre-Filing Report, the Monitor is supportive of the IRP Charge and noted that additional details would be provided in respect of same prior to the Comeback Hearing.
15. Information related to the IRP, which is attached as Confidential Appendix "1", is summarized as follows:
  - (a) All of OGL's five employees, and one contractor who works solely for OGL, are beneficiaries of the IRP;
  - (b) The provisions of the IRP require, among other things, that:
    - (i) employees do not voluntarily leave their employment at OGL and are not terminated for cause prior to transaction relating to the Kearney mine (the "**Mine**") resulting from the SISP (the "**Transaction**");
    - (ii) the IRP participants continue to comply with their current duties in respect of OGL; and

- (c) The IRP, with one exception related to potential bonuses that could be paid thereunder, provides that OGL's employees will be paid the equivalent of two months' of their respective 2019 salary, or in the case of the contractor, twice the monthly fees charged in 2019 (plus HST), payable at the earlier of:
  - (i) the termination, not for cause, of their employment or of the services arrangement;
  - (ii) the closing of a Transaction; and
  - (iii) the termination of the CCAA Proceedings.
- 16. The purpose of the IRP is to provide OGL with continuity in respect of the administration of the SISF and the completion of the Ordered Work.
- 17. The Monitor continues to support the IRP and the IRP Charge for the following reasons:
  - (a) the Monitor worked with OGL and Orionis to design the IRP by providing its view prior to the issuance of the Initial Order;
  - (b) the employees at OGL and the contractor are critical to the success of the implementation of the Ordered Work given their long-term involvement with the requirements of the MECP and the Second Director's Order. In the Monitor's view, it would be difficult to quickly replace such workers given the highly technical nature of the environmental remediation program. Given the implications of the Ordered Work, it is imperative that workers with knowledge of such requirements remain with OGL for continuity purposes;
  - (c) OGL's sole officer has substantial knowledge regarding the technical and financial elements of OGL's assets. Such expertise is critical to the SISF;

- (d) The IRP provides an incentive for employees to remain employed at OGL and for the contractor to continue providing services as their retention payments are payable after a Transaction relating to the Mine is completed. The IRP incents OGL's sole officer to achieve a higher sale price for the benefit of all stakeholders;
- (e) The quantum of the IRP is not excessive in terms of its quantum, and in the Monitor's view it still provides a meaningful incentive; and
- (f) Orionis, OGL's key largest secured creditor whose pre-filing interests would be subordinated by the IRP Charge, is supportive of the IRP and the IRP Charge.

### **THE PROPOSED SISP**

- 18. The Pre-filing Report contained a summary of the proposed SISP. The complete version of the proposed SISP is included as Appendix "B".
- 19. The Monitor, OGL, and Orionis and their counsel have developed the proposed SISP with respect to the marketing and sale of OGL's assets/business to potentially interested parties. Orionis is of the view that it is necessary to execute the SISP to properly market OGL's business and assets and is seeking the Court's approval to do so. The Monitor shares this view.
- 20. The following table summarizes the key activities and milestones related to the proposed SISP<sup>1</sup>.

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<sup>1</sup> Potentially interested parties are recommended to review the full terms of the SISP with legal counsel. The table below sets out a summary of key terms of the proposed SISP only. This summary is qualified in its entirety by the actual terms of any SISP granted by the Court.

Phase/Event	Date	Description of Activities
SISP Order	To be obtained as soon as practicable after appointment of the Monitor	<ul style="list-style-type: none"> <li>Orionis to seek an order approving the SISP</li> </ul>
Publication notice	Within two weeks of the Initial Order being granted	<ul style="list-style-type: none"> <li>Publication of the SISP in the <i>Globe and Mail</i> (National Edition) and appropriate industry publications as determined by the Monitor</li> </ul>
Phase 1		<ul style="list-style-type: none"> <li>The Monitor will seek to identify Qualified Phase 1 bidders and provide each with notice of same</li> <li>Certain criteria are required to be met in order to be a Qualified Phase 1 Bidder</li> <li>Receipt of Non-Binding Indications of Interest by the deadline of April 15, 2020</li> <li>Non-Binding Indications of Interest can be for a sale or investment in OGL</li> </ul>
Phase 1 Bid Deadline	5:00 pm Toronto time on April 15, 2020	<ul style="list-style-type: none"> <li>Non-Binding Indications of Interest due to be provided to the Monitor for each bidder to continue in the process</li> </ul>
Assessment of Non-Binding Indications of Interest		<ul style="list-style-type: none"> <li>As soon as possible after the Phase 1 Bid Deadline, the Monitor will assess each Non-Binding Indication of Interest and assess whether each party will be qualified for Phase 2 of the SISP</li> <li>Notice will be given to each party if they are a “Qualified Phase 2 Bidder”</li> <li>Monitor to seek directions from the Court if no Non-Binding Indications of Interest are received</li> </ul>
Phase 2		<ul style="list-style-type: none"> <li>Solicitation of a Qualified Purchase Bid or a Qualified Investment Bid</li> <li>Orionis may, within 5 days of the Phase 1 Bid Deadline, determine</li> </ul>

		that it will issue a Bid Notice and declare its intention to make a Qualified Purchase Bid with its bid being provided to other Qualified Phase 1 Bidders
Phase 2 Bid Deadline	5:00pm Toronto time on June 22, 2020	<ul style="list-style-type: none"> <li>Qualified Phase 2 Bidders to deliver Qualified Purchase Bids or Qualified Investment Bids to the Monitor by the Phase 2 Bid Deadline</li> </ul>
Evaluation and Selection of the Successful Bid		<ul style="list-style-type: none"> <li>The Monitor will evaluate each Qualified Bid in conjunction with Orionis and OGL</li> <li>The Monitor will clarify any Qualified Bids received and further negotiation may occur</li> <li>The Successful Bid will be chosen and the Successful Bidder will be notified</li> <li>The next best Qualified Bidder will be determined to be the Backup Bidder and will receive notification of same</li> <li>Definitive transaction documents will be settled</li> </ul>
Approval Hearing	On not less than 5 days' notice to the service list	<ul style="list-style-type: none"> <li>As soon as practical, but on not less than 5 days' notice to the service list, the Monitor will seek Court approval of the Successful Bid and the Backup Bid</li> </ul>
Closing	Target of June 30, 2020	

21. In order to execute the SISP, the Monitor will be assisted by its corporate finance affiliate, Deloitte Corporate Finance Inc. (“**DCFI**”). DCFI has significant experience in marketing mining properties at various stages of development.
22. The Monitor is of the view that the proposed SISP provides an appropriate process to market a unique asset and that it will assist in finding an appropriate buyer or investor for OGL’s assets or business.



## CURRENCY OF DIP TERM SHEET

23. The Initial Order approved CAD\$200,000 of borrowings pursuant to DIP Facility prior to the Comeback Hearing. The terms of the DIP Facility are governed by a term sheet between Orionis and OGL previously approved by the Court in these CCAA Proceedings (the “**DIP Term Sheet**”)
24. Notwithstanding the currency of the initial borrowing amount that was approved by the Initial Order and set out in Section 17 of the DIP Term Sheet, the Monitor understands that it was always the intention of the parties to have the DIP Term Sheet denominated in U.S. funds as this is the currency in which OGL reports to Orionis and is the currency in which it forecasts its cash flows.
25. Accordingly, Orionis will be seeking an Order deeming that, notwithstanding Section 17 of the DIP Term Sheet, all references to currency therein shall be references to U.S. dollars (unless specified therein). The Monitor is supportive of this relief.

## THE CASH FLOW FORECAST

26. The Cash Flow Forecast is attached as Appendix “**D**” to this First Report.
27. The Cash Flow Forecast is presented on a weekly basis and estimates OGL’s receipts and disbursements from February 7, 2020 to August 28, 2020 (the “Cash Flow Period”). The Monitor has reviewed the Cash Flow Forecast with respect to the reasonableness of its major assumptions as required by section 23(1)(b) of the CCAA.
28. Pursuant to this standard, the Monitor’s review of the Cash Flow Forecast consisted of inquiries, analytical procedures, review of the supporting data and consideration of the Information. Since assumptions with respect to the Cash Flow Forecast need not be

supported, the Monitor's procedures with respect to its material assumptions was limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

29. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects that:
- (a) the material assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - (b) as at the date of this First Report, the material assumptions are not suitably supported and consistent with the plans of OGL or do not provide a reasonable basis for the Cash Flow Forecast; or
  - (c) the Cash Flow Forecast does not reflect the material assumptions upon which it was created.

#### **EXTENSION OF THE STAY PERIOD**

30. Absent an extension of the Stay Period, the stay granted by the Initial Order will expire on February 22, 2020.
31. Orionis is currently seeking an extension of the Stay Period to April 29, 2020. An extension of the Stay Period will allow the Monitor and DCFI to commence the SISF, if approved, through its proposed first phase to gauge market interest in the OGL opportunity. This date has been chosen specifically to allow the Monitor and DCFI to carry out Phase 1 of the SISF and determine, at that time, whether it is advisable to continue with the process. Should there be no interest, the Monitor, after consulting with Orionis and OGL, may seek directions from the Court.

32. Given the relatively short period of time since the Initial Order was granted, a new cash flow forecast has not been prepared. The Cash Flow Forecast included in the Pre-Filing Report is attached as Appendix “D” to this First Report.

### RECOMMENDATIONS

33. For the reasons set out above, the Monitor recommends that the Court, should it see fit to do so, grant the relief sought by Orionis in its motion record dated February 18, 2020, including:
- (a) granting the Increased Borrowings Authorization;
  - (b) approving the IRP and the IRP Charge;
  - (c) approving the SISP;
  - (d) deeming all references to currency in the DIP Term Sheet to represent U.S. dollars (unless otherwise specified therein); and
  - (e) extending the Stay Period to April 29, 2020.

All of which is respectfully submitted this 19<sup>th</sup> day of February, 2020.

**Deloitte Restructuring Inc.**

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

Per:



Philip J. Reynolds, LIT  
Senior Vice-President

**Appendix “C”**

**SISP Order**

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

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

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



BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

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

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

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

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Castor, sworn February 18, 2020 (the “**Castor Affidavit**”), the Pre-Filing Report of Deloitte Restructuring Inc., in its capacity as the proposed monitor of Ontario Graphite, Ltd., dated February 11, 2020, the First Report to the Court of the Monitor, dated February 19, 2020 (the “**First Report**”), the Factum of Orionis, and on hearing the submissions of counsel for Orionis, counsel for the Monitor, counsel for the Respondent, Ontario Graphite, Ltd. (the “**Debtor**”), and no one appearing for any other parties, although properly served as appears from the affidavits of service of Mark Sheeley, sworn February 18, 2020, and February 19, 2020,

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

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order and the Sale and Investment Solicitation Procedure, attached as Schedule “A” to this Order (the “**SISP**”).

**SISP**

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to perform its obligations under the SISP, including through its affiliate, Deloitte Corporate Finance Inc., and to take any and all steps that are reasonably necessary or desirable to carry out the SISP.

5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, directors, employees, advisors, agents and controlling persons, including Deloitte Corporate Finance Inc. as agent of the Monitor (collectively, the “**Agents**”), shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of their duties under the SISP or the provisions of this Order, save and except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Monitor or the

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Agents, as applicable, in performing their obligations under the SISP or the provisions of this Order, as determined by this Court.

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

#### **IRP**

7. **THIS COURT ORDERS** that the incentive and retention plan (the “**IRP**”) described in the Castor Affidavit and the First Report is hereby approved and the Debtor is authorized to make the Retention Payments (as defined in the Castor Affidavit) contemplated thereunder and set out in Confidential Appendix “1” to the First Report (the “**Confidential IRP Appendix**”) in accordance with the terms and conditions of the IRP.

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

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



**Sealing**

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

**General**

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

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

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

FEB 20 2020

PER / PAR:

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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**SECOND REPORT OF THE MONITOR**

**DATED APRIL 21, 2020**

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## INTRODUCTION

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

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

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

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

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

## **PURPOSE**

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

## **TERMS OF REFERENCE**

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

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

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

- (b) Deloitte has prepared this Second Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the MAC. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
5. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in U.S. dollars.

#### **ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDING**

6. Since the date of the SISP Approval Order, the Monitor has taken steps to administer the SISP. A copy of the SISP is attached as Appendix “C” to this Second Report. The Monitor’s activities to administer the SISP have included:
- (a) Developing marketing materials (a “teaser” and a confidential information memorandum (the “**CIM**”)) for distribution to creditors both prior to and after the execution of a non-disclosure agreement (and “**NDA**”);
  - (b) Along with Management, developing a list of potentially interested parties in OGL’s assets (the “**Buyers List**”). The Buyers List included 327 parties including mining companies (both graphite and other base metals, 37 parties in total), diversified metals and mining producers (75 parties), graphite producers (43 parties), users of graphite (126 parties), trading houses (15 parties), and financial buyers that focus on mining opportunities (31 parties);

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



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

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

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

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

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

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

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

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

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

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

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

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

#### **NEXT STEPS**


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

All of which is respectfully submitted this 21<sup>st</sup> day of April, 2020.

**Deloitte Restructuring Inc.**

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

Per:



Philip J. Reynolds, LIT  
Senior Vice-President

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

## SALE AND INVESTMENT SOLICITATION PROCEDURE

### ONTARIO GRAPHITE, LTD.

#### RECITALS

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

#### ARTICLE 1 DEFINED TERMS

In these SISP Procedures:

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

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



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

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

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

## ARTICLE 2 SOLICITATION

### 2.1 Solicitation Process

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

## 2.2 Sale and Investment Opportunity

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

## 2.3 “As Is, Where Is”

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

## 2.4 Solicitation of Interest

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

## 2.5 Participation Requirements

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

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

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

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

### **ARTICLE 3 DUE DILIGENCE**

#### **3.1 Due Diligence**

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

## ARTICLE 5 PHASE 2

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

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

### 5.2 Qualified Purchase Bids

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

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

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

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

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

it includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;
- (f) It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Phase 2 Bidder’s direct and indirect owners and their principals, and the complete terms of any such participation;



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

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

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

### 5.3 Qualified Investment Bids

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

- (a) It includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment (the “**Investment Amount**”) and details regarding the proposed equity and/or debt structure of OGL, if applicable, following completion of the proposed transaction (a “**Definitive Investment Agreement**”);
- (b) It includes a letter stating that the Investment Proposal is irrevocable until the earlier of:
  - (i) approval by the Court of a Successful Bid; and
  - (ii) 45 Business Days following the Phase 2 Bid Deadline;

provided, however, that if such Investment Proposal is selected as the Successful Bid or Backup Bid, it shall remain irrevocable until the earlier of:

  - (i) the closing of the Successful Bid or the Backup Bid, as the case may be; and
  - (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;
- (c) It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting an Investment Proposal, the Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submission of its Investment Proposal or these SISP Procedures;

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



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

#### **5.4 Qualified Bids**

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

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

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

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

## **5.6 Selection Criteria**

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



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

## 5.7 Approval Hearing

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

## 5.8 Deposits

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

## 5.9 Approvals

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

## 5.10 Notice to the Monitor

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

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

### **5.11 Reservation of Rights**

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

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

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

### **5.12 Further Orders**

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

### **5.13 Credit Bid**

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

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

ORIONIS CORPORATION

Applicant

and ONTARIO GRAPHITE, LTD.

Respondent

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

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

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

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Lawyers for the Applicant,  
Orionis Corporation

Our Matter No. 1165915

**Appendix “D”**

**Second Report**

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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**SECOND REPORT OF THE MONITOR**

**DATED APRIL 21, 2020**

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## INTRODUCTION

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

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

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



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

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

## **PURPOSE**

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

## **TERMS OF REFERENCE**

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

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

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

- (b) Deloitte has prepared this Second Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the MAC. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
5. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in U.S. dollars.

#### **ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDING**

6. Since the date of the SISP Approval Order, the Monitor has taken steps to administer the SISP. A copy of the SISP is attached as Appendix “C” to this Second Report. The Monitor’s activities to administer the SISP have included:
- (a) Developing marketing materials (a “teaser” and a confidential information memorandum (the “**CIM**”)) for distribution to creditors both prior to and after the execution of a non-disclosure agreement (and “**NDA**”);
  - (b) Along with Management, developing a list of potentially interested parties in OGL’s assets (the “**Buyers List**”). The Buyers List included 327 parties including mining companies (both graphite and other base metals, 37 parties in total), diversified metals and mining producers (75 parties), graphite producers (43 parties), users of graphite (126 parties), trading houses (15 parties), and financial buyers that focus on mining opportunities (31 parties);

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **NEXT STEPS**

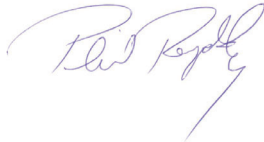
18. OGL has limited cash resources and its current bank balance is approximately CAD\$45,000.
19. The Monitor will be assessing OGL's options given the issuance of the MAC Notice and will report to the Court when there is greater certainty in this regard.

All of which is respectfully submitted this 21<sup>st</sup> day of April, 2020.

**Deloitte Restructuring Inc.**

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

Per:



Philip J. Reynolds, LIT  
Senior Vice-President



**Appendix “E”**

**Supplemental Second Report**

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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**SUPPLEMENTAL SECOND REPORT OF THE MONITOR**

**DATED APRIL 28, 2020**

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## INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, commenced a proceeding (the “**CCAA Proceeding**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”).
2. As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (as amended and restated on February 20, 2020, the “**Initial Order**”) that among other things:
  - (a) Appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
  - (b) Granted a stay of proceedings in respect of OGL through to April 29, 2020;
  - (c) Approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000 (the “**Administration Charge**”);
  - (d) Approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000; and
  - (e) Approved a debtor-in-possession credit facility (the “**DIP Facility**”) established under a CCAA Debtor-In-Possession Financing Term Sheet dated February 10, 2020 (the “**DIP Term Sheet**”) between OGL and Orionis (the “**DIP Lender**”) and also approved a charge in favour of Orionis in respect of such DIP Facility.

3. On February 20, 2020, the Court granted a further Order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation procedure (the “**SISP**”) to identify bidders or investors for the Assets. The SISP was to be administered by the Monitor.
4. The Monitor administered the SISP in accordance with its terms. At the conclusion of Phase 1 of the SISP (as such term is defined in the SISP), the Monitor received three bids and shared a summary of same with Orionis. Orionis was not satisfied that the bids were compliant with the requirements set out in the SISP or provided sufficient value and, as a result, issued a notice terminating the DIP Facility.
5. The DIP Facility was OGL’s only source of liquidity and, as a result of its termination, OGL has no ongoing source of funding. Given this fact, the Monitor issued a notice of material adverse change (the “**MAC Notice**”) and filed its second report, dated April 21, 2020 (the “**Second Report**”).
6. Orionis’ counsel has advised OGL and the Monitor that Orionis will not be taking steps to address the expiry of the Stay Period on April 29, 2020.

#### **PURPOSE**

7. The Monitor files this Supplemental Second Report in respect of the expiry of the Stay Period and the effect of the MAC Notice.
8. Given the termination of the DIP Facility and Orionis declining to take action with respect to the expiry of the Stay Period, the Monitor is seeking advice and direction from the Court with respect to such expiry. This includes the following relief:

- (a) Terminating these CCAA Proceedings and discharging the Monitor upon the Monitor filing a certificate with the Court. The Monitor contemplates filing the Certificate with the Court once OGL's Kearney Mine (the "**Mine**") is transferred to the Ministry of Energy, Northern Development and Mines (the "**ENDM**");
- (b) Approving the activities of the Monitor and its counsel since the commencement of the CCAA Proceeding. This includes an approval of the first report of the Monitor dated February 19, 2020 (the "**First Report**"), Second Report, this Supplemental Second Report and the activities described therein;
- (c) Maintaining the various charges created by the Initial Order;
- (d) Approving the Monitor's fees and disbursements and the fees and disbursements of its counsel Borden Ladner Gervais LLP ("**BLG**"). Such approval includes an estimate of fees to be incurred in the future for each of BLG and the Monitor;
- (e) Providing the Monitor and its counsel with a release, including a process to be followed if there are claims against the Monitor, its counsel or certain related persons; and
- (f) Continuing to provide the Monitor and its counsel with the protections granted to it and BLG as part of the Initial Order.

## TERMS OF REFERENCE

9. In preparing this Supplemental Second Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, OGL's books and records, discussions with management of OGL ("**Management**"), discussions with Orionis

and its legal counsel, and information from third-party sources (collectively, the “**Information**”). Except as described in this Supplemental Second Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
- (b) Deloitte has prepared this Supplemental Second Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the MAC Notice and the expiry of the Stay Period. Parties using the Supplemental Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

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

#### **ACTIVITIES SINCE THE ISSUANCE OF THE MAC NOTICE AND THE RELIEF SOUGHT**

11. Since the date of the MAC Notice, a number of steps have been taken OGL and the Monitor. Such activities include:
  - (a) Convening a conference call with representatives of the Ministry of the Environment, Conservation and Parks (the “MECP”) and the ENDM. The purpose



of this call was to advise the various regulators of the events leading up to the issuance of the MAC Notice and to commence the process to hand over the Mine to ENDM in accordance with the *Mining Act* (Ontario). ENDM has subsequently made a document request of OGL to enable it to commence this process;

- (b) Arranging for certain liquidators to attend the OGL site with a view to providing auction proposals in respect of OGL's assets. No formal proposals have been received as at the date of this Supplemental Second Report;
  - (c) Engaging in discussions with the bidders that submitted non-binding expressions of interest to advise them that their bids were not acceptable and that the SISP was being terminated; and
  - (d) Providing Management with a template bid letter to be shared with a party who may be interested in acquiring OGL outside of the SISP.
12. OGL's status remains fluid and both it and the Monitor are hopeful that a party may be able to step forward and provide OGL with needed liquidity in order to generate some returns for creditors. In the absence of such solutions, the Monitor is of the view that it is necessary to address the expiry of the Stay Period. As such, the Monitor is seeking an Order from the Court that:
- (a) Terminates these CCAA Proceedings and discharges the Monitor;
  - (b) Approves the activities of the Monitor and its counsel since the commencement of the CCAA Proceeding;
  - (c) Approves the Monitor's fees and disbursements and the fees and disbursements of BLG;

- (d) Maintains the charges that were created by the Initial Order;
  - (e) Provides the Monitor and its counsel with a release, including a process to be followed if there are claims against the Monitor, its counsel or certain related persons; and
  - (f) Continues to provide the Monitor and its counsel with the protections granted to it and BLG as part of the Initial Order.
13. A draft Order in respect of the relief being sought by the Monitor is attached as Appendix “A” to this Supplemental Second Report.

#### **RATIONALE FOR RELIEF SOUGHT**

14. Given OGL’s lack of liquidity due to the termination of the DIP Facility and the results of the SISP, there is no reason for the CCAA Proceeding to continue. The sole purpose of the CCAA Proceeding was to find a buyer or investor of OGL’s assets or business. Given the results of the SISP, the Monitor is of the view that, aside from a lack of ongoing funding, there is no reason to continue with the CCAA Proceeding, especially since Orionis, as Applicant, will be taking no steps to continue it.
15. As a result of the lack of urgency to continue the CCAA Proceeding, it will no longer be necessary to have the Monitor continue its role overseeing the process.
16. In addition to requesting that the CCAA Proceeding be terminated, the Monitor is seeking to have the Court approve its fees and the fees of its counsel BLG for the CCAA Proceeding. Attached as Appendices “B” and “C”, respectively, hereto are the fee affidavits for Deloitte and BLG, which include the redacted accounts of Deloitte and BLG. While OGL does not have the necessary liquidity to fund the payment of such fees,

each party is a beneficiary of the Administration Charge and seeks Court approval in the event that any funds come into OGL's estate to fund the payment of such fees.

17. The Monitor anticipates that it and BLG will continue to provide OGL with some ongoing support should it be necessary to consummate some sort of transaction in the future.
18. In addition to the approval of the Monitor and BLG's fees, the Monitor is also seeking Court approval of its activities. Such activities are summarized in the Pre-filing Report of the Monitor dated February 11, 2020, the First Report and the Second Report. The Pre-filing Report and the First Report, without appendices, are attached as Appendices "D" and "E" to this Supplemental Second Report.
19. The Monitor is also seeking a release from the Court in respect of its activities. Given that the Monitor contemplates it may have ongoing interaction with respect to OGL (either in respect of an asset liquidation process or in the handoff of the Mine to ENDM) it is also seeking an Order that continues the protections afforded to it and BLG in the Initial Order.
20. Should OGL identify any parties that are able to consummate a transaction on an urgent basis, the Monitor will seek further direction of the Court, including the possibility of obtaining an approval and vesting order in respect of any transaction. Prior to doing so, the Monitor will consult with Orionis to obtain its views.

**RECOMMENDATIONS**

21. For the reasons set out above, the Monitor respectfully recommends that the Court approve the relief that the Monitor is seeking and issue the draft Order attached as Appendix “A”.

All of which is respectfully submitted this 28<sup>th</sup> day of April, 2020.

**Deloitte Restructuring Inc.**

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

Per:



Philip J. Reynolds, LIT  
Senior Vice-President

**Appendix “F”**

**Termination Order**

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

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

THE HONOURABLE MADAM	)	WEDNESDAY, THE 29 <sup>th</sup> DAY
	)	
JUSTICE GILMORE	)	OF APRIL, 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

**CCAA TERMINATION ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. ("**Deloitte**" or the "**Monitor**"), in its capacity as the Court-appointed Monitor in respect of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("**CCAA**") proceedings of the respondent, Ontario Graphite, Ltd. ("**OGL**") for an order (i) terminating the within CCAA proceedings, (ii) approving the Second Report of the Monitor dated April 21, 2020 (the "**Second Report**"), the Supplement to the Second Report of the Monitor dated April 28, 2020 (the "**Supplement to the Second Report**"), the activities set out therein, and all prior reports filed and activities described therein (iii) authorizing the discharge of the Monitor, and (iv) approving the professional fees

and disbursements of the Monitor and its counsel, and such further relief as may be required in the circumstances and which this Court deems as just and equitable, was heard by videoconference this day at 330 University Avenue, Toronto, Ontario, in accordance with the Changes to the operations of the Commercial List and the Notice to the Profession updated April 2, 2020 in light of the COVID-19 pandemic.

**ON READING** the Second Report, the Supplement to the Second Report, the affidavit of Alex MacFarlane sworn April 28, 2020 (the “**MacFarlane Affidavit**”), and the affidavit of Todd Ambachtsheer, sworn April 28, 2020 (the “**Ambachtsheer Affidavit**”), filed, and on hearing the submissions of counsel for the Monitor, counsel for OGL, counsel for the Applicant Orionis Corporation (“**Orionis**”), and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Adrianna Gaspari sworn April 28, 2020, filed,

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meaning attributed to them in the Second Report and the Initial Order as Amended and Restated dated February 20, 2020 (the “**Initial Order**”).
2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is validated so that the Motion is properly returnable today and hereby dispenses with further service thereof, including without limitation, any prescribed notice requirements under the CCAA.
3. **THIS COURT ORDERS** that the Second Report, the Supplement to the Second Report, all prior reports filed by the Monitor in these proceedings, and the activities of the Monitor as set out therein be and are hereby approved.
4. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly satisfied, discharged and performed all of its obligations, liabilities, responsibilities and duties in respect of the CCAA proceedings and in accordance with the CCAA, the Initial Order, and all other Orders of this Court made in the within proceedings.
5. **THIS COURT ORDERS** that the within CCAA proceeding, bearing Court File No. CV-20-00634195-00CL (the “**CCAA Proceedings**”) is hereby terminated, effective on the date and



time (the “**CCAA Termination Date**”) at which the Monitor files the certificate, substantially in the form attached hereto as Schedule “A” (the “**Monitor’s Certificate**”), certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed, including a sharing of the information required for the appropriate regulators to take the steps required to safeguard public health and safety and the environment, and the CCAA Proceedings shall be automatically terminated without any further act or formality.

6. **THIS COURT ORDERS** that the Stay Period as set out in the Initial Order shall expire on the CCAA Termination Date.

7. **THIS COURT ORDERS** that the Monitor shall, at least 5 days prior to the proposed CCAA Termination Date, post on the Monitor’s website and serve on the Service List for these CCAA Proceedings notice of the Monitor’s intention to file the Monitor’s Certificate.

8. **THIS COURT ORDERS** that the fees and disbursements of the Monitor up to and including April 29, 2020, as set out in the Ambachtsheer Affidavit, are hereby approved, and that the fees and disbursements of the Monitor as estimated not to exceed \$50,000, incurred in connection with the completion by the Monitor of its remaining duties and the administration of the CCAA Proceedings, are hereby approved without further Order of the Court.

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor’s counsel up to and including April 26, 2020, as set out in the MacFarlane Affidavit, are hereby approved, and that the fees and disbursements of the Monitor’s counsel as estimated not to exceed \$30,000, incurred in connection with the completion by the Monitor of its remaining duties and the administration of the CCAA Proceedings, are hereby approved without further Order of the Court.

10. **THIS COURT ORDERS AND DECLARES** that, effective as at the CCAA Termination Date, Deloitte shall be discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor in these CCAA Proceedings.

11. **THIS COURT ORDERS** that the Monitor and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents (collectively, the “**Released Persons**”) shall be and are hereby released and discharged from any and all claims that any

person may have or be entitled to assert against the Released Persons, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their conduct in the within proceedings (collectively, the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Persons shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

12. **THIS COURT ORDERS** that, at the CCAA Termination Date, and subject to paragraph 13 below, the Released Persons shall be released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, foreseen or unforeseen, existing or thereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their respective conduct in the within proceedings (collectively, the “**Subsequent Released Claims**”), and any such Subsequent Released Claims shall be released, stayed, extinguished and forever barred and the Released Persons shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

13. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection and the grounds thereof to the Monitor such that the notice of objection is received by the Monitor prior to the proposed CCAA Termination Date. If no objection is received by the Monitor prior to the CCAA Termination Date, the release and discharge of Subsequent Released Claims pursuant to paragraph 12 above shall be automatically deemed effective upon the CCAA Termination Date, without further Order of the Court. If an objection is received prior to the CCAA Termination Date, the release and discharge of the Subsequent Released Claims shall not become effective pending further Order of the Court.

14. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor at law or pursuant to the Initial Order or any other Order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the filing of the Monitor's Certificate.

15. **THIS COURT ORDERS** that all charges, and in particular the Administration Charge, Directors' Charge and DIP Lender's Charge, shall survive and remain in place following the CCAA Termination Date, and on the same basis and priority as set out in the Initial Order.

16. **THIS COURT ORDERS** that, notwithstanding the discharge of the Monitor and the termination of the CCAA Proceedings, this Court shall remain seized of any matter arising from these CCAA Proceedings, and each of Orionis, OGL, the Monitor and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA Proceedings notwithstanding the termination thereof. The Monitor is authorized to take such steps and actions as the Monitor determines are necessary to give effect to this Order following the date of this Order until the CCAA Termination Date.

**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 OGL and 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist OGL and the Monitor and their agents in carrying out the terms of this Order.

  
\_\_\_\_\_

## Schedule "A"

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**FORM OF MONITOR'S CERTIFICATE**

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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 CERTIFICATE****RECITALS**

1. Ontario Graphite, Ltd. ("**OGL**") obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), as amended and restated on February 20, 2020 (the "**Initial Order**")
2. Deloitte Restructuring Inc. (in such capacity, the "**Monitor**") was appointed as the Monitor of OGL in the CCAA Proceedings pursuant to the Initial Order.

3. Pursuant to the Termination Order, granted April 29, 2020, the Court approved, among other things, the termination of the CCAA Proceedings effective at the date and time on which the Monitor files this Monitor's certificate with the Court (the "**CCAA Termination Date**").

**THE MONITOR CONFIRMS** the following:

4. The Monitor has been informed by OGL that all matters to be attended to in connection with the CCAA Proceedings have been completed.

5. The Monitor confirms that with respect to the Mine previously operated by OGL and located at Kearney, Ontario, the information required for the appropriate regulators to take the steps required to safeguard public health and safety and the environment has been shared.

6. Accordingly, the CCAA Termination Date has occurred at the date and time set forth below.

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2020

**DELOITTE RESTRUCTURING INC., solely in  
its capacity as Monitor and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:

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

ORIONIS CORPORATION  
Applicant

-AND-

ONTARIO GRAPHITE, LTD.  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**CCAA TERMINATION ORDER**

**BORDEN LADNER GERVAIS LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3400  
Toronto ON M5H 4E3

**Alex MacFarlane – LSO No. 28133Q**

Tel: 416.367.6305  
Email: amacfarlane@blg.com

**Bevan Brooksbank - LSO No. 56717U**

Tel: 416.367.6604  
Email: bbrooksbank@blg.com

Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor

**Appendix “G”**

**Third Report**



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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**THIRD REPORT OF THE MONITOR**

**DATED APRIL 21, 2021**

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## INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, commenced a proceeding (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”).
2. As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (as amended and restated on February 20, 2020 and otherwise modified, the “**Initial Order**”, attached hereto as Appendix “**A**”) that among other things:
  - (a) Appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
  - (b) Granted a stay of proceedings in respect of OGL through to April 29, 2020;
  - (c) Approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000;
  - (d) Approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000 (the “**Administration Charge**”); and
  - (e) Approved a debtor-in-possession credit facility (the “**DIP Facility**”) established under a CCAA Debtor-In-Possession Financing Term Sheet dated February 10,

2020 (the “**DIP Term Sheet**”) between OGL and Orionis (the “**DIP Lender**”) and also approved a charge in favour of Orionis in respect of such DIP Facility.

3. On February 20, 2020, the Court granted a further Order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation procedure (the “**SISP**”) to identify bidders or investors for the Assets. The SISP was to be administered by the Monitor and was summarized in the first report of the Monitor dated February 19, 2020 (the “**First Report**”). A copy of the First Report (without appendices) is attached hereto as Appendix “**B**”. A copy of the SISP Approval Order is attached hereto as Appendix “**C**”.
4. Despite the onset of the COVID-19 pandemic and with the concurrence of the DIP Lender, the Monitor administered the SISP in accordance with its terms. At the conclusion of Phase 1 of the SISP (as such term is defined in the SISP), the Monitor received three bids. Each of the three bids received required clarification as certain of the economics were unclear to the Monitor. Such clarifications were received and, based on the result of these clarifications and discussions with the Monitor, and after receiving a summary of the three bids received, Orionis advised that it did not find any of the three bids to be compliant with the terms of the SISP or to provide sufficient value. Orionis subsequently issued a notice of event of default and termination of the DIP Facility to the Monitor and OGL and shortly thereafter the Monitor terminated the SISP.
5. The DIP Facility was OGL’s only source of liquidity and, as a result of its termination, OGL had no ongoing source of funding. Given this fact, the Monitor issued a notice of material adverse change (the “**MAC Notice**”) and filed its second report, dated April 21, 2020 (the “**Second Report**”) with the Court. A copy of the Second Report (without appendices) is attached hereto as Appendix “**D**”.

6. The Monitor subsequently issued a supplement to its Second Report on April 28, 2020 (the “**Supplemental Second Report**”). The Supplemental Second Report (attached hereto as Appendix “**E**”) provided details in respect of the following:
- (a) The request for an order in respect of the termination of OGL’s CCAA Proceedings (the “**Termination Order**”) subject to the Monitor filing a certificate (the “**Termination Certificate**”), certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed. A copy of the Termination Order is attached hereto as Appendix “**F**”;
  - (b) The request for Court approval of the conduct, fees and disbursements of the Monitor and its counsel, Borden Ladner Gervais LLP (“**BLG**”) from the commencement of the CCAA Proceedings up to and including April 29, 2020 and April 26, 2020 respectively;
  - (c) Maintaining various charges and protections for the Monitor and its counsel that were granted by the Court during the CCAA Proceedings; and
  - (d) Providing the Monitor with a release in respect of its activities related to the CCAA Proceedings.
7. Notwithstanding the existence of the Administration Charge, none of the Monitor, BLG or OGL’s corporate counsel, Miller Thomson LLP (“**Miller Thomson**”), have been paid their fees and disbursements related to these CCAA Proceedings. The Monitor estimates that the aggregate amount currently outstanding in respect of these three parties is approximately CAD\$640,000. The foregoing amount is net of retainers held by certain

beneficiaries of the Administration Charge. Such amount was outstanding prior to any additional work in respect of the Transaction (as defined herein) began.

8. Shortly after the MAC Notice was issued, the Monitor undertook a number of activities in respect of OGL's primary asset, the Kearney graphite mine (the "**Mine**"). These include the following, among other things:
  - (a) Providing the Ministry of Energy, Northern Development and Mines (the "**ENDM**") and Ministry of the Environment, Conservation and Parks (the "**MECP**") with notice that OGL would be abandoning the Mine following termination of the DIP Facility and that OGL was unable to continue with its required environmental compliance activities;
  - (b) Advising ENDM and MECP that the CCAA Proceedings would be terminated upon the filing of the Termination Certificate; and
  - (c) Ensuring that the ENDM received the appropriate contact details for the individuals at the Mine site that carried out the day to day environmental compliance activities for OGL.
9. Notwithstanding that the SISP did not result in the receipt of any SISP-compliant or otherwise satisfactory offers and that the Termination Order had been granted, the Monitor became aware of certain expressions of interest received from several parties outside the context of the SISP and, in consultation with OGL and the DIP Lender, determined that it would be beneficial to the interests of OGL, its creditors and stakeholders to delay the filing of the Termination Certificate, which preserved the ability to seek a vesting order from the

Court in the event that any potential purchaser was prepared to execute a definitive transaction agreement with respect to some or all of the Assets.

## PURPOSE

10. The Monitor files this Third Report in respect of its motion dated April 21, 2021 (the “**Motion**”). The Monitor seeks the following relief:
  - (a) Granting the Monitor expanded powers to execute transaction documents and make decisions in respect of an offer (the “**Bold LOI**”) presented by Bold Global Advisory Ltd. (“**Bold**”) for the purchase of the Mine (the “**Transaction**”) or in the event another party brings forward an offer for the purchase of the Mine;
  - (b) Suspending certain provisions of the Termination Order and extending the Stay Period to September 30, 2021;
  - (c) Increasing the quantum of the Administration Charge to CAD\$1,000,000;
  - (d) Approving this Third Report and the activities of the Monitor as described therein;  
and
  - (e) Granting certain other ancillary relief in respect of any potential liabilities that the Monitor may be exposed to as a consequence of seeking an expansion of its powers in order to negotiate and advance the Transaction to a closing.

## TERMS OF REFERENCE

11. In preparing this Third Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, OGL’s books and records, discussions with management of OGL (“**Management**”), discussions with Orionis and its



legal counsel, and information from third-party sources (collectively, the “**Information**”). Except as described in this Third Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
  - (b) Deloitte has prepared this Third Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the Motion. Parties using the Third Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
12. Unless otherwise stated, all dollar amounts contained in this Third Report are expressed in U.S. dollars, OGL’s reporting currency.

#### **DEVELOPMENTS SINCE THE ISSUANCE OF THE TERMINATION ORDER**

13. As set out above, the Court issued the Termination Order on April 29, 2020. Since that date, the Monitor has been in periodic contact with a member of the management of OGL (the “**Management**”) in respect of certain parties that may be interested in acquiring the Mine. Management advised the Monitor that there were parties that did not participate in the SISP that may have interest outside of a formal insolvency process. Management began to engage with such parties shortly after the Termination Order was granted to determine

if a transaction could be consummated. Such activity continued through the balance of 2020. Certain parties that participated in the SISF also continued to express interest in the opportunity to acquire the Mine.

14. On April 28, 2020, prior to the issuance of the Termination Order, and pursuant to section 148 of the *Mining Act*, R.S.O. 1990, c. M. 14, and as delegate of the Minister of ENDM, the Director of Mine Rehabilitation issued Directions (the “**Directions**”). Pursuant to the Directions specified employees and agents of the ENDM were required to take actions to remedy the environmental condition and environmental damage affecting the Mine. Specifically, and pursuant to the Directions, employees and agents of ENDM have taken steps to:
  - (a) manage and treat surface water at the property;
  - (b) dredge and maintain the polishing pond; and
  - (c) secure the property against unauthorized access.
15. ENDM has advised the Monitor that it has expended approximately CAD\$1.4 million (net of financial assurance previously provided to MECP by OGL) in both capital and operating disbursements in remedying the environmental condition or environmental damage affecting the Mine, as required by the Directions. While the Monitor (through its counsel) has not undertaken a full review of the priority of ENDM’s charge on the Mine assets, stakeholders currently expect the amount disbursed to be repaid to ENDM out of the proceeds of the Transaction.

16. Over the last year, Management has identified several parties that expressed some level of interest in acquiring the Mine. Despite several potential transactions that looked like they could result in a binding offer, no such offers were received prior to the Bold LOI.
17. As noted above, notwithstanding the granting of the Termination Order, the stay of proceedings continued indefinitely pending the filing of the Termination Certificate, which permitted Management to focus its efforts on seeking a buyer for the Mine. Management provided the Monitor with periodic updates in respect of the continuing interest for the purchase of the Mine. Due to the fact that there was still ongoing, although limited interest in the Mine, the Monitor (in consultation with OGL and the DIP Lender) opted to not file the Termination Certificate. The Monitor was of the view that if a transaction for the purchase of the Mine materialized, Management and the potential purchaser would likely require access to the CCAA Proceedings, including obtaining an approval and vesting order from the Court, as a condition to closing a sale of the Mine and that their efforts to negotiate the terms of, and complete, any letter of intent or transaction would benefit from the continuation of the stay of proceedings.
18. In late December 2020, the Monitor was advised by Management that there was a potential transaction developing that was extremely promising. The Monitor was further advised that the potential bidder was North American Carbon Solutions (“NACS”), a newly incorporated entity constituted for the sole purpose of acquiring the Mine.
19. The Monitor understands that OGL’s current chief executive officer is also the chief executive officer of NACS.
20. On March 9, 2021, the Monitor was approached by a principal of Bold who expressed an interest in acquiring the Mine. In order to facilitate such interest, the Monitor provided

- Bold with a non-disclosure agreement (the “NDA”), which it executed. Management granted Bold access to due diligence materials as a result of the execution of the NDA.
21. The Monitor engaged in a number of discussions with Bold in respect of its interest in acquiring the Mine. Such discussions involved the status of OGL and its assets, the process by which the Mine could be acquired, and the status of the Mine’s care and environmental compliance.
  22. On March 23, 2021 Bold submitted a letter of intent to the Monitor. The original letter of intent has been negotiated by Bold and the Monitor, in consultation with Orionis. Such negotiations have resulted in the terms of the Bold LOI. The Bold LOI contains the following material provisions, although a redacted copy of same is not being provided in this Third Report given the confidentiality clause included therein. An unredacted version of the Bold LOI is being provided to the Court as Confidential Appendix “1”:
    - (a) Bold proposes to form a special purpose vehicle to purchase the Mine assets but will not be acquiring OGL’s interest in any financial assurance that has been posted with either ENDM or MECP. Such funds are specifically identified as “excluded assets” from the Transaction;
    - (b) The full purchase price contemplated in the Bold LOI will be held in trust by the Monitor pending the consummation or cancellation of the Transaction. The Monitor is currently holding the full purchase price in its trust account;
    - (c) The Transaction is subject to several conditions including:
      - (i) The negotiation of a definitive agreement between the buyer and seller;
      - (ii) Court approval;

- (iii) Obtaining certain regulatory consents related to the Mine's operations;
  - (iv) The posting of necessary financial assurance with either of the MECP or ENDM; and
  - (v) MECP and ENDM consenting to return the Mine after the required care and maintenance costs have been reimbursed to MECP and ENDM. The Monitor notes that ENDM staff is undertaking actions required by the Directions, notwithstanding the language of the Bold LOI.
- (d) The Bold LOI contains exclusivity provisions in favour of Bold through May 13, 2021, although such exclusivity may be terminated if notice is given under limited defined circumstances; and
- (e) The Bold LOI is binding and subject only to conditions (ii) through (v) in paragraph 22(c) above.
23. Notwithstanding the terms of the Bold LOI, ENDM has advised the Monitor of the following:
- (a) The financial assurance posted with ENDM is not an OGL asset that can be purchased; and
  - (b) There are certain regulatory requirements of MECP and ENDM that need to be satisfied by Bold in order to transfer any licenses, permits or consents that have previously been provided to OGL. The posting of financial assurance, or the rectification of any deficiencies in the current level of same posted by OGL, will be required.
24. An unredacted copy of the Bold LOI is attached as Confidential Appendix "1" to this Third Report.

25. The Monitor had also been advised that a member of Management was working to advance a bid from NACS. The Monitor advised Management on March 25, 2021 that NACS would have until the close of business (Vancouver time) on March 29, 2021 to submit a binding bid for the Mine. NACS ultimately submitted a bid letter (the “NACS LOI”), an unredacted copy of which is attached hereto as Confidential Appendix “2”.
26. The Monitor determined that, despite the termination of the SISP and that no formal sale process remained in place, affording NACS an opportunity to present a competing bid by March 29, 2021 was appropriate and fair in the circumstances.
27. On reviewing the Bold LOI and the NACS LOI, the Monitor determined that the Bold LOI was the superior bid in the circumstances.
28. The Bold LOI and the NACS LOI were provided to the DIP Lender for its review and comments. After certain clarifications, the DIP Lender advised the Monitor that it would support the transaction contemplated by the Bold LOI.
29. The unredacted Bold LOI was provided to Management for signature on behalf of OGL on April 13, 2021. Management executed the Bold LOI and returned it to the Monitor on April 16, 2021. The Monitor received Bold’s counter signature later that day on April 16, 2021.
30. Since that time, the Monitor has worked with Bold to advance its diligence efforts in furtherance of entering into the Transaction, which included inviting Bold to meet with representatives of ENDM and MECF so that the conditions in the Bold LOI could be addressed.

**RATIONALE FOR RELIEF SOUGHT**

31. After further discussions with the DIP Lender, its counsel and OGL's counsel, the Monitor is seeking an order from the Court expanding its powers with the objective of entering into the Transaction for and on behalf of OGL and returning to Court for approval of the Transaction. Although Management has previously assisted the Monitor in signing back the Bold LOI, the Monitor and the DIP Lender are of the view that since Management representatives are still desirous of proceeding with the NACS bid, should the Transaction not be approved by the Court or otherwise fail to close, it would be preferable to grant the Monitor certain expanded powers in order to empower the Monitor to proceed to negotiate with Bold with the object of entering into the Transaction and bringing the Transaction before the Court for approval. Further, should the Transaction not close and NACS wish to proceed with the transaction contemplated by the NACS LOI, it may be preferable at that time for the Monitor to negotiate on behalf of OGL due to the dual role of certain members of Management as executives of both OGL and NACS.
32. For this reason, and in furtherance of general transaction efficiency, the Monitor is seeking the expanded powers as contained in the draft Order attached hereto as Appendix "H". The DIP Lender is supportive of the proposed relief. The Monitor is also seeking certain declarations from the Court that limit its liability in the context of its proposed expanded powers. Given that the Monitor is seeking the expanded powers solely for the purpose of advancing the Transaction (or a similar transaction with the approval of the DIP Lender), the Monitor is of the opinion that such protections are appropriate in the circumstances.
33. The Monitor is also seeking to suspend certain provisions of the Termination Order that provide for the termination of these CCAA Proceedings. The Monitor further seeks to



extend the Stay Period to September 30, 2021 in order to provide the Monitor with sufficient time to pursue entering into the Transaction with Bold, seek Court approval of the Transaction and proceed to close the Transaction if approved by the Court.

34. As noted earlier in this Third Report, none of the Monitor, its counsel or counsel to OGL have been paid for their services since the commencement of these CCAA Proceedings due to the lack of proceeds from the sale of any or all part of OGL's business or Assets. In order to address the foregoing, the Monitor is also seeking to increase the Administration Charge in order to secure its currently outstanding and forecast fees and those of the DIP Lender's counsel, BLG, Miller Thomson and Stikeman Elliot LLP (the Monitor's former counsel prior to the CCAA Proceedings). The proposed increase is to CAD\$1,000,000, which the Monitor believes should be sufficient to address the relevant professional costs through to a closing of the Transaction. Such costs would be paid out of the proceeds of the Transaction upon closing. The DIP Lender supports this relief.
35. The Monitor further notes the following in respect of its request to increase the Administration Charge from CAD\$200,000 to CAD\$1,000,000:
- (a) Given the MAC Notice and the implications of the Termination Order, it was necessary for the Monitor and its counsel to engage with stakeholders in respect of OGL's ongoing environmental compliance activities. This required the coordination between Management, ENDM and MECP;
  - (b) Given the termination of the DIP Facility, there was significant professional time required in order to determine the path that the CCAA Proceedings should follow. This involved discussions with Orionis and OGL and their respective counsel;

- (c) Since the Termination Order was issued the Monitor has been in regular contact with Management about potential transactions and has also entertained expressions of interest from other parties, although no such party ultimately proceeded with a transaction. These consultations include time immediately following the issuance of the Termination Order and also more recently related to the Bold LOI and NACS LOI. The Monitor expects significant professional time to be incurred to advance the Transaction to a closing; and
  - (d) Amounts currently outstanding are significantly in excess of any retainers that were held as security by the various parties.
36. All of the work set out above has been undertaken by the Monitor and its counsel with no certainty or prospect of payment. The Monitor is of the view that it is appropriate to increase the Administration Charge to allow the Transaction to proceed and be brought to a close to provide value for stakeholders. The Monitor has discussed the increase with Orionis, who is supportive of the relief being sought.

**RECOMMENDATIONS**

37. For the reasons set out above, the Monitor respectfully recommends that the Court approve the relief that the Monitor is seeking and issue the draft Order attached as Schedule “A” to the Notice of Motion and Appendix “H” to this Third Report.

All of which is respectfully submitted this 21<sup>st</sup> day of April 2021.

**Deloitte Restructuring Inc.**

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

Per:

A handwritten signature in black ink, appearing to read "Philip J. Reynolds". The signature is written in a cursive, flowing style.

Philip J. Reynolds, LIT  
Senior Vice-President

**Appendix “H”**

**Expansion of the Powers of the Monitor Order**

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

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

THE HONOURABLE	)	MONDAY, THE 26 <sup>TH</sup> DAY
	)	
JUSTICE MCEWEN	)	OF APRIL, 2021

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent



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

**ORDER**

**(Expansion of the powers of the Monitor)**

**THIS MOTION**, made by Deloitte Restructuring Inc. (“**Deloitte**” or the “**Monitor**”), in its capacity as the Court-appointed Monitor in respect of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“**CCAA**”) proceedings of the respondent, Ontario Graphite, Ltd. (“**OGL**”), for an order to amend the Restated and Amended Initial Order, dated February 20, 2020 (the “**Initial Order**”), as modified by the SISP & IRP Approval Order dated

February 20, 2020 and the CCAA Termination Order dated April 29, 2020 (the “**CCAA Termination Order**”) and such further relief as may be required in the circumstances and which this Court deems as just and equitable, was heard this day by videoconference via Zoom in Toronto due to the COVID-19 pandemic.

**ON READING** the Third Report of the Monitor, dated April 21, 2021 (the “**Third Report**”) filed, and on hearing the submissions of counsel for the Monitor, counsel for OGL, counsel for the Applicant Orionis Corporation (“**Orionis**”), and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Adriana Gasparini sworn April 21, 2021, filed,

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meanings attributed to them in the Third Report and the Initial Order.
2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is validated so that the Motion is properly returnable today and dispenses with further service thereof, including without limitation, any prescribed notice requirements under the CCAA.
3. **THIS COURT ORDERS** that the Third Report and the activities of the Monitor as set out therein be and are hereby approved.
4. **THIS COURT ORDERS** that paragraphs 5, 6 and 7 of the CCAA Termination Order be and are hereby suspended until further order of this Court on notice to the Service List.
5. **THIS COURT ORDERS** that the Stay Period as set out in the Initial Order shall expire on September 30, 2021, unless further extended by order of this Court on notice to the Service List.
6. **THIS COURT ORDERS** that the Administration Charge, as provided for in paragraph 30 of the Initial Order, be and is hereby increased to \$1,000,000 on the same basis and priority as set out in the Initial Order.

7. **THIS COURT ORDERS** that in addition to the rights, obligations and powers of the Monitor, as set out in the Initial Order, or in any other order of this Court in these proceedings, the Monitor be and is hereby authorized and empowered to:

- (a) take any and all actions and steps, including without limitation, execute any and all documents and writings, for and on behalf of and in the name of OGL, in furtherance of negotiating and entering into a definitive transaction (the “**Transaction**”) with Bold Global Advisory Ltd. (“**Bold Global**”), substantially in accordance with the terms of the binding letter of intent dated April 13, 2021 (the “**Bold Global LOI**”), or with any other person, or entity as the Monitor may determine is appropriate, in its discretion and in consultation with the DIP Lender, for the sale of the Business and/or the Property or any part, or parts thereof;
- (b) engage any person, or entity, or cause OGL to engage such person, or entity as the Monitor deems necessary or advisable, in its discretion, to assist the Monitor and/or OGL to negotiate and enter into the Transaction; and,
- (c) meet with and direct management, or any employees of and persons retained by OGL, including OGL’s counsel, to assist the Monitor solely with regard to the negotiating and entering into the Transaction and such other matters as are reasonably ancillary thereto.

8. **THIS COURT ORDERS** that the enhancement of the Monitor’s powers as set forth in this Order, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the employment by the Monitor of any person, or entity in connection with its appointment and the performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of OGL within the meaning of any provincial, federal or municipal legislation or common law governing employment, persons, labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individual arising from or relating to their previous employment by OGL.

9. **THIS COURT ORDERS** that the Monitor is not and shall not be, or be deemed to be a director, or an officer of OGL.

10. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, OGL shall remain in possession and control of the Business and the Property and that the Monitor shall not take possession, or control, or be deemed to have taken possession or control of the Business or the Property, or any part thereof. For greater certainty, the Monitor shall not take possession or control of the Mine (as defined in the Second Report), and in no manner whatsoever shall the enhanced powers granted to the Monitor pursuant to this Order be deemed to have granted the Monitor such possession, or control of the Mine, the Business or the Property.

11. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and be extended to the Monitor, and its legal counsel, in respect of the fulfillment of its duties and obligations in carrying out of the provisions of this Order.

12. **THIS COURT ORDERS** that nothing in this Order shall constitute, or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors of OGL, or legal representative of OGL within the meaning of any relevant legislation and that any future distributions to the creditors of OGL that may be authorized by, or made by the Monitor, subject to the prior approval of this Court, shall be deemed to have been made by OGL itself.

13. **THIS COURT ORDERS** that, other than as specifically provided for herein, nothing in this Order shall derogate from the provisions of the CCAA Termination Order.

14. **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 OGL and 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 Monitor, as an



officer of this Court, as may be necessary or desirable to give effect to this Order or to assist OGL and the Monitor and their agents in carrying out the terms of this Order.

McE T.

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

ORIONIS CORPORATION  
Applicant

-AND-

ONTARIO GRAPHITE, LTD.  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor

**Appendix "I"**  
**Stay Extension Order**

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

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

THE HONOURABLE MADAM ) THURSDAY, THE 23<sup>rd</sup> DAY  
 )  
JUSTICE DIETRICH ) OF SEPTEMBER, 2021

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent



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

**ORDER**

**(Stay Extension)**

**THIS MOTION**, made by Deloitte Restructuring Inc. ("**Deloitte**" or the "**Monitor**"), in its capacity as the Court-appointed Monitor in respect of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("**CCAA**") proceedings of the respondent, Ontario Graphite, Ltd. ("**OGL**"), for an order to amend the Amended and Restated Initial Order, dated February 20, 2020 (the "**Initial Order**") and the CCAA Termination Order dated April 29, 2020

(the “**Termination Order**”) and such further relief as may be required in the circumstances and which this Court deems as just and equitable, was heard this day by videoconference via Zoom in Toronto due to the COVID-19 pandemic.

**ON READING** the Fourth Report of the Monitor, dated September 21, 2021 (the “**Fourth Report**”) filed, and on hearing the submissions of counsel for the Monitor, counsel for OGL, counsel for the Applicant Orionis Corporation (“**Orionis**”), and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Adriana Gasparini sworn September 21, 2021, filed,

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meanings attributed to them in the Fourth Report and the Initial Order.
2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is validated so that the Motion is properly returnable today and dispenses with further service thereof, including without limitation, any prescribed notice requirements under the CCAA.
3. **THIS COURT ORDERS** that the Fourth Report and the activities of the Monitor as set out therein be and are hereby approved.
4. **THIS COURT ORDERS** that paragraphs 5, 6 and 7 of the Termination Order be and are hereby further suspended until further order of this Court on notice to the Service List.
5. **THIS COURT ORDERS** that the Stay Period as set out in the Initial Order shall expire on March 31, 2022, unless further extended by order of this Court on notice to the Service List.
6. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and empowered to act as OGL’s agent for the purpose of maintaining OGL’s mining claims (the “**OGL Mining Claims**”) within the Ministry of Northern Development, Mines, Natural Resources and Forestry Mining Lands Administration System (“**MLAS**”), and in furtherance of this purpose Todd Ambachtsheer (“**Ambachtsheer**”) shall be appointed as profile administrator (“**Profile Administrator**”) in the MLAS system with regard to the OGL Mining Claims registered in the mining claims registry in MLAS, and Ambachtsheer, in his capacity as Profile Administrator, is

hereby authorized and empowered to access OGL's MLAS account for such purpose. Neither the Monitor, nor Ambachtsheer shall have any liability, personal or corporate, while acting as OGL's agent, or in the case of Ambachtsheer as the Profile Administrator in accordance with paragraph 6 of this Order and all the protections afforded to the Monitor under the Expansion of Powers Order dated April 26, 2021 (the "**Expansion of the Powers of the Monitor Order**") shall continue and apply to the Monitor while acting as agent for OGL and to Ambachtsheer while acting as Profile Administrator.

7. **THIS COURT ORDERS** that, other than as specifically provided for herein, nothing in this Order shall derogate from the provisions of the CCAA Termination Order and the Expansion of the Powers of the Monitor Order.

8. **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 OGL and 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist OGL and the Monitor and their agents in carrying out the terms of this Order.

A handwritten signature in cursive script, reading "Dietrich J.", is positioned above a horizontal line that extends across the width of the signature.

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

ORIONIS CORPORATION  
Applicant

-AND-

ONTARIO GRAPHITE, LTD.  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor

**Appendix “J”  
Fourth Report**



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

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

**BETWEEN:**

**ORIONIS CORPORATION**

Applicant

**- and -**

**ONTARIO GRAPHITE, LTD.**

Respondent

**FOURTH REPORT OF THE MONITOR**

**DATED SEPTEMBER 21, 2021**

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## INTRODUCTION

1. On February 12, 2020, Orionis Corporation (“**Orionis**”), as secured creditor, commenced a proceeding (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of Ontario Graphite, Ltd. (“**OGL**”) for the purpose of commencing a court-supervised sale and investment solicitation process in respect of OGL’s assets, undertakings, and properties, real and personal (collectively, the “**Assets**”).
2. As a result of Orionis’ application, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (as amended and restated on February 20, 2020, the “**Initial Order**”, attached hereto as Appendix “**A**”) that among other things:
  - (a) Appointed Deloitte Restructuring Inc. (“**Deloitte**”) as monitor (the “**Monitor**”) of OGL;
  - (b) Granted a stay of proceedings in respect of OGL through to April 29, 2020;
  - (c) Approved a charge in favour of OGL’s directors and officers in the amount of CAD\$200,000 (the “**Directors’ Charge**”);
  - (d) Approved a charge in respect of the fees and expenses of the Monitor, its counsel, counsel to Orionis and counsel to OGL in the amount of CAD\$200,000 (the “**Administration Charge**”); and
  - (e) Approved a debtor-in-possession credit facility (the “**DIP Facility**”) established under a CCAA Debtor-In-Possession Financing Term Sheet dated February 10,

2020 (the “**DIP Term Sheet**”) between OGL and Orionis (the “**DIP Lender**”) and also approved a charge in favour of Orionis in respect of such DIP Facility.

3. On February 20, 2020, the Court granted a further Order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation procedure (the “**SISP**”) to identify bidders or investors for the Assets. The SISP was to be administered by the Monitor and was summarized in the first report of the Monitor dated February 19, 2020 (the “**First Report**”). A copy of the First Report (without appendices) is attached hereto as Appendix “**B**”. A copy of the SISP Approval Order is attached hereto as Appendix “**C**”.
4. Despite the onset of the COVID-19 pandemic and with the concurrence of the DIP Lender, the Monitor administered the SISP in accordance with its terms. At the conclusion of Phase 1 of the SISP (as such term is defined in the SISP), the Monitor received three bids and shared a summary of same with Orionis. Orionis subsequently advised that it did not find any of the three bids to be compliant with the terms of the SISP or to provide sufficient value and, as a result, issued a notice terminating the DIP Facility.
5. The DIP Facility was OGL’s only source of liquidity and, as a result of its termination, OGL had no ongoing source of funding. Given this fact, the Monitor issued a notice of material adverse change (the “**MAC Notice**”) and filed its second report, dated April 21, 2020 (the “**Second Report**”) with the Court. A copy of the Second Report (without appendices) is attached hereto as Appendix “**D**”.
6. The Monitor subsequently issued a supplement to its Second Report on April 28, 2020 (the “**Supplemental Second Report**”). The Supplemental Second Report (attached hereto as Appendix “**E**”) provided details in respect of the following:

- (a) The request for an order in respect of the termination of OGL's CCAA Proceedings (the "**Termination Order**") subject to the Monitor filing a certificate (the "**Termination Certificate**"), certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed. A copy of the Termination Order is attached hereto as Appendix "**F**";
  - (b) The request for Court approval of the conduct, fees and disbursements of the Monitor and its counsel, Borden Ladner Gervais LLP ("**BLG**") from the commencement of the CCAA Proceedings up to and including April 29, 2020 and April 26, 2020, respectively;
  - (c) Maintaining various charges and protections for the Monitor and its counsel that were granted by the Court during the CCAA Proceedings; and
  - (d) Providing the Monitor with a release in respect of its activities related to the CCAA Proceedings.
7. As of March 2021, the Monitor had not filed the Termination Certificate as the management of OGL ("**Management**") was working to identify a party or parties that may have an interest in purchasing the Assets with the approval of the Court (and after consulting with the DIP Lender).
8. As set out in greater detail in the Third Report (as defined below), two parties approached the Monitor in the intervening period regarding a potential purchase of the Assets. One was a third party, Bold Global Advisory Ltd. ("**Bold**") and the other was an entity called North American Carbon Solutions, Inc. ("**NACS**"). The Monitor understands that one of the principals of NACS is a member of Management.

9. Bold provided the Monitor with a letter of intent to purchase the Assets on March 23, 2021 (the “**Bold LOI**”). NACS had not submitted a letter of intent for the Assets as of this date.
10. Given the competing interest in the Assets and with Orionis’s support, the Monitor provided a short additional period for NACS to submit a bid in respect of OGL’s Assets or business (the “**NACS Offer Deadline**”). The circumstances leading up to the selection of the preferred bidder for the Assets were set out in detail in the third report of the Monitor dated April 21, 2021 (the “**Third Report**”). A copy of the Third Report, without appendices, is attached hereto as Appendix “**G**”.
11. NACS ultimately submitted a bid for the Assets prior to the NACS Offer Deadline on March 29, 2021.
12. After reviewing the bids received from NACS and Bold, the Monitor, in consultation with Orionis, determined that the Bold offer was superior and proceeded to provide the Bold LOI to Management. Management executed the Bold LOI on behalf of OGL on April 16, 2021.
13. Given that a member of Management is a principal of NACS and that NACS was a competing bidder, the Monitor determined, in consultation with Orionis, that it would be beneficial to ask the Court to grant it additional powers to allow the Monitor to advance a transaction for the sale of the Assets. The Monitor filed a Motion seeking such expanded powers on April 21, 2021.
14. Counsel for NACS appeared at the hearing on April 26, 2021 wherein the Monitor was seeking an Order granting it expanded powers in order to advance a transaction related to the sale of the Assets (the “**Expansion of the Powers of the Monitor Order**”). Despite

initially raising concerns related to the draft Expansion of the Powers of the Monitor Order that the Monitor was seeking, NACS did not ultimately object to the Expansion of the Powers of the Monitor Order being granted. Orionis was supportive of the relief that was requested.

15. On April 26, 2021, the Court issued the Expansion of the Powers of the Monitor Order that provided the Monitor, among other things, the power to:
  - (a) Execute documents on behalf of OGL in furtherance of a sale transaction for the Assets (a “**Transaction**”);
  - (b) Engage persons or entities to assist the Monitor in advancing a Transaction; and
  - (c) Meet and direct Management, OGL or OGL’s counsel solely with regard to advancing a Transaction.
  
16. The Expansion of the Powers of the Monitor Order also, among other things:
  - (a) Increased the Administration Charge to CAD\$1 million;
  - (b) Approved the Third Report and the Monitor’s conduct described therein; and
  - (c) Extended the Stay Period to September 30, 2021.

A copy of the Expansion of the Powers of the Monitor Order is attached, hereto, as Appendix “**H**”.

17. In addition to advancing the process of completing a Transaction, the Monitor has worked with Bold, Orionis, and others to accomplish same and has made substantial progress since its last report to Court. Among other things, the Monitor has worked with a third-party mining lands consultant to extend a number of OGL’s expiring mining claims (the “**Expiring Mining Claims**”) that, absent steps that have been taken, were set to expire on

September 16, 2021. A summary of all of OGL's mining claims is included as Appendix "I". The Monitor has requested that it be named OGL's agent within the Mining Lands Administration System ("MLAS") for the sole purpose of having access to OGL's account to ensure that all of OGL's claims remain in good standing. The Monitor has been in contact with the Provincial Recording Office in order to affect this change, but it has not yet occurred.

#### **PURPOSE**

18. The Monitor files this Fourth Report in respect of its motion dated September 21, 2021 (the "**Motion**"). The Monitor seeks an order for the following relief:
  - (a) Extending the Stay Period to March 31, 2022;
  - (b) Authorizing and empowering the Monitor to act as OGL's agent solely for the purpose of maintaining the mining claims of OGL registered with the MLAS; and
  - (c) Approving the Monitor's conduct as described in this Fourth Report.
19. This Fourth Report also provides the Court with an update in respect of the Bold LOI.

#### **TERMS OF REFERENCE**

20. Deloitte has prepared this Fourth Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the Motion. Parties using the Fourth Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
21. Unless otherwise stated, all dollar amounts contained in this Fourth Report are expressed in U.S. dollars, OGL's reporting currency.



**DEVELOPMENTS SINCE THE ISSUANCE OF THE EXPANSION OF THE POWERS  
OF THE MONITOR ORDER**

22. The Bold LOI contains an exclusivity provision that granted Bold the exclusive right to pursue a Transaction. The exclusivity period contained in the Bold LOI terminated on the earlier of: i) the execution of a definitive agreement between Bold and OGL, and ii) May 13, 2021.
23. Bold and OGL have not yet entered into a definitive agreement in respect of a Transaction as Bold is still carrying out the final stages of its due diligence. The Monitor believes that Bold is continuing to act in good faith in pursuing the Transaction. As such and with Orionis's support, several extensions of the Bold LOI and the exclusivity period initially contained therein have been granted. As part of the first extension, the Monitor negotiated a significant non-refundable deposit from Bold that is currently held in its trust account along with the balance of the purchase price payable by Bold pursuant to the Bold LOI.
24. The current exclusivity period expires on September 30, 2021. Bold continues its due diligence and work to be in a position to execute a definitive agreement in respect of a Transaction. The Monitor does not expect that this will occur prior to the expiry of the current Stay Period and that additional time is required for this purpose.
25. Bold has advised the Monitor that it has, among other things, carried out the following:
  - (a) Engaged counsel to provide advice related to a Transaction and to review a draft form of purchase agreement prepared by the Monitor, in consultation with Orionis;
  - (b) Engaged environmental consultants to assist it with geotechnical and environmental due diligence;

- (c) Engaged in extensive discussions regarding OGL's mine site with the Ministry of the Environment, Conservation and Parks (the "MECP") and the Ministry of Northern Development, Mines, Natural Resources and Forestry (the "MNDMNRF" and together with the MECP, the "Ministries"); and
  - (d) Undertaken a site visit of OGL's mine site in Kearney, Ontario.
26. The Monitor also notes that, notwithstanding the termination of the DIP Facility, representatives of Orionis and the Monitor have been in regular contact regarding the status of these proceedings. The Monitor has sought input and support from Orionis with respect to various matters, including attendances at Court as well as the potential structure of any Transaction and related considerations. Orionis continues to support the Monitor's efforts to maximize value for OGL's stakeholders.

#### **RATIONALE FOR RELIEF SOUGHT**

27. Given the status of discussions with Bold regarding a Transaction, the Monitor is seeking an extension of the Stay Period to allow Bold to complete its due diligence, negotiate the terms of a definitive agreement, and close a Transaction. For this reason, the Monitor is of the view that it is appropriate to extend the Stay Period until March 31, 2022 to facilitate these activities for the benefit of stakeholders.
28. The Monitor is also seeking the Court's authorization to act, without personal liability, as OGL's agent for the purposes of maintaining the Expiring Mining Claims within the MLAS maintained by MNDMNRF. Absent the appropriate oversight, the Expiring Mining Claims could expire. Accordingly, the Monitor requests that it be authorized to act as OGL's agent for the sole purpose of preserving the Expiring Mining Claims in furtherance of closing a

Transaction with Bold. Granting the Monitor power to access OGL's MLAS account will minimize any risk that the Expiring Mining Claims will expire.

29. The Monitor has advised counsel to Orionis and counsel to OGL of the relief sought by the Monitor in this motion and neither party as expressed any objection thereto. The Monitor is not aware of any other objections to this motion.

### **RECOMMENDATIONS**

30. For the reasons set out above, the Monitor respectfully recommends that the Court approve the relief that the Monitor is seeking and issue the draft Order attached as Schedule "A" to its Notice of Motion and Appendix "J" to this Fourth Report.

All of which is respectfully submitted this 21<sup>st</sup> day of September, 2021.

**Deloitte Restructuring Inc.**

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

Per:



Todd Ambachtsheer, LIT  
Senior Vice-President

**Appendix “K”**  
**Redacted Share Purchase Agreement**

**PURCHASE AGREEMENT**

**AMONG**

**G6 ENERGY CORP.**

- and -

**ONTARIO GRAPHITE, LTD.**

**MADE AS OF February 23, 2022**

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**THIS PURCHASE AGREEMENT** is made as of February 23, 2022,

**BETWEEN:**

**G6 ENERGY CORP.**, a corporation governed by the laws of British Columbia,

(the “**Purchaser**”)

- and -

**ONTARIO GRAPHITE, LTD**, a corporation governed by the laws of Ontario,

(“**OGL**”)

**RECITALS:**

- A. Ontario Graphite Ltd. (“**Parent**”), an exempted company incorporated with limited liability in the Cayman Islands owns all of the common shares (the “**Existing OGL Shares**”) in the authorized capital of OGL, and the Existing OGL Shares constitute all of the issued and outstanding shares of OGL outstanding immediately prior to the Closing Time, which for greater certainty, does not include the Post-Consolidation OGL Shares.
- B. Pursuant to those certain Secured Notes between Orionis Corporation (“**Orionis**”), as lender, and OGL, as borrower, dated as of January 19, 2016, July 19, 2017, and March 20, 2019 (collectively, and in each case as amended, supplemented, and otherwise modified from time to time, the “**Orionis Credit Facilities**”), Orionis made various advances to OGL and, as at the date of this Agreement, the total indebtedness owing by OGL to Orionis thereunder is in excess of US\$18,840,227 (inclusive of accrued and unpaid interest).
- C. As security for the obligations under the Orionis Credit Facilities, OGL granted Orionis a security interest over all of its present and after-acquired property, assets and undertakings. In addition, Parent provided a guarantee to Orionis of all obligations under the Orionis Credit Facilities, which guarantee is secured by a pledge of the Existing OGL Shares.
- D. On the Filing Date, upon application of Orionis, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an initial order (as amended and restated on February 20, 2020, as modified by the SISP & IRP Approval Order dated February 20, 2020, and as may be further amended, amended and restated, or modified from time to time, the “**Initial Order**”) in respect of OGL commencing proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) (the proceedings thereunder hereinafter referred to as the “**CCAA Proceedings**”).

- E. Pursuant to the Initial Order, the Court, among other things, (i) appointed Deloitte Restructuring Inc. as “Monitor” in connection with the CCAA Proceedings, and (ii) approved a US\$2.75 million debtor-in-possession financing facility with Orionis, as lender, and OGL, as borrower, dated as of February 20, 2020 (the “**DIP Facility**”) and granted to Orionis a priority charge over the property, assets and undertakings of OGL to secure the obligations under the DIP Facility. As at the date of this Agreement, the total indebtedness owing by OGL to Orionis under the DIP Facility is in excess of US\$946,839 (inclusive of accrued and unpaid interest).
- F. Pursuant to the SISP & IRP Approval Order of the Court made on February 20, 2020, the Court approved a Sale and Investor Solicitation Process (the “**SISP**”), the purpose of which was to seek sale proposals or investment proposals from qualified bidders and to implement one or a combination of such proposals in respect of the assets, shares and/or business of OGL.
- G. After soliciting preliminary expressions of interest with respect to the SISP, the Monitor consulted with Orionis (being the key economic stakeholder in the CCAA Proceedings), who advised that it did not find any of the three bids received as part of the SISP to be compliant with the terms of the SISP or to provide sufficient value. As such, a default under the DIP Facility occurred and the Monitor subsequently obtained an Order of the Court on April 29, 2020 (the “**Termination Order**”) that provided for the discharge of the Monitor, approval of professional fees, and the termination of the CCAA Proceedings upon the filing of a certificate (the “**Monitor’s Termination Certificate**”).
- H. Subsequent to the making of the Termination Order but prior to the filing of the Monitor’s Termination Certificate, the Monitor received two expressions of interest for OGL’s assets. In response to such expressions and in consultation with Orionis, the Monitor designed a process to allow for each party to submit their best offer in accordance with certain procedures communicated by the Monitor to both parties (the “**Informal SISP**”).
- I. In accordance with the requirements of the Informal SISP, OGL and an Affiliate (as defined below) of the Purchaser entered into a binding letter of intent as of April 16, 2021 (as amended on May 25, 2021, August 5, 2021, September 3, 2021, September 30, 2021, October 29, 2021, November 30, 2021, December 31, 2021, January 14, 2021, and January 31, 2022, and as may be further amended or modified, the “**LOI**”) setting out the material terms and conditions upon which the Purchaser would be prepared to acquire the Business of OGL, and the Purchaser, OGL and the Monitor, in consultation with Orionis, have determined that the most efficient manner to implement the LOI is pursuant to the transactions contemplated by this Agreement.
- J. Pursuant to an order made on April 26, 2021, the Court (i) suspended certain provisions of the Termination Order and (ii) granted the Monitor enhanced powers to, among other things, (A) execute the LOI on behalf of OGL, (B) negotiate and enter into a definitive transaction on behalf OGL with the Purchaser, and (C) to carry out various ancillary actions relating to the negotiation and entering into such transaction (the “**Expanded Powers Order**”).

- K. The Purchaser and the Monitor, on behalf of OGL, in consultation with Orionis, have determined that the most efficient manner to implement the LOI is pursuant to the transactions contemplated in this Agreement, which includes, inter alia, (i) the vesting out of the claims and security interests held by Orionis in the Retained Assets (as defined below) pursuant to the Orionis Credit Facilities, the DIP Facility, and the security delivered in connection therewith and (ii) the issuance by OGL of the New OGL Shares to the Purchaser.
- L. Following the issuance of the New OGL Shares to the Purchaser and the completion of the Consolidation and Cancellation, the Purchaser shall own all of the Post-Consolidation OGL Shares (being all of the outstanding shares of OGL).

**NOW THEREFORE**, in consideration of the covenants and agreements herein contained and other good and valuation consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Definitions**

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

“**Additional Consideration**” has the meaning set out in Section 3.1.

“**Administration Charge**” has the meaning set out in the Initial Order;

“**Affiliate**” has the meaning set out in the *Canada Business Corporations Act*;

“**Agreement**” means this Purchase Agreement, including all schedules, and all amendments or restatements, as permitted, and references to “**Article**” or “**Section**” mean the specified Article or Section of this Agreement;

“**Approval and Vesting Order**” means the order of the Court, substantially in form and substance attached as Schedule 1.1(f) (or as otherwise agreed upon by, on one hand, the Purchaser and, on the other hand, OGL with the consent of the Monitor and Orionis) that, among other things, (a) approves this Agreement and the Transactions; (b) adds ExcludedCo as an applicant in the CCAA Proceedings; (c) vests in and to ExcludedCo, the Excluded Assets and Excluded Liabilities and releases OGL from the Excluded Liabilities; and (d) authorizes and directs the Monitor on behalf of OGL to execute the the amendments to the Basserman Agreements described herein;

“**Basserman Agreements**” means (i) the existing trust agreements related to those Properties registered in the name of Robert James Basserman and (ii) the respective option agreements related to the Properties between OGL and Vinecrest Management Services Limited and Vincent Sheehan;

“**Basserman Amendment Agreements**” has the meaning set out in Section 7.7.

**“Benefit Plans”** means:

- (a) plans providing for employment benefits relating to disability or wage or benefits continuation during periods of absence from work, and any and all employment benefits relating to hospitalization, healthcare, medical or dental treatments or expenses, life insurance, accidental death and dismemberment insurance, death or survivor’s benefits, and supplementary employment insurance, in each case regardless of whether or not such benefits are insured or self-insured; and
- (b) plans in the nature of compensation plans, which means all employment benefits relating to bonuses, incentive pay or compensation, performance compensation, deferred compensation, profit sharing or deferred profit sharing, vacation or vacation pay, sick pay, severance or termination pay, employee loans or separation from service benefits, or any other type of arrangement providing for compensation or benefits additional to base pay or salary, but not any share purchase, share option, stock appreciation or phantom stock plans,

in each case to which OGL is a party and by which OGL is bound, or under which OGL has any liability or contingent liability with respect to any of its respective Employees or former employees (or any spouses, dependants, survivors or beneficiaries of any such Employees or former Employees), directors or officers, individuals working under contract with OGL (i.e., independent contractors) or other individuals providing services to any of them of a kind normally provided by Employees or eligible dependants of such Person, including Statutory Plans;

**“Books and Records”** means all books and records of OGL, including those relating to the Business or the Retained Assets, and all financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, formulae, business reports, plans and projections, drill core, bulk samples, assays, studies, reports (including technical and environmental reports) mine plans, closure plans, advice and files of lawyers and accountants or other advisors of OGL, and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise including all data, information and databases stored on computer-related or other electronic media, whether subject to privilege or not;

**“Business”** means the business carried on by OGL, being the ownership and operation of the Kearney Graphite Project located in Ontario as described in Schedule 1.1(a);

**“Business Day”** means any day, other than a Saturday or Sunday or any day on which banks are generally not open for business in the City of Toronto;

**“CCAA”** has the meaning set out in Recital D;

**“CCAA Charges”** means the Administration Charge, the DIP Lender’s Charge and the Directors’ Charge (each as defined in the Initial Order) and the IRP Charge (as defined in the SISP & IRP Approval Order of the Court made on February 20, 2020);

“**CCAA Proceedings**” has the meaning set out in Recital D;

“**Claims**” means claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, arbitrations, informations or other similar processes, assessments or reassessments, judgments, debts, indebtedness, liabilities, obligations, expenses, costs, damages or losses, contingent or otherwise (whether contractual, statutory, or otherwise), of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a partial indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;

“**Closing**” means the completion of the Transactions on the Closing Date;

“**Closing Date**” means the date that is two (2) Business Days from the date on which all conditions set out in Article 7 and Article 8 respectively, (other than those conditions that by their nature can only be satisfied on the Closing Date) have been satisfied or waived or such other date as may be agreed to in writing by the Parties;

“**Closing Time**” means the time on the Closing Date at which Closing occurs, as evidenced by the Monitor’s Closing Certificate;

“**Closure Plan FA**” means the [REDACTED] held by NDMNRF as financial assurance pursuant to the *Mining Act* (Ontario) in connection with a closure plan filed by OGL with NDMNRF in connection with the Kearney Graphite Mine;

“**Contracts**” means contracts, licences, leases, agreements, agreements to lease, obligations, purchase orders, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which OGL is a party and to which OGL is bound (in each case, whether written or oral, express or implied), and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees;

“**Consolidation and Cancellation**” means the consolidation of all New OGL Shares and Existing OGL Shares in accordance with the Consolidation Ratio, and the cancellation of all fractional New OGL Shares and all Existing OGL Shares in accordance with Article 2 hereof;

“**Consolidation Ratio**” means the ratio by which New OGL Shares and Existing OGL Shares shall be consolidated, as determined by the Purchaser, acting reasonably and in consultation with the Monitor, given the intended effect of the Transactions;

“**Court**” has the meaning set out in Recital D;

“**DIP Facility**” has the meaning set out in Recital E;

“**DIP Lender’s Charge**” has the meaning set out in the Initial Order;

“**Directors Order**” means Order Number 7328-BEMKE5, issued October 18, 2019, and amended on December 11, 2019.

“**Discharged**” means, in relation to any Encumbrance against any Person or upon any asset, undertaking or property, including all proceeds thereof, the full, final, complete and permanent waiver, release, discharge, cancellation, termination and extinguishment of such Encumbrance and all related rights or obligations thereunder against such Person or upon such asset, undertaking or property and all proceeds thereof;

“**Employee Costs**” means wages, vacation pay, employee benefits, notice of termination, termination pay, severance pay and all other costs, liabilities and obligations including entitlements under Benefit Plans, stock options or incentive compensation whether due under contract, statute, common law, and any other Claims, owing by OGL to, or arising from or in connection with any Employee;

“**Employees**” means any current or former individuals employed or retained by OGL, on a full-time, part-time or temporary basis, including those employees on disability leave, parental leave or other absence;

“**Encumbrances**” means pledges, liens, charges, security interests, hypothecs, leases, title retention agreements, mortgages, options, adverse claim, levies, trusts or deemed trusts, guarantees or any right or obligation under any guarantee, or encumbrances of any kind or character whatsoever (whether contractual, statutory, or otherwise), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including without limitation, (a) the rights of others in the ores, minerals, metals (in whatever state), inventories, work in progress, waste rock, or stockpiles, (b) any encumbrances or charges created by any Order of the Court, including the CCAA Charges and the DIP Lender’s Charge, and (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;

“**Equipment Contracts**” means motor vehicle leases, equipment leases, conditional sales contracts, title retention agreements and other similar agreements binding upon OGL;

“**Escrow Funds**” means the [REDACTED] delivered from the Purchaser (or an Affiliate) to the Monitor at the time that the LOI was entered into and which the Monitor is currently holding in its trust account;

“**Excluded Assets**” means:

- (a) Excluded Contracts;
- (b) Intercompany Liabilities receivables (and all Claims, Encumbrances and Contracts relating thereto);



- (c) the shares of subsidiaries of OGL not specifically designated as Retained Assets;
- (d) any input tax credits that may arise as a result of the NDMNRF ITCs; and
- (e) any properties, assets and rights that are added to the Excluded Assets pursuant to Section 2.6(b), Section 2.7 or Section 2.8;

**“Excluded Assets Bill of Sale”** has the meaning set out in Section 2.6(b);

**“Excluded Contracts”** means all the Contracts of OGL, that:

- (c) are not Retained Contracts;
- (d) are Excluded Leases; or
- (e) are added as Excluded Contracts pursuant to Section 2.6(b), Section 2.7 or Section 2.8;

**“Excluded Leases”** means all Leases in respect of the Leased Real Property listed in Schedule 1.1(c), which for greater certainty have been or will be disclaimed by OGL in the CCAA Proceedings, including any Leases that are added as Excluded Leases pursuant to Section 2.6(b), Section 2.7 or Section 2.8;

**“Excluded Liabilities”** means, other than the Retained Liabilities, all debts, obligations, Liabilities, Encumbrances, indebtedness, contracts, leases, agreements, undertakings, Claims, rights and entitlements of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or in equity and whether based in statute or otherwise) of or against OGL as at the Closing Time, or relating to or in respect of any Excluded Assets and Excluded Contracts as at, and from and after, the Closing Time, including without limitation any and all Liabilities relating to any change of control provision that may arise in connection with the change of control contemplated by the Transactions and to which OGL may be bound as at the Closing Time, all Liabilities relating to or under the Excluded Assets and Excluded Contracts, all Liabilities related to the termination of any Contracts prior to the Closing Time, all Liabilities (including for Employee Costs) relating to or in respect of Employees or other individuals whose employment with OGL or its Affiliates is terminated on or before Closing, all Liabilities of OGL to or in respect of OGL’s Affiliates, the Intercompany Liabilities payables (and all Claims, Encumbrances and Contracts relating thereto), all Liabilities that are added as Excluded Liabilities pursuant to Section 2.6(b) and/or all Liabilities related to Taxes;

**“Excluded Liabilities Assumption Agreement”** has the meaning set out in Section 2.6(b);

**“Excluded Liabilities Promissory Note”** has the meaning set out in Section 2.6(b);

**“ExcludedCo”** means 1000063081 Ontario Inc., a corporation incorporated by the Monitor under the laws of the Province of Ontario and to be added as an applicant in

the CCAA Proceedings, to which the Excluded Assets and Excluded Liabilities will be transferred as part of the Transactions. The shares of ExcludedCo shall be held in trust by the Monitor for the shareholders of OGL immediately prior to implementing the Transactions as their interests may be determined by the Court in the CCAA Proceedings;

“**Existing OGL Shares**” has the meaning set out in Recital A;

“**Filing Date**” means February 12, 2020;

“**Final Order**” means, in respect to any order of any court of competent jurisdiction, that such order shall not have been stayed, appealed, varied (except with the consent of the Purchaser, OGL, Orionis and the Monitor, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired;

“**Goodwill**” means the goodwill of the Business and relating to the Retained Assets, and information and documents relevant thereto including lists of customer and suppliers, credit information, telephone and facsimile numbers, email addresses, internet addresses and domain names used in connection with the Business, research materials, research and development files and the exclusive right of OGL to represent itself as carrying on the Business and to all rights in respect of the name “Ontario Graphite”, and any variations of such name;

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities having jurisdiction over OGL’s assets or the Transaction and:

- (a) having jurisdiction on behalf of Canada, Cayman Islands, or any province or territory or any other geographic or political subdivision of any of them; or
- (b) exercising, or entitled to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“**Governmental Authorizations**” means authorizations, approvals, licences or permits issued to OGL relating to the Business or any of the Retained Assets by or from any Governmental Authority, including, for greater certainty, the closure plan for the Kearney Graphite Mine;

“**Information Technology**” means computer hardware, software in source code and object code form (including documentation, interfaces and development tools), websites for the Business, databases, telecommunications equipment and facilities and other information technology systems owned, used or held by OGL for use in or relating to the Business;

“**Initial Order**” has the meaning set out in Recital D;



**“Intellectual Property”** means all intellectual property rights, whether registered or not, owned, used or held by OGL, including all copyrights, patents, patent rights, trademarks, certification marks and industrial designs, applications for any of the foregoing, trade names, brand names, business names, trade secrets, proprietary manufacturing information and know-how, instruction manuals, inventions, inventors’ notes, research data, unpatented blue prints, drawings and designs, formulae, calculations, processes, prototypes, technology and marketing rights, designs, patterns and manufacturing processes, together with all rights under licence agreements, sublicense agreements, strategic alliances, development agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing, that are owned, used or held by OGL;

**“Intercompany Liabilities”** means all Liabilities owing between OGL and any subsidiary or between any subsidiary and any other subsidiary;

**“Interim Period”** means the period from the date that this Agreement is entered into by the Parties to the Closing Time;

**“Laws”** means with respect to any Person, property, transaction, event or other matter; all laws, statutes, by-laws, rules, regulations, Orders, ordinances or judgments, guidelines, directives or other requirements having the force of law, whether federal, provincial, or municipal, relating or applicable to that Person, property, transaction, event or other matter;

**“Leased Real Property”** means the leased real property subject to the Leases, together with any and all interests of OGL in all existing plants, buildings, structures, fixtures, erections, improvements, easements, rights-of-way and other appurtenances situated on or forming part of those lands and premises;

**“Leases”** means the Crown mining leases issued under the *Mining Act* (Ontario) and other leases or agreements in the nature of a lease or right of occupancy of real property to which OGL is a party or in which OGL has a contractual or legal or beneficial right, title or interest, whether as lessor or lessee, in respect of or related to the Business;

**“Liabilities”** means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, matured or unmatured, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person;

**“LOI”** has the meaning set out in Recital I;

**“Material Adverse Effect”** means any one or more changes, effects, events or occurrences that, individually or in the aggregate is, or would reasonably be expected to be, materially adverse to the Business, condition (financial or otherwise), capitalization, operations or results of operations of the Business or the Retained Assets, but shall exclude any Material Adverse Effect arising out of: (i) any adverse change, effect or circumstance, relating, generally, to financial markets, commodity

market conditions or general economic conditions, including any currency fluctuations, in each case, in any of the geographical areas in which the Business operates; (ii) any adverse change, effect or circumstance relating to conditions generally affecting the industry in which the Business operates; (iii) war, act of terrorism, civil unrest, natural disaster, pandemic (including COVID 19) or similar event; or (iv) any adverse change resulting from an action required by this Agreement; and provided that clauses (i) through (iii) shall not apply where the change, effect or circumstance affects the Business in a materially disproportionate manner relative to the industry and jurisdictions in which OGL operates;

“**Monitor**” has the meaning set out in Recital E;

“**Monitor’s Closing Certificate**” means a certificate signed by the Monitor to be filed in the CCAA Proceedings confirming, among other things, that the conditions to be complied with at or prior to the Closing Time as set out in Article 7, or Article 8 have been satisfied or waived by OGL or the Purchaser, as applicable;

“**NDMNR**” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Northern Development, Mines, Natural Resources and Forestry;

“**NDMNR ITCs**” has the meaning set out in Section 2.6(c).

“**New OGL Shares**” mean the common shares of OGL to be issued to the Purchaser as part of the Closing in exchange for the Purchase Consideration;

“**Non-Refundable Portion of Escrow Funds**” means [REDACTED];

“**Notice**” has the meaning set out in Section 11.4;

“**OGL**” has the meaning set out in the preamble to this Agreement;

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator and includes the Initial Order any other orders granted in the CCAA Proceedings;

“**Orionis**” has the meaning set out in Recital B;

“**Orionis Credit Facilities**” has the meaning set out in Recital B;

“**Outside Date**” means 30 days after the Approval and Vesting Order is granted or such later date as the Purchaser may designate, in its sole discretion, on not less than 2 Business Days’ notice to the Monitor, on behalf of OGL, provided such date is no more than 60 days following such 30 day period, or in any event such other date as ordered by the Court or as OGL and the Purchaser may agree to in writing.

“**Parties**” means OGL and the Purchaser collectively, and “**Party**” means any one of them;

“**Permitted Encumbrances**” means the Encumbrances listed in Schedule 1.1(e);

“**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“**Post-Consolidation OGL Shares**” means the common shares of OGL that will remain following the Consolidation and Cancellation in a number to be determined by the Purchaser, which will represent all of the outstanding equity securities of OGL, all of which shall be held by the Purchaser;

“**Prepaid Expenses and Deposits**” means the unused portion of amounts prepaid by or on behalf of OGL to any Person relating to the Business or the Retained Assets including Taxes, assessments, rates and charges, utilities, rents, deposits with any public utility or any Governmental Authority as at the Closing Time;

“**Properties**” means the real property interests in which OGL has a contractual, legal or beneficial interest as more particularly described in Schedule 1.1(g), including without limitation, the Crown mining leases issued under the *Mining Act* (Ontario) by the Province of Ontario (including the Retained Leases and Leased Real Property) and the unpatented mining claims issued under the *Mining Act* (Ontario) by the Province of Ontario, set out on such Schedule and shall include all easements and rights of way related thereto and all improvements, fixtures and appurtenances (including fixed machinery and fixed equipment bore holes, pits and shafts) existing on the Closing Date and located on the Properties or forming part thereof;

“**Purchase Consideration**” has the meaning set out in Section 3.1;

“**Purchaser**” has the meaning set out in preamble to this Agreement;

“**Retained Assets**” means all of OGL’s properties, assets and rights other than the Excluded Assets and includes, without limitation, the following:

- (a) cash, bank balances, moneys in possession of banks, the Monitor and other depositories, term or time deposits, including in respect of collateral posted by OGL related to cash management or hedging programs, and similar cash items of, owned or held by or for the account of the OGL;
- (b) the Books and Records;
- (c) the Retained Contracts;
- (d) the Goodwill;
- (e) the Governmental Authorizations, except to the extent consent to change of control is required;
- (f) the Prepaid Expenses and Deposits;
- (g) OGL’s rights in and to the Closure Plan FA;

- (h) the Tangible Personal Property;
- (i) the Information Technology;
- (j) the Technical Information;
- (k) the Intellectual Property;
- (l) the Properties;
- (m) the properties, assets and rights that are added as Retained Assets pursuant to Section 2.8; and
- (n) all other properties, assets and rights of OGL used in or held by OGL for use in or relating to the Business, of whatsoever nature or kind and wherever situated;

**“Retained Contracts”** means all Contracts listed on Schedule 1.1(b) and any amendments thereto and any Contracts that are added as Retained Contracts pursuant to Section 2.8, but excluding the Excluded Contracts;

**“Retained Leases”** means, and is limited to, those Leases in respect of Leased Real Property listed in Schedule 1.1(d), and includes any Leases that are added as Retained Assets pursuant to either Section 2.7 or Section 2.8 but does not include any Leases that are or become Excluded Assets pursuant to Section 2.7 or Section 2.8;

**“Retained Liabilities”** means the Liabilities of OGL as follows:

- (f) in respect of the performance of the Retained Contracts (other than the Retained Leases) from and after the Closing Time;
- (g) in respect of the performance of the Retained Leases, from and after the Closing Time;
- (h) the Permitted Encumbrances;
- (i) for any Taxes accruing from and after the Closing Time;
- (j) for any debts arising under s. 151(1) of the *Mining Act* (Ontario) accruing from and after the Closing Time in connection with the costs of NDMNRF’s implementation of Minister’s Direction 2020-003;
- (k) the Excluded Liabilities Promissory Note;
- (l) regulatory or environmental Liabilities owed to any Governmental Authority in Canada relating to or arising from any act, occurrence, or circumstance existing at or before the Closing Time other than the costs of NDMNRF’s implementation of Minister’s Direction 2020-003 which will be satisfied by ExcludedCo at the Closing Time and other than any fines or penalties in connection with the charges against OGL currently pending in the Ontario Court of Justice, including but not limited to charges set out in the informations

sworn on May 3, 2018 and February 4, 2019, which fines or penalties, if not withdrawn by the Ministry of the Attorney General, shall be Excluded Liabilities; and

(m) that are added as Retained Liabilities pursuant to Section 2.8,

but does not include the Excluded Liabilities;

“**SISP**” has the meaning set out in Recital F;

“**Statutory Plans**” means statutory benefit plans with which OGL is required to comply, including the Canada and Québec Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;

“**Tangible Personal Property**” means the machinery, equipment, furniture, fixtures, furnishings, office equipment, supplies, materials, vehicles, material handling equipment, ores, minerals, metals (in whatever state), inventories, work in progress, waste rock, stockpiles and tangible assets (other than Leased Real Property) owned, used or held by OGL;

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under Law, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and governmental pension plan premiums or contributions;

“**Technical Information**” means know-how and related technical knowledge owned, used or held by OGL for use in or relating to the Business; and

“**Transactions**” means all of the transactions contemplated by this Agreement and all matters ancillary thereto as contemplated by and in the manner provided in this Agreement.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – Unless otherwise specified, all references to money amounts are to lawful currency of Canada.
- (b) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (d) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (e) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (g) **Statutory references** – A reference to a statute includes all regulations and rules made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- (h) **Time** – Time is of the essence in the performance of the Parties’ respective obligations.
- (i) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### 1.3 Knowledge

Any reference to the knowledge of any Party means to the actual knowledge of such Party.

### 1.4 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise with respect to the subject matter of this Agreement, including the LOI. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement and the Purchaser shall, upon Closing, have acquired all of the Post-Consolidation OGL Shares (and indirectly the Business) as is and where is subject to the benefit of the representations and warranties in this Agreement. This Agreement constitutes the complete and exclusive statement of its terms and no extrinsic



evidence whatsoever may be introduced in any proceedings involving this Agreement. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its Affiliates, agents or representatives (including any due diligence presentations or documents, and in particular any descriptive memorandum transmitted to the Purchaser relating to the issuance of the New OGL Shares, and any supplements or addenda thereto) are not and shall not be deemed to be representations or warranties of any of OGL, the Monitor, any of their Affiliates or any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of OGL, the Monitor or any of their Affiliates.

## 1.5 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(a)	Description of the Business
Schedule 1.1(b)	Retained Contracts
Schedule 1.1(c)	Excluded Leases
Schedule 1.1(d)	Retained Leases
Schedule 1.1(e)	Permitted Encumbrances
Schedule 1.1(f)	Form of Approval and Vesting Order
Schedule 1.1(g)	Description of Properties
Schedule 7.7	Form of Basserman Amendment Agreement

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Issuance of New OGL Shares and Treatment of Existing OGL Shares

Subject to the provisions of this Agreement, on the Closing Date, and at the Closing Time where practicable, OGL shall take the following steps:

- (a) Issuance of New OGL Shares: OGL shall issue the New OGL Shares to the Purchaser in a number to be determined by the Purchaser, acting reasonably and in consultation with the Monitor, having regard to the intended effect of the Transactions, free and clear of all Encumbrances in exchange for the payment of the Purchase Consideration in accordance with Article 3;
- (b) Share Consolidation: OGL's articles shall be amended to, among other things, (i) consolidate the New OGL Shares and the Existing OGL Shares on the basis of the Consolidation Ratio, and (ii) provide for such additional changes to the rights and conditions attached to the New OGL Shares and the Existing OGL Shares as may be requested by the Purchaser, acting reasonably;

- (c) Share Cancellation: Any fractional New OGL Shares and all Existing OGL Shares outstanding immediately following the consolidation of such shares shall be cancelled without any requirement to make payment or any liability on behalf of OGL, and the articles of OGL shall be altered as necessary to achieve such result;
- (d) Extinguishment of any OGL Equity Interests: Any and all equity interests in OGL (other than the Post-Consolidation OGL Shares) that remain issued and outstanding following the Consolidation and Cancellation shall be cancelled without any liability or payment required; and
- (e) Post-Consolidated OGL Shares: Subject to the terms of this Agreement, effective immediately after the Consolidation and Cancellation, the Purchaser shall be the sole owner of the Post-Consolidation OGL Shares.

## **2.2 Delivery of the Monitor's Closing Certificate**

When the conditions set out in Article 7 or Article 8, as applicable, have been satisfied or waived, the Purchaser and OGL will each deliver to the Monitor written confirmation of same, following which the Monitor will deliver an executed copy of the Monitor's Closing Certificate to the Purchaser's counsel. Upon such delivery of the Monitor's Closing Certificate, the Closing Time will be deemed to have occurred. The Monitor will file a copy of the Monitor's Closing Certificate with the Court and provide evidence of such filing to the Purchaser and NDMNRF.

## **2.3 Place of Closing**

The Closing shall take place electronically or such other place as may be agreed upon by the Parties.

## **2.4 OGL's Closing Deliveries**

On or before the Closing, OGL will deliver or cause to be delivered to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order;
- (b) all share certificates representing the New OGL Shares and the Post-Consolidation OGL Shares;
- (c) a certificate dated as of the Closing Date and executed by the Monitor on behalf of OGL confirming and certifying that (i) each of the representations and warranties in Article 4 remain true and correct in all material respects with the same effect as if made at and as of the Closing Date; (ii) OGL has performed or complied with, in all material respects, all of its obligations and covenants under this Agreement, in each case, as at the Closing Date; and (iii) there has been no Material Adverse Effect to the Business or to the Retained Assets since the date of execution of this Agreement;



- (d) the Excluded Liability Promissory Note;
- (e) a copy of the Excluded Liabilities Assumption Agreement, signed by OGL and ExcludedCo;
- (f) a copy of the Excluded Asset Bill of Sale, signed by OGL and ExcludedCo; and
- (g) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement.

## 2.5 Purchaser's Closing Deliveries

On or before the Closing Time, the Purchaser will deliver or cause to be delivered the following:

- (a) the Purchase Consideration in accordance with Section 3.2;
- (b) of the Purchaser confirming and certifying that (i) each of the representations and warranties in Article 5 remain true and correct in all material respects with the same effect as if made at and as of the Closing Date; and (ii) the Purchaser has performed or complied with, in all material respects, all of their respective obligations and covenants under this Agreement, in each case, as at the Closing Date; and
- (c) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by OGL to complete the transactions provided for in this Agreement.

## 2.6 Retained Assets and Retained Liabilities; Transfer of Excluded Assets and Excluded Liabilities to ExcludedCo

- (a) Pursuant to the Approval and Vesting Order, on the Closing Date (i) OGL shall retain all of the Retained Assets, and shall remain liable in respect of the Retained Contracts in accordance with the terms of this Agreement, and (ii) OGL shall retain all of the Retained Liabilities and shall remain liable in respect of the Retained Liabilities in accordance with the terms of this Agreement.
- (b) Pursuant to the Approval and Vesting Order, on the Closing Date, (i) all of the Excluded Assets shall be transferred to and vested in ExcludedCo at the Closing Time and evidenced by a bill of sale and assignment of contracts, in form and substance satisfactory to the Purchaser, OGL and the Monitor (collectively, the “**Excluded Assets Bill of Sale**”), (ii) all of the Excluded Liabilities shall be transferred to and assumed by ExcludedCo at the Closing Time and evidenced by an assignment and assumption agreement in form and substance acceptable to the Purchaser, OGL and the Monitor (the “**Excluded Liabilities Assumption Agreement**”), (iii) OGL shall issue to ExcludedCo an interest-free promissory note in an amount equal to the Purchase Consideration in consideration for ExcludedCo assuming the Excluded Liabilities (the “**Excluded Liabilities**”).

**Promissory Note**”) and (iv) the Excluded Liabilities Promissory Note will be settled in exchange for the payment of the Purchase Consideration from OGL to ExcludedCo. Notwithstanding any other provision of this Agreement, neither the Purchaser nor OGL shall assume or have any liability for any of the Excluded Liabilities and all Excluded Liabilities shall be Discharged from OGL and its assets, undertaking, business and properties from and after the Closing Time.

- (c) In the event that: (i) ExcludedCo makes a claim to Canada Revenue Agency (“**CRA**”) in respect of input tax credits that arise out of the payment by ExcludedCo and/or the Monitor of the costs of NDMNRF’s implementation of Minister’s Direction 2020-003 (the “**NDMNRF ITCs**”); and (ii) CRA denies or rejects such claim for NDMNRF ITCs, then Purchaser shall, as soon as reasonably possible following receipt of a written request from the Monitor, cause OGL to make a claim to CRA for the NDMNRF ITCs. In the event that OGL actually receives cash payment in respect of the NDMNRF ITCs (the “**Recovered Tax**”), then Purchaser shall cause OGL to pay the amount of the Recovered Tax to the Monitor within fourteen (14) days following receipt by OGL of such Recovered Tax. The Monitor acknowledges that OGL’s claim for NDMNRF ITCs may be denied or rejected by CRA, and there is no assurance that any Recovered Tax will be received by it if OGL makes a claim for NDMNRF ITCs. Notwithstanding the foregoing, OGL shall not make a claim to the CRA in respect of the NDMNRF ITCs if OGL is not entitled or eligible to make such claim under the *Excise Tax Act* (Canada).

## 2.7 Right to Exclude Assets and Liabilities

At any time on or prior to the day that is one (1) day prior to the hearing date for the Approval and Vesting Order, the Purchaser may, by giving Notice to OGL and the Monitor, elect to:

- (a) exclude any properties, assets or rights of OGL from the Retained Assets, and add such properties, assets or rights to the Excluded Assets;
- (b) exclude any Contract from the Retained Contracts, including any Leases that are not amended to the satisfaction of the Purchaser, and add such Contracts to the Excluded Contracts; and
- (c) exclude any Liability from the Retained Liabilities and add such Liability to the Excluded Liabilities.

Notwithstanding the foregoing, no Liability owed to or in respect of any Governmental Authority in Canada shall be excluded pursuant to this Section 2.7(c) without the consent of such Governmental Authority.

No changes to the Purchase Consideration shall result from the exclusion of any properties, assets, rights, Contracts, Liabilities or Employees from the Retained Assets, Retained Contracts, Retained Liabilities pursuant to this Section 2.7.

## 2.8 Right to Add Assets and Liabilities

At any time on or prior to the day that is one (1) day prior to the Closing Date, the Purchaser may, by giving Notice to OGL and the Monitor, elect to:

- (a) exclude any properties, assets or rights of OGL from the Excluded Assets, and add such properties, assets or rights to the Retained Assets;
- (b) exclude any Contract from the Excluded Contracts, including any Leases that are amended to the satisfaction of the Purchaser, and add such Contracts to the Retained Contracts; and
- (c) exclude any Liability from the Excluded Liabilities and add such Liability to the Retained Liabilities.

No changes to the Purchase Consideration shall result from the addition of any properties, assets, rights, Contracts, Liabilities or Employees to the Retained Assets, Retained Contracts, Retained Liabilities pursuant to this Section 2.8.

## ARTICLE 3 PURCHASE PRICE

### 3.1 Purchase Consideration

The consideration to be paid by the Purchaser to OGL for the New OGL Shares shall be [REDACTED] (the “**Purchase Consideration**”), composed of the Escrow Funds and additional consideration in the amount of [REDACTED] (the “**Additional Consideration**”).

### 3.2 Satisfaction of Purchase Consideration

The Purchaser shall pay and satisfy the Purchase Consideration on the Closing Date by (a) the Monitor releasing the Escrow Funds in accordance with Section 3.3 and (b) payment of the Additional Consideration on the Closing Date, unless it was already paid prior to the Closing Date.

### 3.3 Escrow Funds

- (a) The Parties acknowledge that the Escrow Funds have been deposited with the Monitor.
- (b) Upon delivery of the Monitor’s Closing Certificate, the Monitor shall be authorized to release the Escrow Funds and hold them on behalf of OGL.
- (c) If this Agreement is terminated for any reason, other than the Agreement having been terminated by the Purchaser pursuant to Section 10.1(d) and OGL, its Affiliates or Parent (or the Monitor on behalf of OGL) has entered into a definitive agreement relating to the sale of all of the securities or all or substantially all of the assets of OGL, the Monitor shall (i) retain the Non-Refundable Portion of the Escrow Funds and further retain or distribute them as directed by the Court, and (ii) the remaining Escrow Funds shall be forthwith

released in full (without offset or deduction) to the Purchaser or as directed in writing by the Purchaser. If the Agreement is terminated by the Purchaser pursuant to Section 10.1(d) in the circumstances set out above, all of the Escrow Funds (including the Non-Refundable Portion of the Escrow Funds) shall be released in full (without offset or deduction) to the Purchaser or as directed in writing by the Purchaser.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF OGL**

OGL represents and warrants to and in favour of the Purchaser the matters set out below. The inclusion of any information in any Schedule shall not be deemed to be an acknowledgement, in and of itself, that, as of the Closing Time, such information is required to be disclosed, is material to the Business, or has resulted in or would result in a Material Adverse Effect.

##### **4.1 Status of OGL**

OGL is a corporation validly existing under the provincial laws of Ontario.

##### **4.2 Residence and Taxation of OGL**

OGL is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

##### **4.3 Litigation**

Except for the CCAA Proceedings and the Directors Order, there are no Claims, injunctions, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of OGL, pending or threatened against or relating to OGL, which, if determined adversely to OGL, would prevent the OGL from fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

##### **4.4 Authority**

The Monitor, on behalf of OGL has the authority, subject to the granting of the Approval and Vesting Order by the Court, to enter into this Agreement and consummate the transactions contemplated hereby.

##### **4.5 No Other Agreements to Purchase**

To the actual knowledge of the Monitor, except for the Purchaser's rights under this Agreement, no Person has any contractual right, option or privilege for the purchase or acquisition from OGL any of the Retained Assets or the New OGL Shares.

#### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to and in favour of the Monitor, on behalf of OGL, the matters set out below.

### **5.1 Status of the Purchaser**

The Purchaser is a corporation existing under the laws of Ontario.

### **5.2 Due Authorization and Enforceability of Obligations**

- (a) The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of the Purchaser.
- (c) This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject only to the granting of the Approval and Vesting Order and to any limitations imposed by Law.

### **5.3 Investment Canada**

The Purchaser is a “Canadian” within the meaning of the *Investment Canada Act* (Canada).

### **5.4 Litigation**

There are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of the Purchaser, pending or threatened against or relating to the Purchaser which, if determined adversely to the Purchaser, would

- (a) prevent the Purchaser from satisfying the Purchase Consideration to or as directed by OGL and/or the Monitor;
- (b) enjoin, restrict or prohibit the issuance of all or any part of the New OGL Shares or the Post-Consolidation OGL Shares as contemplated by this Agreement; or
- (c) prevent the Purchaser from fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

### **5.5 Due Diligence by Purchaser**

The Purchaser acknowledges that it has relied solely on the results of its own independent investigation and the representations, warranties, conditions and statements in this Agreement.

### **5.6 Acknowledgements of the Purchaser**

- (a) THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SET FORTH HEREIN: (A) THE PURCHASER IS ACQUIRING THE NEW OGL SHARES AND THE POST CONSOLIDATION OGL SHARES (AND THE UNDERLYING RETAINED ASSETS AND RETAINED LIABILITIES OF OGL) ON AN “AS IS, WHERE IS” BASIS; AND (B) NONE OF OGL, THE MONITOR, ORIONIS NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF ANY

SUCH PERSON, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING OGL, THE BUSINESS, THE NEW OGL SHARES, THE POST CONSOLIDATION OGL SHARES, THE RETAINED ASSETS, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS RESPECTIVE REPRESENTATIVES; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (VIENNA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED AND THAT THE PURCHASER IS PURCHASING THE NEW OGL SHARES AND THE POST CONSOLIDATION OGL SHARES (AND THE UNDERLYING RETAINED ASSETS AND RETAINED LIABILITIES OF OGL) AT ITS OWN RISK, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY FOR DEVELOPMENT, TITLE, DESCRIPTION, USE OR ZONING, ENVIRONMENTAL CONDITION, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY INTELLECTUAL PROPERTY, OR ANY OTHER THING AFFECTING THE BUSINESS, THE NEW OGL SHARES, THE POST CONSOLIDATION OGL SHARES, ANY OF THE RETAINED ASSETS, ANY OF THE RETAINED LIABILITIES, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

- (b) The Purchaser acknowledges and agrees that, except for the representations and warranties of OGL set out in Article 4, none of OGL, the Monitor, Orionis, any of their respective Affiliates or any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of OGL, the Monitor, Orionis or any of their respective Affiliates has made any representation or warranty, express or implied, as to the New OGL Shares, the Post-Consolidation OGL Shares, the Business, the Retained Assets or the Retained Liabilities (including any implied representation or warranty as to the



condition, merchantability, suitability or fitness for a particular purpose of any of the Retained Assets), title to the Retained Assets or the Retained Liabilities, or as to the accuracy or completeness of any information regarding any of the foregoing that OGL, the Monitor, Orionis, or any other Person, furnished or made available to the Purchaser or its representatives (including any projections, estimates, budgets, offering memoranda, management presentations or due diligence materials).

- (c) The Purchaser acknowledges and agrees that the enforceability of this Agreement against OGL is subject to entry of the Approval and Vesting Order.

## **ARTICLE 6 SURVIVAL**

All representations, warranties, covenants and agreements of the Parties made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

## **ARTICLE 7 PURCHASER'S CONDITIONS PRECEDENT**

The obligation of the Purchaser to complete the Transactions is subject to the satisfaction of, or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

### **7.1 Truth and Accuracy of Representations at the Closing Time**

All of the representations and warranties of OGL made in or pursuant to this Agreement shall be true and correct in all material respects at the Closing Time and with the same effect as if made at and as of the Closing Time, except as such representations and warranties may be affected by the occurrence of events or transactions contemplated or permitted by this Agreement.

### **7.2 Compliance with Covenants**

OGL shall have performed or complied with, in all material respects, all of their respective obligations and covenants under this Agreement.

### **7.3 Transfer of Excluded Assets and Excluded Liabilities**

Pursuant to the Approval and Vesting Order:

- (a) ExcludedCo shall have been added as an applicant in the CCAA Proceedings;
- (b) all Excluded Assets and Excluded Liabilities shall have been transferred to ExcludedCo; and

- (c) OGL and its business and property shall have been released and forever Discharged of all Claims and Encumbrances other than the Retained Liabilities and the Permitted Encumbrances; such that, from and after Closing the business and property of OGL shall exclude the Excluded Assets and shall not be subject to any Excluded Liabilities.

#### **7.4 Consents and Authorizations**

The Approval and Vesting Order shall have been issued by the Court and be effective and shall be a Final Order.

#### **7.5 Material Adverse Effect**

There shall have been no Material Adverse Effect to the Business or to the Retained Assets since the date of execution of this Agreement.

#### **7.6 No Proceedings**

There shall be no Order issued preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Governmental Authority known to the Parties, for the purpose of enjoining or preventing the consummation of the transactions contemplated in this Agreement.

#### **7.7 Properties**

The Monitor on behalf of OLG shall have entered into an amending agreement with respect to each of the Basserman Agreements substantially in the form set out in Schedule 7.7 hereof (the “**Basserman Amendment Agreements**”).

#### **7.8 Charges**

The charges against OGL currently pending in the Ontario Court of Justice, including but not limited to charges set out in the informations sworn on May 3, 2018 and February 4, 2019, shall have been withdrawn with prejudice by the Ministry of the Attorney General as against OGL.

#### **7.9 Deliveries at Closing**

Each of the deliveries required to be made to the Purchaser pursuant to Section 2.4 shall have been so delivered.

The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived, in writing, by the Purchaser, in whole or in part, at or prior to the applicable time for satisfaction of such conditions, and if they are not satisfied or waived at or prior to the applicable times, then the Purchaser may terminate this Agreement pursuant to Section 10.1.



## **ARTICLE 8 OGL'S CONDITIONS PRECEDENT**

The obligation of the OGL to complete the Transactions under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of OGL and may be waived in whole or in part with the consent of OGL except as otherwise provided below):

### **8.1 Truth and Accuracy of Representations at Closing Time**

All of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct in all material respects at the Closing Time and with the same effect as if made at and as of the Closing Time.

### **8.2 Compliance with Covenants**

The Purchaser shall have performed or complied with, in all material respects, all of its obligations and covenants under this Agreement.

### **8.3 Consents and Authorizations**

The Approval and Vesting Order shall have been issued by the Court and be effective and shall be a Final Order.

### **8.4 Deliveries at Closing**

Each of the deliveries required to be made to OGL pursuant to Section 2.5 shall have been so delivered.

The foregoing conditions are for the exclusive benefit of OGL and may be waived, in writing, by OGL, in whole or in part, at or prior to the applicable time set for the satisfaction of such conditions and if they are not satisfied or waived at or prior to the applicable times, then OGL may terminate this Agreement pursuant to Section 10.1.

## **ARTICLE 9 OTHER COVENANTS OF THE PARTIES**

### **9.1 Approval and Vesting Order**

- (a) As soon as practicable after execution of this Agreement, the Monitor shall serve on the service list in the CCAA Proceedings, as supplemented with such additional parties as the Purchaser and Orionis may reasonably request, and file with the Court, motion materials seeking the Approval and Vesting Order, and use commercially reasonable efforts to obtain the issuance of the Approval and Vesting Order from the Court.
- (b) The Purchaser and OGL shall cooperate in obtaining the issuance of the Approval and Vesting Order, and OGL shall deliver to the Purchaser prior to service and filing, and as early in advance as is practicable to permit adequate

and reasonable time for the Purchaser and its counsel to review and comment upon, copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other material papers to be filed by OGL in connection with such motions and relief requested therein and any objections thereto.

- (c) The Purchaser, at its own expense, will promptly provide to OGL and the Monitor all such information within its possession or under its control as OGL or the Monitor may reasonably require to obtain the issuance of the Approval and Vesting Order.

## **9.2 Interim Period**

During the Interim Period, except as contemplated or permitted by this Agreement (including the Approval and Vesting Order and the Transaction): (i) OGL shall not take steps to operate its business differently than the manner it was conducted on the date of this Agreement, it being acknowledged by the Purchaser that OGL is not currently actively maintaining its business and has no liquidity to do so, (ii) OGL shall not, without the prior written approval of the Purchaser, sell or transfer any assets for amounts greater than \$1,000, and (iii) OGL shall not enter into any transaction involving the Business or the Retained Assets without the prior written approval of the Purchaser.

## **9.3 Access During the Interim Period**

During the Interim Period, OGL shall use its commercially reasonable efforts to give, or cause to be given, to the Purchaser, and its representatives, reasonable access during normal business hours to the Retained Assets, including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Retained Assets as the Purchaser reasonably deems necessary or desirable to further familiarize themselves with the Business and the Retained Assets. Without limiting the generality of the foregoing, OGL shall use its commercially reasonable efforts to enable the Purchaser and its representatives to be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement and to the Employees. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and cost, during normal business hours, and without undue interference with OGL's operations and OGL shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser or its representatives.

## **9.4 Actions to Satisfy Closing Conditions**

- (a) Each of the Parties shall use commercially reasonable efforts to effect the Closing on the Closing Date, including to fulfill and satisfy the conditions set forth in Article 7 or Article 8.
- (b) The Purchaser will promptly notify OGL and the Monitor, and the Monitor, on behalf of OGL will promptly notify the Purchaser, upon:

- (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the transactions contemplated under this Agreement; or
- (ii) receiving any notice from any Governmental Authority of its intention:
  - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the transactions contemplated by this Agreement; or
  - (B) to nullify or render ineffective this Agreement or such transactions if consummated.
- (c) OGL shall use its commercially reasonable efforts to obtain prior to the Closing Date, all consents and approvals in form and substance satisfactory to the Purchaser, acting reasonably, that are necessary for the completion of the Transactions.

#### **9.5 Submission to Jurisdiction**

- (a) Each Party submits to the exclusive jurisdiction of the Court (and any court to which appeals therefrom may be made) in any action, application, reference or other proceeding arising out of or relating to this Agreement and consents to all Claims in respect of any such action, application, reference or other proceeding being heard and determined in the Court (or any court to which appeals therefrom may be made, if applicable).
- (b) The Parties shall not raise any objection to the venue of any action, application, reference or other proceeding arising out of or relating to this Agreement in the Court, including the objection that the proceedings have been brought in an inconvenient forum.

### **ARTICLE 10 TERMINATION**

#### **10.1 Termination Rights**

Subject to Section 10.2, this Agreement may be terminated prior to the Closing Date as follows:

- (a) by mutual agreement of the Purchaser and OGL;
- (b) by the Purchaser, by written notice to OGL and the Monitor, on the one hand, or by OGL, by written notice the Purchaser and the Monitor, on the other hand, at any time after the Outside Date, if Closing has not occurred on or prior to 11:59pm (Eastern time) on the Outside Date; provided that the reason for Closing not having occurred is not due to any act or omission, or breach of this Agreement, by the Party proposing to terminate this Agreement; or

- (c) by the Purchaser, on one hand, or OGL, on the other hand, upon notice to the other Party if:
  - (i) a Governmental Authority in Canada issues a Final Order prohibiting the Transactions;
  - (ii) the Court declines at any time to grant the Approval and Vesting Order for reasons other than a breach of this Agreement by the Party proposing to terminate this Agreement; provided, however, this Section 10.1(c)(ii) shall not apply by reason only of the adjournment of the hearing of the motion for the Approval and Vesting Order by the Court; or
  - (iii) the CCAA Proceedings are terminated in respect of OGL prior to the Closing Time.
- (d) by the Purchaser, if there has been a material violation or breach by OGL of any agreement, covenant, representation or warranty which would prevent the satisfaction of, or compliance with, any condition set forth in Article 7, and such violation or breach has not been waived by the Purchaser or cured by OGL within five (5) Business Days of the Purchaser providing notice to OGL of such breach, unless the Purchaser is in material breach of its obligations under this Agreement at such time; or
- (e) by OGL, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty of the Purchaser in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Article 8, as applicable, and such violation or breach has not been waived by OGL or cured by the Purchaser within five (5) Business Days of OGL providing notice to the Purchaser of such breach, unless OGL is in material breach of its obligations under this Agreement at such time.

## **10.2 Effect of Termination**

If this Agreement is terminated pursuant to Section 10.1, all further obligations of the parties hereto under this Agreement will cease immediately; and the Parties will have no further obligations to each other (except for its obligations and agreements pursuant to Article 6, and Sections 11.1, 11.2, and 11.3 and the release of the Escrow Funds by the Monitor in accordance with Section 3.3 hereof); provided that nothing herein shall release any Party from any obligation in respect of a breach of this Agreement prior to the date of termination of this Agreement pursuant to this Section 10.2.

## **ARTICLE 11 GENERAL**

### **11.1 Monitor's Capacity; No Liability**

The Purchaser and OGL acknowledge and agree that the Monitor, acting in its capacity as the Monitor of OGL in the CCAA Proceedings and in accordance with the expanded powers granted to it pursuant to the Expanded Powers Order, will have no liability in connection with

this Agreement or the release of the Escrow Funds whatsoever in its capacity as Monitor, in its personal capacity or otherwise. The Purchaser and OGL further acknowledge and agree that Orionis will have no liability in connection with this Agreement.

## 11.2 Public Notices

The Parties shall jointly plan and co-ordinate any public notices, press releases, and any other publicity concerning the transactions contemplated by this Agreement and no Party shall act in this regard without the prior approval of the other, such approval not to be unreasonably withheld, except where required to meet timely disclosure obligations of any Party under applicable Laws (including the CCAA) in circumstances where prior consultation with the other Party is not practicable and a copy of such disclosure is provided to the other Party.

## 11.3 Expenses

Except as otherwise provided in this Agreement, each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the purchase and sale of the Business and the New OGL Shares and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses incurred.

## 11.4 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “**Notice**”) 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 e-mail:

- (a) in the case of a Notice to the Monitor at:

Deloitte Restructuring Inc.  
8 Adelaide Street West  
Toronto, ON M5H 0A9

Attention: Todd Ambachtsheer  
E-mail: [tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)

With a copy to:

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

Attention: Alex MacFarlane / Jason Saltzman  
E-mail: [amacfarlane@blg.com](mailto:amacfarlane@blg.com) / [jsaltzman@blg.com](mailto:jsaltzman@blg.com)

- (b) in the case of a Notice to the Purchaser at:

885 West Georgia Street West, Suite 2200

Vancouver, BC V6C 3E8

Attention: Peter McCague  
E-mail: peter@pjmconsulting.ca

With a copy to:

Cassels Brock & Blackwell LLP  
Scotia Plaza  
2100 King St. W, Suite 2100  
Toronto ON M5H 3C2

Attention: Brian Dominique  
E-mail: bdominique@cassels.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section 11.4.

### **11.5 Assignment**

No Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party, except for assignment of all or any part of this Agreement by the Purchaser to one or more Affiliates, provided that:

- (a) the assignee(s) will become jointly and severally liable with the Purchaser, as a principal and not as a surety, with respect to all of the obligations of the Purchaser, including the representations, warranties, covenants, indemnities and agreements of the Purchaser; and
- (b) the assignee(s) must execute an agreement confirming the assignment and the assumption by the assignee of all obligations of the Purchaser under this Agreement.

### **11.6 Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

### **11.7 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound thereby.

### **11.8 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

### **11.9 Severability**


If any covenant or other provision of this Agreement is invalid, illegal or incapable of being enforced by reason of any rule of law or public policy, then such covenant or other provision will be severed from and will not affect any other provision of this Agreement and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. All other covenants and provisions of this Agreement will, nevertheless, remain in full force and effect and no covenant or provision will be deemed dependent upon any other covenant or provision unless so expressed herein.

### **11.10 Execution and Delivery**


This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile, email or other electronic means and all such counterparts together shall constitute one and the same agreement.


**IN WITNESS OF WHICH** the Parties have executed this Agreement as of the date first written above.

**G6 ENERGY CORP.**

By:   
Name: *Peter McCague*  
Title: *Director*

**ONTARIO GRAPHITE, LTD., by its court-appointed Monitor, Deloitte Restructuring Inc.**

By:   
Name: Phil Reynolds  
Title: Senior Vice President

By:   
Name: Todd Ambachtsheer  
Title: Senior Vice President



**SCHEDULE 1.1(a): DESCRIPTION OF THE BUSINESS**

For the purposes of this Agreement “Business” means the business of OGL conducted or previously conducted in or about the Town of Kearney, Butt Township, Ontario, consisting of the exploration for, the development of the production of, the production and processing of, and the disposition of, graphite ore and mineral products from the natural environment, including, without limitation, the Properties (including, without limitation, the Leased Real Property) and all graphite mineral and ore production from the Properties, together with the rights of OGL to all graphite mineral and ore production from the Properties, and includes all Retained Assets but does not include any Excluded Assets or and Excluded Liabilities.

**SCHEDULE 1.1(b): RETAINED CONTRACTS**

	<b>Contract<sup>1</sup></b>
1.	Option Agreement between Vinecrest Management Services Limited, as the Optionor, and Graphite Technology Group Inc., as the Optionee, dated February 17, 2006
2.	Deed of Trust between Robert J. Basserman, as the Trustee, and Vinecrest Management Services Ltd. and Graphite Technology Group Inc., as the Beneficiaries, dated February 20, 2006
3.	Option Agreement between Vincent Sheehan, as the Optionor, and Graphite Technology Group Inc., as the Optionee, dated February 17, 2006
4.	Deed of Trust between Robert J. Basserman, as the Trustee, and Vincent Sheehan and Graphite Technology Group Inc., as the Beneficiaries, dated February 20, 2006
5.	Memorandum of Understanding between Shawanaga First Nation and Ontario Graphite Limited dated April 2, 2012
6.	Memorandum of Understanding between Magnetawan First Nation and Ontario Graphite Ltd. dated March 22, 2013
7.	Memorandum of Understanding between Henvey Inlet First Nation and Ontario Graphite Ltd. dated June 19, 2013

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<sup>1</sup> Each of the contracts listed as may have been amended, restated, supplemented and/or amended and restated from time to time.

**SCHEDULE 1.1(c): EXCLUDED LEASES**

All Leases other than the Retained Leases, including any Leases added to Excluded Assets pursuant to Section 2.7 or Section 2.8.

**SCHEDULE 1.1(d): RETAINED LEASES**

	<b>Ontario Crown Mining Lease No.</b>	<b>Land Titles PIN</b>	<b>Registration Date</b>	<b>Registration No.</b>	<b>Registered Owner</b>
1.	Mining Lease 109611 being renewal of Mining Lease 106813	52152-0003	2016/02/02	GB89299	Robert James Bassermann, in Trust
2.	Mining Lease 109543 being renewal of Mining Lease 106691	52152-0004	2016/01/07	GB88643	Ontario Graphite, Ltd.
3.	Mining Lease 109612 being renewal of Mining Lease 106814	52152-0005	2016/02/02	GB89300	Robert James Bassermann, in Trust
4.	Mining Lease 109613 being renewal of Mining Lease 106815	52152-0006	2016/02/02	GB89301	Robert James Bassermann, in Trust
5.	Mining Lease 109610 being renewal of Mining Lease 106812	52152-0007	2016/02/02	GB89298	Robert James Bassermann, in Trust
6.	Mining Lease 109542 being renewal of Mining Lease 106692	52152-0008	2016/01/07	GB88646	Ontario Graphite, Ltd.
7.	Mining Lease 108513 being renewal of Mining Lease 105009	52152-0009	2010/10/25	GB38040	Ontario Graphite, Ltd.

**SCHEDULE 1.1(e): PERMITTED ENCUMBRANCES****General**

Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Leased Real Property.

**Specific****PIN 52152-0003**

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339543	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339543)	GB89299	2016/02/02

**PIN 52152-0004**

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9254	1992/09/15
2.	Crown Patent Lease	NLT333875	1993/10/04
3.	Land Registrar's Order	LT270748	2005/12/06
4.	Land Registrar's Order	GB77282	2014/10/16
5.	Notice (Renewal of Mining Lease registered as NLT333785)	GB88643	2016/01/07

PIN 52152-0005

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339544	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339544)	GB89300	2016/02/02

PIN 52152-0006

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339545	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339545)	GB89301	2016/02/02

PIN 52152-0007

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339542	1994/06/06

	Encumbrance	Registration Number	Registration Date
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339542)	GB89298	2016/02/02

PIN 52152-0008

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9396	1993/02/19
2.	Crown Patent Lease	NLT334240	1993/10/18
3.	Land Registrar's Order	LT270748	2005/12/05
4.	Land Registrar's Order	GB77282	2014/10/16

PIN 52152-0009

	Encumbrance	Registration Number	Registration Date
1.	Plan Reference	36R7472	1987/09/22
2.	Crown Patent Lease	NLT276987	1988/05/09
3.	Land Registrar's Order	LT270748	2005/12/06
4.	Land Registrar's Order	GB252	2006/09/26
5.	Notice (Renewal of Mining Lease registered as NLT276987)	GB38040	2010/10/25
6.	Land Registrar's Order	GB77282	2014/10/16

**SCHEDULE 1.1(f): FORM OF APPROVAL AND VESTING ORDER**



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

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

THE HONOURABLE	)	FRIDAY, THE 4 <sup>th</sup> DAY
	)	
JUSTICE CONWAY	)	OF MARCH, 2022

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

**ORDER**  
**(Approval and Vesting Order)**

**THIS MOTION**, made by Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”) of Ontario Graphite, Ltd. (“**OGL**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order, among other things: (i) approving the Share Purchase Agreement (the “**SPA**”) between OGL and G6 Energy Corp., as assignee of Bold Global Advisory Ltd. (the “**Purchaser**”), dated February 24, 2022, and the transactions contemplated thereby (the “**Transactions**”), (ii) adding 1000063081 Ontario Inc. (“**ExcludedCo**”) as a Respondent in these CCAA proceedings; (iii) transferring and vesting all of OGL’s right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SPA) to and in ExcludedCo; and (iv) vesting all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares (as defined in the SPA) in the Purchaser; was heard on March 4, 2022, by video conference due to the COVID-19 pandemic.

**ON READING** the Notice of Motion, the Fifth Report of the Monitor, filed (the “Fifth Report”), and on hearing the submissions of counsel for the Monitor, counsel for the Purchaser,

counsel for OGL, counsel for Orionis Corporation (“**Orionis**”) and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavit of service of Laura Herd sworn February 24, 2022, filed.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on March 4, 2022, and hereby dispenses with further service thereof.

### **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

### **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that the SPA, the Basserman Agreement Amendments, and the Transactions be and are hereby approved and that the execution of the SPA and the Basserman Agreement Amendments by the Monitor on behalf of OGL is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary. The Monitor on behalf of OGL is hereby authorized and directed to perform OGL’s and its obligations under the SPA and the Basserman Agreement Amendments and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the New OGL Shares and the Post-Consolidation OGL Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor on behalf of OGL to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor’s certificate (the “**Monitor’s Closing Certificate**”) to the Purchaser (the “**Closing Time**”), substantially in the form attached as Schedule “A” hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

- (a) first, all of the right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ExcludedCo, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Proceeds (as defined below) in accordance with paragraph 11 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;
- (b) second, in consideration for the (i) Excluded Liability Promissory Note and (ii) the transfer of (w) the Excluded Assets, (x) all Excluded Contracts, (y) Excluded Leases and (z) Excluded Liabilities, other than set off claims asserted as defences to any claims made by OGL, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario) or the *Mining Act* (Ontario) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario) or the *Forfeited Property Act* (Ontario) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not

include the permitted encumbrances, easements and restrictive covenants listed on **Schedules “C”** hereto)) of OGL (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in ExcludedCo such that the Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of ExcludedCo and shall no longer be obligations of OGL and all of OGL’s assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for OGL (and including, for certainty, the Retained Assets, the **“OGL Property”**) shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to OGL’s Property are hereby expunged and discharged as against OGL’s Property;

- (c) third, in consideration for the Purchase Consideration, OGL shall issue the New OGL Shares to the Purchaser, and all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and Encumbrances of any kind affecting or relating to the New OGL Shares and the Post-Consolidation OGL Shares are hereby expunged and discharged as against the New OGL Shares and the Post-Consolidation OGL Shares;
- (d) fourth, any fractional New OGL Shares and all Existing OGL Shares and all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of OGL or which require the issuance, sale or transfer by OGL, of any shares or other securities of OGL and/or the share capital of OGL, or otherwise relating thereto, shall be deemed terminated and cancelled and the only equity interests that shall remain in OGL shall be the Post-Consolidation OGL Shares;

- (e) fifth, the Monitor shall cause payment to be made on behalf of OGL from the Purchase Consideration to ExcludedCo in full satisfaction of the Excluded Liability Promissory Note, provided that such payment shall continue to be held by the Monitor on behalf of ExcludedCo;
- (f) sixth, the Monitor is authorized and directed to, and the Monitor shall, disburse from the Proceeds to NDMNRF the full amount of the costs paid by NDMNRF prior to the Closing Time in connection with the implementation of Minister's Directions 2020-003 (which amount shall be specified in the Monitor's Closing Certificate, and which amount, for greater certainty, was \$2,410,109.80 as at December 24, 2021 [**to be updated**] and continues to accrue) (such disbursement, the "**NDMNRF Payment**"); the NDMNRF Payment shall be in full and final satisfaction of both: (i) the debt owed to NDMNRF under s. 151(1) of the *Mining Act* and (ii) any Claim of NDMNRF pursuant to s. 11.8(8) of the CCAA, in each case to the extent related to costs paid by NDMNRF prior to the Closing Time; and,
- (g) seventh, OGL shall be deemed to cease being a Respondent in these CCAA proceedings, and OGL shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of this CCAA Proceeding, save and except for this Order, the provisions of which (as they relate to OGL) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to OGL, the Retained Assets, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance

as may be required to give effect to the terms of this Order and the SPA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Retained Assets of any Claims including Encumbrances but excluding Permitted Encumbrances, and the Monitor and the Purchaser are hereby specifically authorized to discharge the registrations on the OGL Property, other than Permitted Encumbrances.

8. **THIS COURT ORDERS**, without limiting the generality of paragraph 7 of this Order and consistent with paragraph 5 of this Order, that upon the registration in the Land Registry Office for the Land Titles Division of Parry Sound (No. 42) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to delete and expunge from title to the OGL Property (including the property held in trust for OGL) all of the Encumbrances listed in **Schedule "B"** hereto.

9. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Retained Assets is required for the due execution, delivery and performance by OGL of the SPA.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Purchaser regarding the fulfilment of conditions to closing under the SPA and shall have no liability with respect to delivery of the Monitor's Closing Certificate.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the New OGL Shares (the "**Proceeds**") which will be held by ExcludedCo shall stand in the place and stead of the OGL Property, and that from and after the delivery of the Monitor's Closing Certificate, all Claims and Encumbrances shall attach to the Proceeds and the Excluded Assets with the same priority as they had with respect to the OGL Property immediately prior to the sale.

12. **THIS COURT ORDERS** that the Monitor shall hold the shares of ExcludedCo, in trust, for the shareholders of OGL immediately prior to implementing the Transactions as their interests may be determined by this Order or any other Order of the Court in these proceedings. In

furtherance of carrying out this task, neither the Monitor, nor any person appointed as an officer or director of ExcludedCo shall have, or incur any personal liability in so doing. In addition to the powers granted to the Monitor pursuant to this Order, the Monitor shall have all the necessary powers as the sole shareholder of ExcludedCo.

13. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, OGL or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in OGL's records pertaining to past and current employees of OGL. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by OGL.

14. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and OGL shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, OGL (provided, as it relates to OGL, such release shall not apply to Taxes in respect of the business and operations conducted by OGL after the Closing Time), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or OGL (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5<sup>th</sup> Supp.), or any provincial equivalent, in connection with OGL. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ExcludedCo.

15. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SPA, all Contracts and Leases to which OGL is a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise



repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor's Closing Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of OGL);
- (b) the insolvency of OGL or the fact that OGL obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SPA, the Transactions or the provisions of this Order, or any other Order of the Court in these proceedings; or
- (d) any transfer or assignment, or any change of control of OGL arising from the implementation of the SPA, the Transactions or the provisions of this Order.

16. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 15 hereof shall waive, compromise or discharge any obligations of OGL in respect of any Retained Liabilities, and (b) the designation of any Claim as a Retained Liability is without prejudice to OGL's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SPA shall affect or waive OGL's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set offs or recoupments against such Retained Liability.

17. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of OGL then existing or previously committed by OGL, or caused by OGL, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Contract, or Lease existing between such Person and OGL (including for certainty, those Contracts, or Leases constituting Retained Assets) arising directly or indirectly from the filing of OGL under the CCAA and implementation of the Transactions, including



without limitation any of the matters or events listed in paragraph 15 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract, or a Lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse OGL from performing its obligations under the SPA or be a waiver of defaults by OGL under the SPA and the related documents.

18. **THIS COURT ORDERS** that from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against OGL relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order. For clarity, nothing in the Order alters or limits the ability of any Person with a preserved or perfected claim for lien to pursue and prosecute that lien against Persons other than OGL, or their assets or properties.

19. **THIS COURT ORDERS** that from and after the Closing Time:

- (a) the nature of the Retained Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ExcludedCo;
- (c) any Person that prior to the Closing Time had a valid right or claim against OGL under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have an Excluded Liability Claim against OGL but will have an equivalent Excluded Liability Claim

against ExcludedCo in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ExcludedCo; and

- (d) any Person with an Excluded Liability Claim against ExcludedCo following the Closing Time shall have the same rights, priority and entitlement as against ExcludedCo as such Person, with an Excluded Liability Claim, had against OGL prior to the Closing Time.

20. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

- (a) ExcludedCo shall be a company to which the CCAA applies; and
- (b) ExcludedCo shall be added as a Respondent in this CCAA Proceeding and all references in any Order of this Court in respect of this CCAA Proceeding to (i) “OGL” shall refer to and include ExcludedCo, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ExcludedCo (the “**ExcludedCo Property**”), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February 20, 2020 and as increased by orders dated April 29, 2020 and April 26, 2021), shall constitute a charge on the Property of ExcludedCo.

21. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of ExcludedCo and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of ExcludedCo;

the SPA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to ExcludedCo, the transfer and vesting of the New OGL Shares and the Post-Consolidation OGL Shares in and to the Purchaser) and any payments by or to the Purchaser, ExcludedCo or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of ExcludedCo and shall not be void or voidable by creditors of ExcludedCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **MONITOR'S ENHANCED POWERS**

22. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor as set out in the Initial Order, as expanded by the Order of this Court dated April 26, 2021 (the “**Expansion of Powers Order**”), or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of ExcludedCo as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ExcludedCo in order to facilitate the performance of any ongoing obligations of ExcludedCo, including with respect to any Excluded Liability Claim, and to carry out the Monitor's duties under this Order or any other Order of this Court in this CCAA Proceeding;
- (b) exercise any powers which may be properly exercised by a board of directors of ExcludedCo;
- (c) cause ExcludedCo to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;

- (d) open one or more new accounts (the “**ExcludedCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ExcludedCo shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ExcludedCo, the ExcludedCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;
- (e) cause ExcludedCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ExcludedCo or the distribution of the proceeds the property of the ExcludedCo, or any other related activities, including in connection with bringing this CCAA Proceeding to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ExcludedCo (including ENDM, or other any governmental authority) in the name of or on behalf of ExcludedCo;
- (g) claim, or cause ExcludedCo to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ExcludedCo is entitled;
- (h) have access to all books and records that are the property of ExcludedCo in ExcludedCo’s possession or control in addition to OGL’s books and records in accordance with the terms of the SPA;
- (i) assign ExcludedCo, or cause ExcludedCo to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) consult with Canada Revenue Agency, or any other provincial, federal, or municipal government agency with respect to any issues arising in respect of this CCAA Proceeding; and

- (k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

23. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of ExcludedCo or OGL.

24. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, ExcludedCo shall remain in possession and control of its Property and Business (each as defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of ExcludedCo, or any part thereof.

25. **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 and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order, the Expansion of Powers Order, and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel in the fulfillment of its duties and the carrying out of the provisions of this Order.

26. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of OGL or ExcludedCo within the meaning of any relevant legislation and that any distributions to creditors of ExcludedCo, or OGL by the Monitor will be deemed to have been made by ExcludedCo.

27. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of ExcludedCo with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

28. **THIS COURT ORDERS** that the Fifth Report and the activities of the Monitor as set out therein be and are hereby approved.

## RELEASES

29. **THIS COURT ORDERS** that effective upon the filing of the Monitor’s Closing Certificate, (i) the legal counsel and advisors to OGL, and (iii) the Monitor and its legal counsel (collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor’s Closing Certificate and that relate in any manner whatsoever to OGL, or any of its assets (current or historical), obligations, business or affairs or this CCAA Proceeding, including any actions undertaken or completed pursuant to the terms of this Order, or arising in connection with or relating to the SPA or the completion of the Transactions (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties.

## GENERAL

30. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against OGL, the New OGL Shares and the Post-Consolidation OGL Shares.

31. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

IN THE MATTER OF THE *COMPANIES’ CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
 AND IN THE MATTER OF THE COMPROMISE OR  
 ARRANGEMENT OF 1000063081 ONTARIO INC.

32. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

34. **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 ExcludedCo, 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 ExcludedCo 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 ExcludedCo and the Monitor and their respective agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that each of ExcludedCo and the Monitor 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.

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**Schedule A – Form of Monitor’s Closing Certificate**

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

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

**ORIONIS CORPORATION**

Applicant

- and-

**ONTARIO GRAPHITE, LTD.**

Respondent

**RECITALS**

A. Pursuant to the Initial Order of Justice Gilmore of the Ontario Superior Court of Justice (Commercial List), (the “**Court**”) dated February 12, 2020, as amended and restated, Ontario Graphite, Ltd. (“**OGL**”) was granted protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Deloitte Restructuring Inc., was appointed as the monitor (“**Monitor**”) of Ontario Graphite Ltd. (“**OGL**”).

B. Pursuant to an order of Justice McEwen dated April 26, 2021 the Monitor was authorized and empowered to, among other things, take any and all actions and steps, including without limitation, execute any and all documents and writings, for and in the name of OGL, in the furtherance of negotiating and entering into a definitive transaction with Bold Global Advisory Ltd. (“**Bold Global**”), or with any other person, or entity as the Monitor may determine is appropriate, in its discretion and in consultation with the DIP Lender.

C. Pursuant to the Approval and Vesting Order of the Court, dated March 4, 2022, (the “**AVO**”), the Court approved the transactions (the “**Transactions**”) contemplated by the Share Purchase Agreement dated February 24, 2022, (the “**SPA**”), between OGL and G6 Energy Corp., as assignee of Bold Global (the “**Purchaser**”), and ordered, *inter alia*, that: (i) all of OGL’s right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ExcludedCo; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to,



assumed by and vest in ExcludedCo; and (iii) all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SPA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SPA.
2. The Monitor has received written confirmation from NDMNRF, supported by invoices in substance satisfactory to the Monitor, that, as at the date and time of this certificate, the costs incurred and paid by NDMNRF prior to the Closing Time in connection with the implementation of Minister's Directions 2020-003 are \$\*\* and the Monitor has paid such costs from the Proceeds.
3. This Monitor's closing certificate was delivered by the Monitor at Toronto on \_\_\_\_\_, 2022.

**Deloitte Restructuring Inc., in its capacity as Monitor of Ontario Graphite, Ltd. and 1000063081 Ontario Inc., and not in its personal or corporate capacity.**

Per: \_\_\_\_\_  
 Name:  
 Title:

**Schedule “B-1” - Encumbrances to be Deleted and Expunged from OGL**

**Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged**

1.	Reference File No.	673330707
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Royal Bank of Canada
	Collateral Classification	Accounts Other
	General Collateral Description	n/a
2.	Reference File No.	691844958
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Northern Ontario Heritage Fund Corporation
	Collateral Classification	Equipment Other
	General Collateral Description	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 CIP SAG MILL MECH. FEEDERS SCREENS (DERRICK CORPORATION), CCIP SAG MILL MECH FEED FLOW DIVIDE, DERRICK CORPORATION, CIP SAG MILL MECH. MAJOR LINERS (TEGA INDUSTRIES), CIP SAG MILL MECHMHYDRAULIC DRIVES (BOSCH REXROTH CANADA CORP), CIP SAG MILL MECH SAGMILL UNIT (BATEMAN ENGINEERED TECHNOLOGIES), CIP SAG MILL MECHSAGMILL DR CONCRETE (WESTERN MECHANICAL), CIPSAG MILL MECH SAG& TAIL PUMPS (KAD INDUSTRIAL SERVICES) AND ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS TO THE ABOVEMENTIONED

		COLLATERAL AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH SUCH COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR ANY PAYMENT THAT INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO SUCH COLLATERAL OR PROCEEDS OF SUCH COLLATERAL. PROCEEDS, GOODS, SECURITIES, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY AND INTANGIBLES.
3.	Reference File No.	695155194
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Orionis Corporation
	Collateral Classification	Inventory Equipment Accounts Other Motor Vehicle Included
	General Collateral Description	n/a
4.	Reference File No.	749098629
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Orionis Corporation
	Collateral Classification	Accounts Other
	General Collateral Description	n/a
5.	Reference File No.	757451754
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Miller Thomson LLP
	Collateral Classification	Inventory Equipment Accounts Other Motor Vehicle Included
	General Collateral Description	LATE RENEWAL OF PPSA FILE NO. 700288974 REGISTRATION NO. 20140930 1940 1531 3232.

### Ontario Land Titles Registrations to be Deleted and Expunged

#### PIN 52152-0004

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

#### PIN 52152-0008

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25

	Encumbrance	Registration Number	Party	Amount	Registration Date
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

PIN 52152-0009

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18

	Encumbrance	Registration Number	Party	Amount	Registration Date
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

**Ontario Land Titles Registrations to be Deleted and Expunged from Property Held in Trust for OGL**

<b>PIN No.</b>	<b>Owner</b>	<b>Instruments Registered on Title</b>	<b>Date Registered</b>
52152-0003	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0005	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0006	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0007	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07

**Registrations Against the Ontario Unpatented Mining Claims in the Township of Butt to be Deleted and Expunged**

1. Debenture/Mortgage/Security – Between Ontario Graphite and Orionis Corporation recorded on January 22, 2016 as transaction number M160.00017.
2. Debenture/Mortgage/Security – Between Ontario Graphite and Boulevard Asia Trading Limited recorded on August 18, 2017 as transaction number T1790.00420.

3. Debenture/Mortgage/Security – Between Ontario Graphite and Orinionis Corporation recorded on August 18, 2017 as transaction number T1790.00421.

each of which is registered against the following claims:

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
1.	113847	4267364	Active
2.	113848	4267364	Active
3.	115231	4248235	Active
4.	115720	4259851	Active
5.	115721	4259851	Active
6.	120017	1500477 4251800	Active
7.	132676	4269444	Active
8.	132677	4269444	Active
9.	132678	4267364	Active
10.	132679		Active
11.	133291	4248236	Active
12.	134038	4248237	Active
13.	134614	4248234 4248235	Active
14.	134618	4248235	Active
15.	137705	4251800 4258350	Active
16.	149276	4251800	Active
17.	149279		Active
18.	149280		Active
19.	150575	4248235	Active
20.	150614	4248233	Active
21.	151295		Active
22.	151296		Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
23.	151565		Active
24.	151567		Active
25.	152807	4248233 4248234	Active
26.	152827	4248233 4248235	Active
27.	152828	4248235	Active
28.	154835	4259851	Active
29.	154836	1500476 4259851	Active
30.	157860	4255163 4258350	Active
31.	163333	4255163	Active
32.	168132	4269444	Active
33.	168133	4269444	Active
34.	170888	4259851	Active
35.	171397	4259851	Active
36.	197391	4248236 4248237 4267364	Active
37.	197392	4267364	Active
38.	198159	4248235	Active
39.	198848	4248236	Active
40.	199797	04258349	Active
41.	200152	1500477 4259851	Active
42.	205413	4269444	Active
43.	206134	4248234	Active
44.	206846	4248236	Active



	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
45.	208182	4259851	Active
46.	217521	4251800	Active
47.	218265	4248234	Active
48.	226242	4248236	Active
49.	231349	1500477	Active
50.	234169	4269444	Active
51.	234170	4269444	Active
52.	234841	4248237	Active
53.	235127	1500476	Active
54.	235423	4248234	Active
55.	246347	04258349	Active
56.	253930	1500476	Active
57.	254416	04258349	Active
58.	263444	4248237	Active
59.	263445	4267364	Active
60.	264724	4248235	Active
61.	265447		Active
62.	266778	1500476	Active
63.	272085	4248237	Active
64.	272154	4251800	Active
65.	272844	4248236	Active
66.	272845	4248236	Active
67.	281545	4255163 4258350	Active
68.	283528	4269444	Active
69.	283531	4267364	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
70.	290910	04258349	Active
71.	296514	4251800 4258350 4269445	Active
72.	298533	1500477	Active
73.	300092	1500477 4251800	Active
74.	301249	4267364	Active
75.	301937	4248237	Active
76.	301998	4248233 4248234 4248235	Active
77.	302014	4248234 4248235	Active
78.	302976	04258349	Active
79.	302977	04258349 4248236 4255163	Active
80.	302978		Active
81.	310679	4259851	Active
82.	310680	4259851	Active
83.	317997	4251800	Active
84.	317999	4267364	Active
85.	318666	4248237	Active
86.	319943	4248236	Active
87.	320889	4248235	Active
88.	323787	4258350 4269445	Active
89.	331387	4269444	Active
90.	331389	4267364	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
91.	333529	4248233 4248234	Active
92.	333530	4248234	Active
93.	333543	4251800	Active
94.	338294	1500477 4251800	Active
95.	341769	04258349 4258350 4269444	Active

## Schedule “C” - Permitted Encumbrances

### General

Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Leased Real Property.

### **Permitted Encumbrances in Respect of OGL Property Registered to OGL**

#### Specific

##### PIN 52152-0004

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9254	1992/09/15
2.	Crown Patent Lease	NLT333875	1993/10/04
3.	Land Registrar’s Order	LT270748	2005/12/06
4.	Land Registrar’s Order	GB77282	2014/10/16
5.	Notice (Renewal of Mining Lease registered as NLT333785)	GB88643	2016/01/07

##### PIN 52152-0008

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9396	1993/02/19
2.	Crown Patent Lease	NLT334240	1993/10/18
3.	Land Registrar’s Order	LT270748	2005/12/05
4.	Land Registrar’s Order	GB77282	2014/10/16

##### PIN 52152-0009

	Encumbrance	Registration Number	Registration Date
1.	Plan Reference	36R7472	1987/09/22
2.	Crown Patent Lease	NLT276987	1988/05/09
3.	Land Registrar’s Order	LT270748	2005/12/06
4.	Land Registrar’s Order	GB252	2006/09/26
5.	Notice (Renewal of Mining Lease registered as NLT276987)	GB38040	2010/10/25
6.	Land Registrar’s Order	GB77282	2014/10/16

### Permitted Encumbrances in Respect of OGL Property Held in Trust for OGL

#### PIN 52152-0003

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339543	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339543)	GB89299	2016/02/02

#### PIN 52152-0005

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339544	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339544)	GB89300	2016/02/02

#### PIN 52152-0006

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339545	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339545)	GB89301	2016/02/02

#### PIN 52152-0007

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339542	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01

4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339542)	GB89298	2016/02/02

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

ORIONIS CORPORATION  
Applicant

-AND-

ONTARIO GRAPHITE, LTD.  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Approval and Vesting Order)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3400  
Toronto ON M5H 4E3

**Alex MacFarlane – LSO No. 28133Q**  
Tel: 416.367.6305  
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Tel: 416.367.6604  
Email: bbrooksbank@blg.com

Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor

**SCHEDULE 1.1(g): DESCRIPTION OF PROPERTIES**

**Retained Leases**

	<b>Crown Mining Lease No.</b>	<b>PIN</b>	<b>Registration Date</b>	<b>Registration No.</b>	<b>Registered Owner</b>
1.	Mining Lease 109611 being renewal of Mining Lease 106813	52152-0003	2016/02/02	GB89299	Robert James Bassermann, in Trust
2.	Mining Lease 109543 being renewal of Mining Lease 106691	52152-0004	2016/01/07	GB88643	Ontario Graphite, Ltd.
3.	Mining Lease 109612 being renewal of Mining Lease 106814	52152-0005	2016/02/02	GB89300	Robert James Bassermann, in Trust
4.	Mining Lease 109613 being renewal of Mining Lease 106815	52152-0006	2016/02/02	GB89301	Robert James Bassermann, in Trust
5.	Mining Lease 109610 being renewal of Mining Lease 106812	52152-0007	2016/02/02	GB89298	Robert James Bassermann, in Trust
6.	Mining Lease 109542 being renewal of	52152-0008	2016/01/07	GB88646	Ontario Graphite, Ltd.



	Mining Lease 106692				
7.	Mining Lease 108513 being renewal of Mining Lease 105009	52152-0009	2010/10/25	GB38040	Ontario Graphite, Ltd.

**Ontario Unpatented Mining Claims in the Township of Butt Registered in the Name  
of Ontario Graphite, Ltd.**

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
8.	113847	4267364	Active
9.	113848	4267364	Active
10.	115231	4248235	Active
11.	115720	4259851	Active
12.	115721	4259851	Active
13.	120017	1500477 4251800	Active
14.	132676	4269444	Active
15.	132677	4269444	Active
16.	132678	4267364	Active
17.	132679		Active
18.	133291	4248236	Active
19.	134038	4248237	Active
20.	134614	4248234 4248235	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
21.	134618	4248235	Active
22.	137705	4251800 4258350	Active
23.	149276	4251800	Active
24.	149279		Active
25.	149280		Active
26.	150575	4248235	Active
27.	150614	4248233	Active
28.	151295		Active
29.	151296		Active
30.	151565		Active
31.	151567		Active
32.	152807	4248233 4248234	Active
33.	152827	4248233 4248235	Active
34.	152828	4248235	Active
35.	154835	4259851	Active
36.	154836	1500476 4259851	Active
37.	157860	4255163 4258350	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
38.	163333	4255163	Active
39.	168132	4269444	Active
40.	168133	4269444	Active
41.	170888	4259851	Active
42.	171397	4259851	Active
43.	197391	4248236 4248237 4267364	Active
44.	197392	4267364	Active
45.	198159	4248235	Active
46.	198848	4248236	Active
47.	199797	04258349	Active
48.	200152	1500477 4259851	Active
49.	205413	4269444	Active
50.	206134	4248234	Active
51.	206846	4248236	Active
52.	208182	4259851	Active
53.	217521	4251800	Active
54.	218265	4248234	Active
55.	226242	4248236	Active
56.	231349	1500477	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
57.	234169	4269444	Active
58.	234170	4269444	Active
59.	234841	4248237	Active
60.	235127	1500476	Active
61.	235423	4248234	Active
62.	246347	04258349	Active
63.	253930	1500476	Active
64.	254416	04258349	Active
65.	263444	4248237	Active
66.	263445	4267364	Active
67.	264724	4248235	Active
68.	265447		Active
69.	266778	1500476	Active
70.	272085	4248237	Active
71.	272154	4251800	Active
72.	272844	4248236	Active
73.	272845	4248236	Active
74.	281545	4255163 4258350	Active
75.	283528	4269444	Active
76.	283531	4267364	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
77.	290910	04258349	Active
78.	296514	4251800 4258350 4269445	Active
79.	298533	1500477	Active
80.	300092	1500477 4251800	Active
81.	301249	4267364	Active
82.	301937	4248237	Active
83.	301998	4248233 4248234 4248235	Active
84.	302014	4248234 4248235	Active
85.	302976	04258349	Active
86.	302977	04258349 4248236 4255163	Active
87.	302978		Active
88.	310679	4259851	Active
89.	310680	4259851	Active
90.	317997	4251800	Active
91.	317999	4267364	Active
92.	318666	4248237	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
93.	319943	4248236	Active
94.	320889	4248235	Active
95.	323787	4258350 4269445	Active
96.	331387	4269444	Active
97.	331389	4267364	Active
98.	333529	4248233 4248234	Active
99.	333530	4248234	Active
100.	333543	4251800	Active
101.	338294	1500477 4251800	Active
102.	341769	04258349 4258350 4269444	Active

**Unpatented Mining Claims in the Township of Butt Registered in the Name of  
Robert James Bassermann**

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
103.	110072	1077366 1077367	Active Pending Proceedings
104.	132312	1077365 1077367	Active Pending Proceedings

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
105.	144474	898527 898529 898530	Active Pending Proceedings
106.	144657	898526 898527	Active Pending Proceedings
107.	148991	1077365	Active Pending Proceedings
108.	175374	898543	Active Pending Proceedings
109.	177571	1077365 1077366 1077367	Active Pending Proceedings
110.	181163	898528 898529 898543 898544	Active Pending Proceedings
111.	181164	898527 898528 898529	Active Pending Proceedings
112.	183511	898523	Active Pending Proceedings
113.	186713	898523 898527 898528	Active Pending Proceedings
114.	203350	898526 898527	Active Pending Proceedings
115.	210569	898530	Active Pending Proceedings
116.	232793	898526	Active Pending Proceedings
117.	276475	898530	Active Pending Proceedings

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
118.	288537	898543	Active Pending Proceedings
119.	326541	1077366	Active Pending Proceedings
120.	329996	898526 898523 898528 898543 898544	Active Pending Proceedings
121.	330296	898523 898528 898543 898544	Active Pending Proceedings
122.	335179	898530	Active Pending Proceedings
123.	335263	1077366	Active Pending Proceedings



**SCHEDULE 7.7: FORM OF BASSERMAN AMENDMENT AGREEMENT**

See attached.

## AMENDING AGREEMENT

**THIS AGREEMENT** made as of this      day of ●, 2022.

### **B E T W E E N:**

**THE ESTATE OF VINCENT ERIC SHEEHAN**, of the Town of Kearney, in the Province of Ontario

(hereinafter referred to as the “**Sheehan Estate**” or the “**Optionor**”)

### **OF THE FIRST PART**

- and -

**ONTARIO GRAPHITE, LTD.**, a company incorporated under the laws of the Province of Ontario

(hereinafter referred to as “**OGI**”)

### **OF THE SECOND PART**

### **WHEREAS:**

(A) Vincent Eric Sheehan and Graphite Technology Group Inc. entered into an option agreement made the 17<sup>th</sup> day of February, 2006 in respect of the Mining Properties described therein (the “**Option Agreement**”) and a trust agreement made the 20<sup>th</sup> day of February, 2006 (the “**Trust Agreement**”) in respect of the Mining Properties, a copies of which agreements are attached hereto as Schedule “A”.

(B) OGI has succeeded to the right, title and interest of Graphite Technology Group Inc. in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties.

(C) Vincent Eric Sheehan was deceased on January 9, 2014 and the Sheehan Estate has succeeded to the right, title and interest of Vincent Eric Sheehan in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties.

(D) The Optionor and OGI have agreed to amend the Option Agreement in accordance with the terms of this Amending Agreement.

(E) All capitalized terms that are used in this Amending Agreement but not defined herein shall have the respective meanings given to them in the Option Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the Optionor and OGL covenant, acknowledge and agree as follows:

1. All payments required to be made to the Optionor under the Option Agreement in order for the exercise of the Purchase Option have been made and paid in full to the Optionor to the date hereof and/or have been and/or are hereby irrevocably and unconditionally waived by the Optionor.
2. The Option Agreement is in good standing as of the date hereof and the Purchase Option has been duly exercised under the terms of the Option Agreement and OGL is, or is entitled to be, the sole beneficial leasehold owner or recorded holder of the Mining Properties as to a 100% undivided interest, and each of them, as the case may be, and is entitled to be the legal registered or recorded leasehold owner of the Mining Properties, and each of them, as the case may be, pursuant and subject to the terms of Article 11 of the Option Agreement.
3. The Optionor hereby irrevocably and unconditionally acknowledges that the Option was exercised in respect of those parts of the Mining Properties comprising the Leasehold Properties (being PIN 52152-0007 (formerly Parcel 3778 Nippissing Leasehold), PIN 52152-0003 (formerly Parcel 3779 Nippissing Leasehold), PIN 52152-0005 (formerly Parcel 3780 Nippissing Leasehold), PIN 52152-0006 (formerly Parcel 3781 Nippissing Leasehold)) and hereby transfers, conveys, assigns and quit claims to OGL all of the Optionor's right, title and interest in and to (i) the Leasehold Properties and each of them and (ii) acknowledges that the Trust Agreement and the trust created thereunder as related to the Leasehold Properties shall be terminated and wound up as soon as reasonably practicable from and after the date of this Agreement.
4. The Optionor hereby agrees to complete such acts and execute and deliver such written instruments (including in registrable form, as required) as soon as reasonably practicable from and after the date of this Agreement in order to transfer legal and registered title to the Leasehold Properties to and into the name of OGL (or its nominee), including as is required to obtain the consent to such transfers from the Government of Ontario.
5. The Optionor hereby agrees to complete such acts and execute and deliver such written instruments (including in registrable or recordable form, as required) in order to transfer legal and registered title to the Mining Properties to and into the name of OGL (or its nominee), including as is required to obtain the consent to such transfers from the Government of Ontario, and to terminate any applicable trust under the Trust Agreement as expeditiously as possible as OGL is or becomes entitled to take such registered or recorded title in its name pursuant to and in accordance with Article 11 of the Option Agreement.
6. All payments of the minimum annual fixed Royalty payable under the Option Agreement to the date hereof pursuant to Section 4.01 of the Option Agreement have been paid in full to the Optionor to the date of this Agreement.

7. The production Royalty payable under the Option Agreement pursuant to Section 4.01(c) of the Option Agreement is in good standing and is fully paid as of the date hereof and shall continue of force and effect and payable from and after the date hereof on the sale of any commercial mining production from the Mining Properties in accordance with Section 4.01(c) and (d) of the Option Agreement.

8. The Optionor hereby represents and warrants that it has succeeded to the right, title and interest of Vincent Eric Sheehan in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties and that it has not granted, transferred, conveyed or assigned to any person any other right, title or interest in and to the Mining Properties or in and to the Option Agreement or the Trust Agreement and that Vincent Eric Sheehan did not grant, transfer, convey or assign to any person any such other right, title or interest in and to the Mining Properties or in and to the Option Agreement or the Trust Agreement.

9. The Optionor hereby acknowledges that OGL has succeeded to the right, title and interest of Graphite Technology Group Inc. in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties and that OGL shall have exclusive and quiet possession of the Mining Properties and OGL and its servants, agents and contractors are free to enter in, on and under such Mining Properties and to conduct such activities thereon as OGL may determine in its sole discretion and that the Optionor retains no legal or beneficial interest in or to the Leasehold Properties and has agreed not to have the Mining Properties, or any of them, registered or recorded in its name as legal or beneficial owner or recorded holder or otherwise, notwithstanding any other term of the Option Agreement.

10. The Option Agreement and this Amending Agreement shall be read together and constitute one and the same agreement and shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns. Neither this Amending Agreement nor the Option Agreement, nor any interest therein, thereto or thereunder may be assigned in whole or in part without the prior written consent of each of the parties hereto.

11. Each of OGL and the Optionor acknowledge that the Optionor shall be entitled to register or record notice of the Option Agreement as amended by this Amending Agreement (which notice shall specifically reference both the Option Agreement and this Amending Agreement) against title to the Mining Properties.

12. This Amending Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in such province.

13. Each of the Optionor and OGL covenant and agree that it will execute all documents and do all such acts and things as either of them may reasonably request or as may be reasonably required in order to (i) terminate the trusts under the Trust Agreement as related to the Leasehold Properties and transfer legal, registered and/or recorded title to the Leasehold Properties and to the Mining Properties in and to the name of OGL, as may

be required (as amended by this Agreement) and (ii) carry out the intent and the terms and conditions of this Amending Agreement.

14. This Amending Agreement may be executed and delivered in any number of original or facsimile counterparts, each of which when executed and delivered shall be considered an original and all of which taken together shall constitute one and the same instrument.

[ Signature Page Follows ]

**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Amending Agreement as of the date first written above.

**WITNESSES:**

) **THE ESTATE OF VINCENT ERIC**  
 ) **SHEEHAN, by:**  
 )  
 )  
 ) \_\_\_\_\_  
 ) Donald K. Baxter - Estate Trustee  
 )  
 )  
 ) \_\_\_\_\_  
 ) Zeta Lambertson – Estate Trustee  
 )  
 ) \_\_\_\_\_  
 ) Mary-Ann Gilchrist – Estate Trustee

**ONTARIO GRAPHITE, LTD.**

Per: \_\_\_\_\_  
 Name:  
 Title:

I have authority to bind the Corporation

## AMENDING AGREEMENT

**THIS AGREEMENT** made as of this      day of ●, 2022.

### **B E T W E E N:**

**1163863 ONTARIO LIMITED**, a company incorporated under the laws of the Province of Ontario

(hereinafter referred to as “**1163863**” or the “**Optionor**”)

### **OF THE FIRST PART**

- and -

**ONTARIO GRAPHITE, LTD.**, a company incorporated under the laws of the Province of Ontario

(hereinafter referred to as “**OGL**”)

### **OF THE SECOND PART**

### **WHEREAS:**

(A) Vinecrest Management Services Limited (“**Vinecrest**”) and Graphite Technology Group Inc. entered into an option agreement made the 17<sup>th</sup> day of February, 2006 in respect of the Mining Properties described therein (the “**Option Agreement**”) and a trust agreement made the 20<sup>th</sup> day of February, 2006 (the “**Trust Agreement**”) in respect of the Mining Properties, a copies of which agreements are attached hereto as Schedule “A”.

(B) OGL has succeeded to the right, title and interest of Graphite Technology Group Inc. in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties.

(C) Vinecrest assigned to 1163863 and 1163863 has succeeded to the right, title and interest of Vinecrest in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties.

(D) The Optionor and OGL have agreed to amend the Option Agreement in accordance with the terms of this Amending Agreement.

(E) All capitalized terms that are used in this Amending Agreement but not defined herein shall have the respective meanings given to them in the Option Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the Optionor and OGL covenant, acknowledge and agree as follows:

1. All payments required to be made to the Optionor under the Option Agreement in order for the exercise of the Purchase Option have been made and paid in full to the Optionor to the date hereof and/or have been and/or are hereby irrevocably and unconditionally waived by the Optionor.
2. The Option Agreement is in good standing as of the date hereof and the Purchase Option has been duly exercised under the terms of the Option Agreement and OGL is, or is entitled to be, the sole beneficial leasehold owner or recorded holder of the Mining Properties as to a 100% undivided interest, and each of them, as the case may be, and is entitled to be the legal registered or recorded leasehold owner of the Mining Properties, and each of them, as the case may be, pursuant and subject to Article 11 of the Option Agreement.
3. The Optionor hereby agrees to complete such acts and execute and deliver such written instruments (including in registrable or recordable form, as required) in order to transfer legal and registered title to the Mining Properties to and into the name of OGL (or its nominee), including as is required to obtain the consent to such transfers from the Government of Ontario, and to terminate any applicable trust under the Trust Agreement as expeditiously as possible as OGL is or becomes entitled to take such registered or recorded title in its name pursuant to and in accordance with Article 11 of the Option Agreement.
4. All payments of the minimum annual fixed Royalty payable under the Option Agreement to the date hereof pursuant to Section 4.01 of the Option Agreement have been paid in full to the Optionor to the date of this Agreement.
5. The production Royalty payable under the Option Agreement pursuant to Section 4.01(c) of the Option Agreement is in good standing and is fully paid as of the date hereof and shall continue of force and effect and payable from and after the date hereof on the sale of any commercial mining production from the Mining Properties in accordance with Section 4.01(c) and (d) of the Option Agreement.
6. The Optionor hereby represents and warrants that it has not granted, transferred, conveyed or assigned to any person any other right, title or interest in and to the Mining Properties or in and to the Option Agreement or the Trust Agreement.
7. The Optionor hereby acknowledges that OGL has succeeded to the right, title and interest of Graphite Technology Group Inc. in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties and that OGL shall have exclusive and quiet possession of the Mining Properties and OGL and its servants, agents and contractors are free to enter in, on and under such Mining Properties and to conduct such activities thereon as OGL may determine in its sole discretion and that the Optionor retains no legal or beneficial interest in or to the Mining Properties and has agreed not to



have the Mining Properties, or any of them, registered or recorded in its name as legal or beneficial owner or recorded holder or otherwise notwithstanding any other term of the Option Agreement.

8. The Optionor hereby represents and warrants that it has succeeded to the right, title and interest of Vinecrest in, to and under (i) the Option Agreement, (ii) the Trust Agreement and (iii) the Mining Properties and that it has not granted, transferred, conveyed or assigned to any person any other right, title or interest in and to the Mining Properties or in and to the Option Agreement or the Trust Agreement and that Vinecrest did not grant, transfer, convey or assign to any person any such other right, title or interest in and to the Mining Properties or in and to the Option Agreement or the Trust Agreement.

9. Each of OGL and the Optionor acknowledge that the Optionor shall be entitled to register or record notice of the Option Agreement as amended by this Amending Agreement (which notice shall specifically reference both the Option Agreement and this Amending Agreement) against title to the Mining Properties.

10. This Amending Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in such province.

11. Each of the Optionor and OGL covenant and agree that it will execute all documents and do all such acts and things as either of them may reasonably request or as may be reasonably required in order to (i) terminate the trusts under the Trust Agreement and transfer legal, registered and/or recorded title to the Mining Properties in and to the name of OGL, as may be required pursuant to and in accordance with the terms of the Option Agreement (as amended by this Agreement) and (ii) carry out the intent and the terms and conditions of this Amending Agreement.

12. This Amending Agreement may be executed and delivered in any number of original or facsimile counterparts, each of which when executed and delivered shall be considered an original and all of which taken together shall constitute one and the same instrument.

Signature Page Follows

**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Amending Agreement as of the date first written above.

**1163863 ONTARIO LIMITED**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

**ONTARIO GRAPHITE, LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

**Appendix “L”**  
**Approval and Vesting Order**

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

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

THE HONOURABLE	)	FRIDAY, THE 4 <sup>th</sup> DAY
	)	
JUSTICE CONWAY	)	OF MARCH, 2022

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

**ORDER**  
**(Approval and Vesting Order)**

**THIS MOTION**, made by Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”) of Ontario Graphite, Ltd. (“**OGL**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order, among other things: (i) approving the Share Purchase Agreement (the “**SPA**”) between OGL and G6 Energy Corp., as assignee of Bold Global Advisory Ltd. (the “**Purchaser**”), dated February 24, 2022, and the transactions contemplated thereby (the “**Transactions**”), (ii) adding 1000063081 Ontario Inc. (“**ExcludedCo**”) as a Respondent in these CCAA proceedings; (iii) transferring and vesting all of OGL’s right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SPA) to and in ExcludedCo; and (iv) vesting all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares (as defined in the SPA) in the Purchaser; was heard on March 4, 2022, by video conference due to the COVID-19 pandemic.

**ON READING** the Notice of Motion, the Fifth Report of the Monitor, filed (the “Fifth Report”), and on hearing the submissions of counsel for the Monitor, counsel for the Purchaser,

counsel for OGL, counsel for Orionis Corporation (“**Orionis**”) and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavit of service of Laura Herd sworn February 24, 2022, filed.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on March 4, 2022, and hereby dispenses with further service thereof.

### **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

### **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that the SPA, the Basserman Agreement Amendments, and the Transactions be and are hereby approved and that the execution of the SPA and the Basserman Agreement Amendments by the Monitor on behalf of OGL is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary. The Monitor on behalf of OGL is hereby authorized and directed to perform OGL’s and its obligations under the SPA and the Basserman Agreement Amendments and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the New OGL Shares and the Post-Consolidation OGL Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor on behalf of OGL to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor’s certificate (the “**Monitor’s Closing Certificate**”) to the Purchaser (the “**Closing Time**”), substantially in the form attached as Schedule “A” hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

- (a) first, all of the right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ExcludedCo, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Proceeds (as defined below) in accordance with paragraph 11 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;
- (b) second, in consideration for the (i) Excluded Liability Promissory Note and (ii) the transfer of (w) the Excluded Assets, (x) all Excluded Contracts, (y) Excluded Leases and (z) Excluded Liabilities, other than set off claims asserted as defences to any claims made by OGL, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario) or the *Mining Act* (Ontario) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario) or the *Forfeited Property Act* (Ontario) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not

include the permitted encumbrances, easements and restrictive covenants listed on **Schedules “C”** hereto)) of OGL (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in ExcludedCo such that the Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of ExcludedCo and shall no longer be obligations of OGL and all of OGL’s assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for OGL (and including, for certainty, the Retained Assets, the **“OGL Property”**) shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to OGL’s Property are hereby expunged and discharged as against OGL’s Property;

- (c) third, in consideration for the Purchase Consideration, OGL shall issue the New OGL Shares to the Purchaser, and all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and Encumbrances of any kind affecting or relating to the New OGL Shares and the Post-Consolidation OGL Shares are hereby expunged and discharged as against the New OGL Shares and the Post-Consolidation OGL Shares;
- (d) fourth, any fractional New OGL Shares and all Existing OGL Shares and all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of OGL or which require the issuance, sale or transfer by OGL, of any shares or other securities of OGL and/or the share capital of OGL, or otherwise relating thereto, shall be deemed terminated and cancelled and the only equity interests that shall remain in OGL shall be the Post-Consolidation OGL Shares;

- (e) fifth, the Monitor shall cause payment to be made on behalf of OGL from the Purchase Consideration to ExcludedCo in full satisfaction of the Excluded Liability Promissory Note, provided that such payment shall continue to be held by the Monitor on behalf of ExcludedCo;
- (f) sixth, the Monitor is authorized and directed to, and the Monitor shall, disburse from the Proceeds to NDMNRF the full amount of the costs paid by NDMNRF prior to the Closing Time in connection with the implementation of Minister's Directions 2020-003 (which amount shall be specified in the Monitor's Closing Certificate, and which amount, for greater certainty, was \$2,410,109.80 as at December 24, 2021 [**to be updated**] and continues to accrue) (such disbursement, the "**NDMNRF Payment**"); the NDMNRF Payment shall be in full and final satisfaction of both: (i) the debt owed to NDMNRF under s. 151(1) of the *Mining Act* and (ii) any Claim of NDMNRF pursuant to s. 11.8(8) of the CCAA, in each case to the extent related to costs paid by NDMNRF prior to the Closing Time; and,
- (g) seventh, OGL shall be deemed to cease being a Respondent in these CCAA proceedings, and OGL shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of this CCAA Proceeding, save and except for this Order, the provisions of which (as they relate to OGL) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to OGL, the Retained Assets, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance



as may be required to give effect to the terms of this Order and the SPA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Retained Assets of any Claims including Encumbrances but excluding Permitted Encumbrances, and the Monitor and the Purchaser are hereby specifically authorized to discharge the registrations on the OGL Property, other than Permitted Encumbrances.

8. **THIS COURT ORDERS**, without limiting the generality of paragraph 7 of this Order and consistent with paragraph 5 of this Order, that upon the registration in the Land Registry Office for the Land Titles Division of Parry Sound (No. 42) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to delete and expunge from title to the OGL Property (including the property held in trust for OGL) all of the Encumbrances listed in **Schedule "B"** hereto.

9. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Retained Assets is required for the due execution, delivery and performance by OGL of the SPA.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Purchaser regarding the fulfilment of conditions to closing under the SPA and shall have no liability with respect to delivery of the Monitor's Closing Certificate.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the New OGL Shares (the "**Proceeds**") which will be held by ExcludedCo shall stand in the place and stead of the OGL Property, and that from and after the delivery of the Monitor's Closing Certificate, all Claims and Encumbrances shall attach to the Proceeds and the Excluded Assets with the same priority as they had with respect to the OGL Property immediately prior to the sale.

12. **THIS COURT ORDERS** that the Monitor shall hold the shares of ExcludedCo, in trust, for the shareholders of OGL immediately prior to implementing the Transactions as their interests may be determined by this Order or any other Order of the Court in these proceedings. In

furtherance of carrying out this task, neither the Monitor, nor any person appointed as an officer or director of ExcludedCo shall have, or incur any personal liability in so doing. In addition to the powers granted to the Monitor pursuant to this Order, the Monitor shall have all the necessary powers as the sole shareholder of ExcludedCo.

13. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, OGL or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in OGL's records pertaining to past and current employees of OGL. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by OGL.

14. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and OGL shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, OGL (provided, as it relates to OGL, such release shall not apply to Taxes in respect of the business and operations conducted by OGL after the Closing Time), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or OGL (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5<sup>th</sup> Supp.), or any provincial equivalent, in connection with OGL. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ExcludedCo.

15. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SPA, all Contracts and Leases to which OGL is a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise

repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor's Closing Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of OGL);
- (b) the insolvency of OGL or the fact that OGL obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SPA, the Transactions or the provisions of this Order, or any other Order of the Court in these proceedings; or
- (d) any transfer or assignment, or any change of control of OGL arising from the implementation of the SPA, the Transactions or the provisions of this Order.

16. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 15 hereof shall waive, compromise or discharge any obligations of OGL in respect of any Retained Liabilities, and (b) the designation of any Claim as a Retained Liability is without prejudice to OGL's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SPA shall affect or waive OGL's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set offs or recoupments against such Retained Liability.

17. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of OGL then existing or previously committed by OGL, or caused by OGL, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Contract, or Lease existing between such Person and OGL (including for certainty, those Contracts, or Leases constituting Retained Assets) arising directly or indirectly from the filing of OGL under the CCAA and implementation of the Transactions, including

without limitation any of the matters or events listed in paragraph 15 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract, or a Lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse OGL from performing its obligations under the SPA or be a waiver of defaults by OGL under the SPA and the related documents.

18. **THIS COURT ORDERS** that from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against OGL relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order. For clarity, nothing in the Order alters or limits the ability of any Person with a preserved or perfected claim for lien to pursue and prosecute that lien against Persons other than OGL, or their assets or properties.

19. **THIS COURT ORDERS** that from and after the Closing Time:

- (a) the nature of the Retained Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ExcludedCo;
- (c) any Person that prior to the Closing Time had a valid right or claim against OGL under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have an Excluded Liability Claim against OGL but will have an equivalent Excluded Liability Claim

against ExcludedCo in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ExcludedCo; and

- (d) any Person with an Excluded Liability Claim against ExcludedCo following the Closing Time shall have the same rights, priority and entitlement as against ExcludedCo as such Person, with an Excluded Liability Claim, had against OGL prior to the Closing Time.

20. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

- (a) ExcludedCo shall be a company to which the CCAA applies; and
- (b) ExcludedCo shall be added as a Respondent in this CCAA Proceeding and all references in any Order of this Court in respect of this CCAA Proceeding to (i) “OGL” shall refer to and include ExcludedCo, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ExcludedCo (the “**ExcludedCo Property**”), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February 20, 2020 and as increased by orders dated April 29, 2020 and April 26, 2021), shall constitute a charge on the Property of ExcludedCo.

21. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of ExcludedCo and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of ExcludedCo;

the SPA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to ExcludedCo, the transfer and vesting of the New OGL Shares and the Post-Consolidation OGL Shares in and to the Purchaser) and any payments by or to the Purchaser, ExcludedCo or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of ExcludedCo and shall not be void or voidable by creditors of ExcludedCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **MONITOR'S ENHANCED POWERS**

22. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor as set out in the Initial Order, as expanded by the Order of this Court dated April 26, 2021 (the “**Expansion of Powers Order**”), or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of ExcludedCo as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ExcludedCo in order to facilitate the performance of any ongoing obligations of ExcludedCo, including with respect to any Excluded Liability Claim, and to carry out the Monitor’s duties under this Order or any other Order of this Court in this CCAA Proceeding;
- (b) exercise any powers which may be properly exercised by a board of directors of ExcludedCo;
- (c) cause ExcludedCo to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;

- (d) open one or more new accounts (the “**ExcludedCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ExcludedCo shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ExcludedCo, the ExcludedCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;
- (e) cause ExcludedCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ExcludedCo or the distribution of the proceeds the property of the ExcludedCo, or any other related activities, including in connection with bringing this CCAA Proceeding to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ExcludedCo (including ENDM, or other any governmental authority) in the name of or on behalf of ExcludedCo;
- (g) claim, or cause ExcludedCo to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ExcludedCo is entitled;
- (h) have access to all books and records that are the property of ExcludedCo in ExcludedCo’s possession or control in addition to OGL’s books and records in accordance with the terms of the SPA;
- (i) assign ExcludedCo, or cause ExcludedCo to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) consult with Canada Revenue Agency, or any other provincial, federal, or municipal government agency with respect to any issues arising in respect of this CCAA Proceeding; and

- (k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

23. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of ExcludedCo or OGL.

24. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, ExcludedCo shall remain in possession and control of its Property and Business (each as defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of ExcludedCo, or any part thereof.

25. **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 and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order, the Expansion of Powers Order, and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel in the fulfillment of its duties and the carrying out of the provisions of this Order.

26. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of OGL or ExcludedCo within the meaning of any relevant legislation and that any distributions to creditors of ExcludedCo, or OGL by the Monitor will be deemed to have been made by ExcludedCo.

27. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of ExcludedCo with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

28. **THIS COURT ORDERS** that the Fifth Report and the activities of the Monitor as set out therein be and are hereby approved.



## RELEASES

29. **THIS COURT ORDERS** that effective upon the filing of the Monitor’s Closing Certificate, (i) the legal counsel and advisors to OGL, and (iii) the Monitor and its legal counsel (collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor’s Closing Certificate and that relate in any manner whatsoever to OGL, or any of its assets (current or historical), obligations, business or affairs or this CCAA Proceeding, including any actions undertaken or completed pursuant to the terms of this Order, or arising in connection with or relating to the SPA or the completion of the Transactions (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties.

## GENERAL

30. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against OGL, the New OGL Shares and the Post-Consolidation OGL Shares.

31. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

IN THE MATTER OF THE *COMPANIES’ CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
 AND IN THE MATTER OF THE COMPROMISE OR  
 ARRANGEMENT OF 1000063081 ONTARIO INC.

32. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

34. **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 ExcludedCo, 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 ExcludedCo 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 ExcludedCo and the Monitor and their respective agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that each of ExcludedCo and the Monitor 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.

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**Schedule A – Form of Monitor’s Closing Certificate**

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

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

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

**RECITALS**

A. Pursuant to the Initial Order of Justice Gilmore of the Ontario Superior Court of Justice (Commercial List), (the “**Court**”) dated February 12, 2020, as amended and restated, Ontario Graphite, Ltd. (“**OGL**”) was granted protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Deloitte Restructuring Inc., was appointed as the monitor (“**Monitor**”) of Ontario Graphite Ltd. (“**OGL**”).

B. Pursuant to an order of Justice McEwen dated April 26, 2021 the Monitor was authorized and empowered to, among other things, take any and all actions and steps, including without limitation, execute any and all documents and writings, for and in the name of OGL, in the furtherance of negotiating and entering into a definitive transaction with Bold Global Advisory Ltd. (“**Bold Global**”), or with any other person, or entity as the Monitor may determine is appropriate, in its discretion and in consultation with the DIP Lender.

C. Pursuant to the Approval and Vesting Order of the Court, dated March 4, 2022, (the “**AVO**”), the Court approved the transactions (the “**Transactions**”) contemplated by the Share Purchase Agreement dated February 24, 2022, (the “**SPA**”), between OGL and G6 Energy Corp., as assignee of Bold Global (the “**Purchaser**”), and ordered, *inter alia*, that: (i) all of OGL’s right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ExcludedCo; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to,

assumed by and vest in ExcludedCo; and (iii) all of the right, title and interest in and to the New OGL Shares and the Post-Consolidation OGL Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SPA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SPA.
2. The Monitor has received written confirmation from NDMNRF, supported by invoices in substance satisfactory to the Monitor, that, as at the date and time of this certificate, the costs incurred and paid by NDMNRF prior to the Closing Time in connection with the implementation of Minister's Directions 2020-003 are \$\*\* and the Monitor has paid such costs from the Proceeds.
3. This Monitor's closing certificate was delivered by the Monitor at Toronto on \_\_\_\_\_, 2022.

**Deloitte Restructuring Inc., in its capacity as Monitor of Ontario Graphite, Ltd. and 1000063081 Ontario Inc., and not in its personal or corporate capacity.**

Per: \_\_\_\_\_  
 Name:  
 Title:

**Schedule “B-1” - Encumbrances to be Deleted and Expunged from OGL**

**Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged**

1.	Reference File No.	673330707
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Royal Bank of Canada
	Collateral Classification	Accounts Other
	General Collateral Description	n/a
2.	Reference File No.	691844958
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Northern Ontario Heritage Fund Corporation
	Collateral Classification	Equipment Other
	General Collateral Description	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 CIP SAG MILL MECH. FEEDERS SCREENS (DERRICK CORPORATION), CCIP SAG MILL MECH FEED FLOW DIVIDE, DERRICK CORPORATION, CIP SAG MILL MECH. MAJOR LINERS (TEGA INDUSTRIES), CIP SAG MILL MECHMHYDRAULIC DRIVES (BOSCH REXROTH CANADA CORP), CIP SAG MILL MECH SAGMILL UNIT (BATEMAN ENGINEERED TECHNOLOGIES), CIP SAG MILL MECHSAGMILL DR CONCRETE (WESTERN MECHANICAL), CIPSAG MILL MECH SAG& TAIL PUMPS (KAD INDUSTRIAL SERVICES) AND ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS TO THE ABOVEMENTIONED

		COLLATERAL AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH SUCH COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR ANY PAYMENT THAT INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO SUCH COLLATERAL OR PROCEEDS OF SUCH COLLATERAL. PROCEEDS, GOODS, SECURITIES, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY AND INTANGIBLES.
3.	Reference File No.	695155194
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Orionis Corporation
	Collateral Classification	Inventory Equipment Accounts Other Motor Vehicle Included
	General Collateral Description	n/a
4.	Reference File No.	749098629
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Orionis Corporation
	Collateral Classification	Accounts Other
	General Collateral Description	n/a
5.	Reference File No.	757451754
	Debtor	Ontario Graphite, Ltd.
	Secured Party	Miller Thomson LLP
	Collateral Classification	Inventory Equipment Accounts Other Motor Vehicle Included
	General Collateral Description	LATE RENEWAL OF PPSA FILE NO. 700288974 REGISTRATION NO. 20140930 1940 1531 3232.

### Ontario Land Titles Registrations to be Deleted and Expunged

PIN 52152-0004

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

PIN 52152-0008

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25

	Encumbrance	Registration Number	Party	Amount	Registration Date
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

PIN 52152-0009

	Encumbrance	Registration Number	Party	Amount	Registration Date
1.	Construction Lien	GB59213	1862066 Ontario Inc.	\$5,116	2012/10/26
2.	Notice of Security Interest	GB69175	Northern Ontario Heritage Fund Corporation	\$1,000,000	2013/11/25
3.	Construction Lien	GB69724	CRS Contractors Rental Supply General Partner Inc.	\$134,189	2013/12/13
4.	Certificate	GB71273	CRS Contractors Rental Supply General Partner Inc.	N/A	2014/03/07
5.	Construction Lien	GB79259	DRA Americas Inc.	\$1,837,854	2015/01/07
6.	Certificate	GB80060	DRA Americas Inc.	N/A	2015/02/17
7.	Charge	GB91682	Orionis Corporation	\$8,000,000	2016/05/18



	Encumbrance	Registration Number	Party	Amount	Registration Date
8.	Land Registrar's Order (deleting and reinstating certain construction liens)	GB104720	N/A	N/A	2017/08/22
9.	Charge	GB107465	Orionis Corporation	\$230,000	2017/11/10
10.	Charge	GB107466	Boulevard Asia Trading Limited	\$1,100,000	2017/11/10
11.	Charge	GB121123	Orionis Corporation	\$1,500,000	2019/05/22
12.	Charge	GB121124	Orionis Corporation	\$8,000,000	2019/05/22
13.	Lien	GB131683	Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Energy, Northern Development and Mines		2020/07/07

**Ontario Land Titles Registrations to be Deleted and Expunged from Property Held in Trust for OGL**

<b>PIN No.</b>	<b>Owner</b>	<b>Instruments Registered on Title</b>	<b>Date Registered</b>
52152-0003	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0005	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0006	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07
52152-0007	Bassermann, Robert James - Trust	GB131683 – Lien – Mining Act	2020/07/07

**Registrations Against the Ontario Unpatented Mining Claims in the Township of Butt to be Deleted and Expunged**

1. Debenture/Mortgage/Security – Between Ontario Graphite and Orionis Corporation recorded on January 22, 2016 as transaction number M160.00017.
2. Debenture/Mortgage/Security – Between Ontario Graphite and Boulevard Asia Trading Limited recorded on August 18, 2017 as transaction number T1790.00420.

3. Debenture/Mortgage/Security – Between Ontario Graphite and Orinionis Corporation recorded on August 18, 2017 as transaction number T1790.00421.

each of which is registered against the following claims:

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
1.	113847	4267364	Active
2.	113848	4267364	Active
3.	115231	4248235	Active
4.	115720	4259851	Active
5.	115721	4259851	Active
6.	120017	1500477 4251800	Active
7.	132676	4269444	Active
8.	132677	4269444	Active
9.	132678	4267364	Active
10.	132679		Active
11.	133291	4248236	Active
12.	134038	4248237	Active
13.	134614	4248234 4248235	Active
14.	134618	4248235	Active
15.	137705	4251800 4258350	Active
16.	149276	4251800	Active
17.	149279		Active
18.	149280		Active
19.	150575	4248235	Active
20.	150614	4248233	Active
21.	151295		Active
22.	151296		Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
23.	151565		Active
24.	151567		Active
25.	152807	4248233 4248234	Active
26.	152827	4248233 4248235	Active
27.	152828	4248235	Active
28.	154835	4259851	Active
29.	154836	1500476 4259851	Active
30.	157860	4255163 4258350	Active
31.	163333	4255163	Active
32.	168132	4269444	Active
33.	168133	4269444	Active
34.	170888	4259851	Active
35.	171397	4259851	Active
36.	197391	4248236 4248237 4267364	Active
37.	197392	4267364	Active
38.	198159	4248235	Active
39.	198848	4248236	Active
40.	199797	04258349	Active
41.	200152	1500477 4259851	Active
42.	205413	4269444	Active
43.	206134	4248234	Active
44.	206846	4248236	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
45.	208182	4259851	Active
46.	217521	4251800	Active
47.	218265	4248234	Active
48.	226242	4248236	Active
49.	231349	1500477	Active
50.	234169	4269444	Active
51.	234170	4269444	Active
52.	234841	4248237	Active
53.	235127	1500476	Active
54.	235423	4248234	Active
55.	246347	04258349	Active
56.	253930	1500476	Active
57.	254416	04258349	Active
58.	263444	4248237	Active
59.	263445	4267364	Active
60.	264724	4248235	Active
61.	265447		Active
62.	266778	1500476	Active
63.	272085	4248237	Active
64.	272154	4251800	Active
65.	272844	4248236	Active
66.	272845	4248236	Active
67.	281545	4255163 4258350	Active
68.	283528	4269444	Active
69.	283531	4267364	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
70.	290910	04258349	Active
71.	296514	4251800 4258350 4269445	Active
72.	298533	1500477	Active
73.	300092	1500477 4251800	Active
74.	301249	4267364	Active
75.	301937	4248237	Active
76.	301998	4248233 4248234 4248235	Active
77.	302014	4248234 4248235	Active
78.	302976	04258349	Active
79.	302977	04258349 4248236 4255163	Active
80.	302978		Active
81.	310679	4259851	Active
82.	310680	4259851	Active
83.	317997	4251800	Active
84.	317999	4267364	Active
85.	318666	4248237	Active
86.	319943	4248236	Active
87.	320889	4248235	Active
88.	323787	4258350 4269445	Active
89.	331387	4269444	Active
90.	331389	4267364	Active

	<b>Current Claim Nos. (Tenure Id)</b>	<b>Legacy Claim Nos.</b>	<b>Status</b>
91.	333529	4248233 4248234	Active
92.	333530	4248234	Active
93.	333543	4251800	Active
94.	338294	1500477 4251800	Active
95.	341769	04258349 4258350 4269444	Active

## Schedule “C” - Permitted Encumbrances

### General

Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Leased Real Property.

### **Permitted Encumbrances in Respect of OGL Property Registered to OGL**

#### Specific

##### PIN 52152-0004

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9254	1992/09/15
2.	Crown Patent Lease	NLT333875	1993/10/04
3.	Land Registrar’s Order	LT270748	2005/12/06
4.	Land Registrar’s Order	GB77282	2014/10/16
5.	Notice (Renewal of Mining Lease registered as NLT333785)	GB88643	2016/01/07

##### PIN 52152-0008

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R9396	1993/02/19
2.	Crown Patent Lease	NLT334240	1993/10/18
3.	Land Registrar’s Order	LT270748	2005/12/05
4.	Land Registrar’s Order	GB77282	2014/10/16

##### PIN 52152-0009

	Encumbrance	Registration Number	Registration Date
1.	Plan Reference	36R7472	1987/09/22
2.	Crown Patent Lease	NLT276987	1988/05/09
3.	Land Registrar’s Order	LT270748	2005/12/06
4.	Land Registrar’s Order	GB252	2006/09/26
5.	Notice (Renewal of Mining Lease registered as NLT276987)	GB38040	2010/10/25
6.	Land Registrar’s Order	GB77282	2014/10/16

### Permitted Encumbrances in Respect of OGL Property Held in Trust for OGL

#### PIN 52152-0003

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339543	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339543)	GB89299	2016/02/02

#### PIN 52152-0005

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339544	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339544)	GB89300	2016/02/02

#### PIN 52152-0006

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339545	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01
4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339545)	GB89301	2016/02/02

#### PIN 52152-0007

	Encumbrance	Registration Number	Registration Date
1.	Plan reference	36R8820	1991/06/24
2.	Crown Patent Lease	NLT339542	1994/06/06
3.	Notice of Option Agreement	NLT343167	1994/11/01



4.	Land Registrar's Order	LT270748	2005/12/05
5.	Land Registrar's Order	GB77282	2014/10/16
6.	Notice (Renewal of Mining Lease registered as NLT339542)	GB89298	2016/02/02

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

ORIONIS CORPORATION  
Applicant

-AND-

ONTARIO GRAPHITE, LTD.  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Approval and Vesting Order)**

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Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor

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

**ORIONIS CORPORATION**  
Applicant

-and-

**ONTARIO GRAPHITE, LTD.**  
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD**  
**(Returnable March 4, 2022)**

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