

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 (the "**Website**");
 - (e) established an email inbox (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 SISP 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 SISP;

- (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 SISP¹.

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

		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"> Qualified Phase 2 Bidders to deliver Qualified Purchase Bids or Qualified Investment Bids to the Monitor by the Phase 2 Bid Deadline
Evaluation and Selection of the Successful Bid		<ul style="list-style-type: none"> The Monitor will evaluate each Qualified Bid in conjunction with Orionis and OGL The Monitor will clarify any Qualified Bids received and further negotiation may occur The Successful Bid will be chosen and the Successful Bidder will be notified The next best Qualified Bidder will be determined to be the Backup Bidder and will receive notification of same Definitive transaction documents will be settled
Approval Hearing	On not less than 5 days' notice to the service list	<ul style="list-style-type: none"> 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
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 SISP, 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 SISP 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 19th 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 "A"

Pre-filing Report (without appendices)

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

**REPORT OF DELOITTE RESTRUCTURING INC., IN ITS CAPACITY AS
PROPOSED MONITOR OF ONTARIO GRAPHITE, LTD.**

DATED FEBRUARY 11, 2020

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APPENDIX “A” – Cash Flow Forecast

APPENDIX “B” – Consent to Act as Monitor

INTRODUCTION

1. Deloitte Restructuring Inc. (“**Deloitte**” or the “**Proposed Monitor**”) understands that Orionis Corporation (“**Orionis**” or the “**Applicant**”) intends to bring an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and seek an order (the “**Proposed Initial Order**”) in respect of Ontario Graphite, Ltd. (“**OGL**” or the “**Debtor**”), among other things:
 - (a) Granting a stay of proceedings in respect of OGL until February 22, 2020;
 - (b) Appointing Deloitte as Monitor of OGL;
 - (c) Approving certain interim financing of up to \$200,000 (the “**Initial Advance**”) pursuant to the CCAA Debtor-in-Possession Financing Term Sheet dated on or about February 10, 2020 between Orionis and OGL (the “**DIP Term Sheet**”) and the DIP Lenders’ Charge (as defined herein);
 - (d) Approving the Administration Charge (as defined herein); and
 - (e) Approving the Directors’ Charge (as defined herein).
2. OGL is the respondent in this CCAA Proceeding and is an indirect investee of Orionis, as well as a debtor pursuant to various secured facilities. Further details in respect of OGL’s capital structure are provided later in this Pre-filing Report.
3. The Proposed Monitor files this report (the “**Pre-filing Report**”) prior to its appointment as Monitor, should this Court grant the Proposed Initial Order, in order to provide the Court

with information for its consideration in respect of the Applicant's CCAA application. Deloitte has consented to act as Monitor in these CCAA Proceedings should this Court grant the Proposed Initial Order.

4. Capitalized terms not defined in this Pre-filing Report are defined in the Affidavit of David Yanovich Wancier sworn on or about February 11, 2020 (the "**Second Wancier Affidavit**") and filed in support of the CCAA application. Mr. Wancier swore a previous affidavit on January 10, 2020 (the "**First Wancier Affidavit**", and together with the Second Wancier Affidavit, the "**Wancier Affidavits**") in support of a receivership application previously filed in respect of OGL (the "**Receivership Application**"). As a result of certain operational issues, it has been determined that a CCAA filing is more appropriate at this time, and the Receivership Application was not brought forward.

PURPOSE

5. Background information and the facts and circumstances giving rise to these CCAA Proceedings are included in the Wancier Affidavits.
6. The purpose of this Pre-filing Report is to provide this Court with information regarding:
 - (a) Deloitte's qualifications to act as Monitor;
 - (b) Background information related to OGL, including events leading up to its insolvency;
 - (c) Environmental matters related to the Kearney mine site, OGL's primary asset;
 - (d) OGL's corporate and capital structure;

- (e) The proposed Court-ordered priority charges in favour of the Monitor and its legal counsel, counsel to OGL, and counsel to the Applicant (the “**Administration Charge**”) and OGL’s directors and officers (the “**Directors’ Charge**”);
- (f) The proposed key employee retention program (the “**KERP**”) and Court-ordered priority charge (the “**KERP Charge**”), which will be the subject of a future motion;
- (g) The proposed sale and investment solicitation process (the “**SISP**”), which will be the subject of a future motion;
- (h) The proposed funding of the CCAA Proceeding pursuant to the DIP Term Sheet; and
- (i) The Debtor’s 29-week cash flow forecast (the “**Cash Flow Forecast**”) for the period from February 8 to August 28, 2020. A copy of the Cash Flow Forecast is attached hereto as Appendix “A”.

TERMS OF REFERENCE

7. In preparing this Pre-filing 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 Pre-filing 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 Proposed Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

- (b) Deloitte has prepared this Pre-filing Report in its capacity as Proposed Monitor to provide background to the Court for its consideration of the relief being sought. Parties using the Pre-filing 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 Pre-filing Report are expressed in U.S. dollars.
 9. This Pre-filing Report has been prepared with reference to the Wancier Affidavits, copies of which have been filed with the Court by Orionis. This Pre-filing Report should be read concurrently with the Wancier Affidavits for further context and background regarding OGL and the activities leading up to Orionis’ CCAA application.
 10. The Proposed Monitor understands that the following relief will be sought via a future motion (the “**Comeback Motion**”), which is anticipated to take place at a date and time to be fixed by a Commercial List Judge, but in no event later than February 22, 2020:
 - (a) An extension of the Stay Period;
 - (b) Further borrowings under the DIP Term Sheet;
 - (c) The KERP and the KERP Charge; and
 - (d) The SISP.

The Pre-filing Report contains information in respect of each of the items above.

OVERVIEW OF OGL

11. The Debtor's primary asset is an open pit graphite mine located near Kearney, Ontario (the "Mine"). The Mine has been on "care and maintenance" for over 25 years. When operating, the Mine produced large flake graphite for a variety of industrial uses. The Mine was put on care and maintenance in 1994 following a mechanical failure of expensive equipment at the Mine site and also due to a depressed graphite market.
12. Uses of graphite include the following:
 - (a) Raw materials for batteries, historically both lead and alkaline, but more recently lithium-ion;
 - (b) Fire retardant uses, including expandable graphite that has been further processed from the ore mined at the Mine site;
 - (c) Along with other materials, for heat diffusing applications in electronic devices;
 - (d) As a component of parts used in the refining and manufacture of steel and other metals; and
 - (e) As a lubricant in various industrial uses.
13. The Mine has two primary "zones" for the mining of the graphite substrate: the Sheehan Zone and the Maguire Zone. Of these two zones, only the Maguire zone is permitted for graphite extraction. The Sheehan Zone is a development property and has never been actively mined.
14. Since the Mine was idled in 1994, a number of activities, under various owners, have been undertaken at the site, including:

- (a) Mine permitting and prospecting;
 - (b) Mine resource estimating; and
 - (c) The carrying out of a definitive feasibility study (the “**DFS**”) related to the Mine’s operating prospects.
15. As at the date of this Pre-filing Report, activities at the Mine site are limited to environmental compliance related to its tailings and polishing ponds. The groundwater surrounding the Mine is naturally acidic and OGL has been “liming” the tailings and polishing ponds (i.e. pumping liquid lime stock into the ponds) to neutralize the acidity of the water before it is discharged into the local watershed.
16. Given that the Mine has no source of revenue, it has been dependent on third-party loans for day to day funding. The Proposed Monitor understands that no third-party lenders are willing to fund the Mine’s care and maintenance costs without a court-supervised process to market the asset. As such, OGL is insolvent.

ENVIRONMENTAL MATTERS

17. Due to various environmental issues at the Mine, the Debtor is subject to a Director’s Order issued by the Ontario Ministry of the Environment, Conservation and Parks (the “**MECP**”). OGL is also subject to the oversight of the Ministry of Energy, Northern Development and Mines (“**ENDM**”).
18. On January 26, 2016, the MECP issued Director’s Order Number 8555-A6ESGE (the “**First Director’s Order**”) to prevent, decrease or eliminate potential adverse environmental effects at the Kearney Mine. The MECP issued three amendments to the First Director’s Order between January 31, 2018 and April 12, 2019 and issued several

Environmental Penalty Orders against OGL related to effluent quality. OGL appealed the most recent amendment to the First Director's Order and the most recent Environmental Penalty Order to the Ontario Environmental Review Tribunal.

19. On October 5, 2019, OGL, along with certain officers and directors named in the First Director's Order, entered into a settlement agreement with the MECP to address OGL's outstanding appeal. The settlement was subsequently approved by the Environmental Review Tribunal. Simultaneously, OGL reached a plea agreement in respect of an outstanding MECP prosecution.
20. Pursuant to the settlement, the First Director's Order was revoked and replaced with a new order, Director's Order Number 7328-BEMKE5, issued October 18, 2019, and amended on December 11, 2019 (the "**Second Director's Order**").
21. The Second Director's Order requires, among other things, that OGL:
 - (a) Undertake certain work as proposed to the MECP (the "**Ordered Work**") in an interim plan dated September 19, 2019 and attached as Schedule A to the Second Director's Order (the "**Interim Plan**") by February 14, 2020. Such Ordered Work includes:
 - i. Installing a mobile treatment unit (the "**MTU**") to replace the current method of liming the polishing pond;
 - ii. Continuously monitoring the pH (i.e. acidity) of the water;
 - iii. Completing the Dredging (defined and discussed further below) and storing the sludge in specially designed containers to isolate the waste;
 - iv. Measuring the flow of the water exiting the polishing pond;

- v. Developing contingency measures to address, among other things, the operation of the MTU and response to alarms from the plant; critical spare parts for the MTU and any emergencies; effluent exceedances; and emergencies occurring during Dredging operations; and
 - vi. Monitoring the environmental impacts of water discharged from the polishing pond.
- (b) Submitting weekly updates to the MECP containing daily data related to the pH of the water being discharged from the polishing pond and daily data related to the flow of water leaving the polishing pond; and
 - (c) Completing, by July 17, 2020, a dredging program designed to improve the efficiency of the existing polishing pond by removing an accumulation of metal hydroxide sludge and undissolved lime from the polishing pond (the “**Dredging**”).
22. Also as a condition of the settlement, OGL must pay an environmental penalty of CDN\$130,000 (the “**Penalty**”) by August 17, 2020. If the Ordered Work (including the Dredging) is completed by July 17, 2020, then the MECP will revoke the Penalty.
23. As at the date of this Pre-filing Report, Deloitte has been advised by Management that the bulk of the Ordered Work has been completed with a limited number of exceptions. Due to the early onset of winter and the consequential freezing of the pond, the Dredging is now scheduled for the spring of 2020.
24. The Proposed Monitor is informed that, in addition to the Penalty and the Second Director’s Order, OGL is also subject to 13 charges under Ontario provincial legislation related to the environmental issues identified in the Second Director’s Order. The Proposed Monitor is

also informed that OGL has negotiated a plea arrangement with the Crown whereby 10 of 13 charges against OGL and certain executives will be dropped in exchange for OGL pleading guilty to the remaining three charges and paying fines totaling CAD\$75,000. The Proposed Monitor understands that the plea arrangement has not been approved by a court. The Proposed Monitor further understands that the plea arrangement will be submitted to the court for approval on or about August 30, 2020 after completion of the Ordered Work.

CORPORATE AND CAPITAL STRUCTURE

25. OGL is wholly-owned by Ontario Graphite Ltd., a holding corporation domiciled in the Cayman Islands (“**OGL Cayman**”). OGL Cayman is owned by a number of investors, including Orionis. Orionis holds the largest equity share of OGL Cayman.
26. The Proposed Monitor understands that OGL has unsecured debt of at least \$1.2 million. In addition, the following creditors, as more particularly detailed in the Second Wancier Affidavit, assert that they hold security over the assets of OGL¹:

Creditors	Nature of indebtedness	Amount
DRA Americas Miller Thomson LLP Northern Ontario Heritage Fund Corporation (collectively, the “ Secured Parties ”)	<ul style="list-style-type: none"> Fees related to the DFS Legal work Funding used for general corporate purposes 	Approximately CAD\$2.2 million in total
Orionis	<ul style="list-style-type: none"> Funding used for general corporate purposes 	Approximately \$15.8 million

¹ The Proposed Monitor understands that a portion of the security for these amounts may be unperfected, though, as set out in paragraph 28, neither the Proposed Monitor nor Stikeman has performed a security review with respect to all security granted by OGL.

Boulevard Asia Trading Limited (“BATL”)	<ul style="list-style-type: none"> Funding used for general corporate purposes 	Approximately \$2.4 million
Total		Approximately \$20 million

27. The secured debt owing to Orionis and BATL was provided pursuant to three separate bridge credit facilities (the “**Bridge Facilities**”):

Facility	Amount outstanding	Issue date	Lender
Bridge I	\$12,018,528	2016	Orionis
Bridge II	\$4,258,515	2017	Orionis (43%) and BATL (57%)
Bridge III	\$1,965,878	2019	Orionis
Total	\$18,242,919²		

28. The Proposed Monitor understands that, as a result of various agreements entered into between Orionis and BATL, the Bridge Facilities enjoy the following priority: first, Bridge I; second, Bridge III; and third, Bridge II (*pari passu* as between Orionis and BATL). The Proposed Monitor’s counsel, Stikeman Elliott LLP (“**Stikeman**”) has reviewed the security held by Orionis and, based on certain assumptions, concluded that Orionis’ security is valid and enforceable. Neither the Proposed Monitor nor Stikeman has conducted a review of the debt and security held by the Secured Parties. However, it appears from a review of the Ontario personal property security registry that some of the Secured Parties may rank ahead of Orionis and BATL.

² The stated amounts include interest earned to January 31, 2020 and are set out as provided by Orionis.

PROPOSED CHARGES

The Administration Charge

29. The Proposed Monitor understands that the Applicant, in connection with the CCAA application, will seek approval of the Administration Charge in the amount of \$200,000.
30. The proposed beneficiaries of the Administration Charge are the Monitor and its counsel, counsel to OGL, and counsel to the Applicant (the “**Professionals**”).
31. As of the date of this Pre-filing Report, the Proposed Monitor understands that OGL’s directors and officers have not retained independent counsel. The amount of the Administration Charge is the estimated amount of the monthly Professionals’ fees.
32. The Proposed Monitor is of the view that the Administration Charge is necessary for the effective participation of the Professionals in these CCAA Proceedings, and the quantum of the Administration Charge is reasonable.

The Directors’ Charge

33. The Applicants are also seeking approval of the Directors’ Charge to a maximum of \$200,000.
34. The Proposed Monitor understands that the OGL’s directors may be liable for payroll and vacation pay amounts in an amount up to \$80,000 following the CCAA application. In addition, OGL’s directors have requested an increase in the amount of the Directors’ Charge to reflect potential future liability for environmental matters. The Proposed Monitor understands that the Applicant and OGL’s directors have negotiated an increase in the proposed amount of the Directors’ Charge to \$200,000 on the basis that all parties

are reserving their rights with respect to whether any potential future liability is covered by the indemnity in favour of the directors and officers granted by the Proposed Initial Order.

35. The Proposed Monitor also understands that OGL's current directors and officers are the beneficiaries of an insurance policy that is paid on a monthly basis and expires on May 31, 2020. Given the potential liabilities facing OGL's directors and officers, they are at risk should OGL not be able to fund its operations in the future. The benefit of the Directors' Charge will provide additional comfort to allow the directors and officers to remain in place and assist with the administration of the SISP.
36. Based on the foregoing, including the negotiated reservation of rights, the Proposed Monitor supports the grant and quantum of the Directors' Charge. The Proposed Monitor understands that Orionis also supports the Directors' Charge.

PROPOSED KERP AND KERP CHARGE

37. The Proposed Monitor understands that the Applicant will seek approval of the KERP and the KERP Charge at the Comeback Motion.
38. The Proposed Monitor has reviewed the terms of the KERP, discussed same with Management and Orionis, and compared the KERP with key employee retention plans in other CCAA proceedings. The Proposed Monitor is advised that:
 - (a) The beneficiaries of the KERP are critical to OGL's business; and
 - (b) Their resignation during these CCAA Proceedings would be disruptive to the Monitor's ability to administer the SISP and allow OGL to restructure its affairs and re-commercialize the Mine.

39. Based on the foregoing, the Proposed Monitor is of the view that the terms and total quantum of the payments contemplated by the KERP, being approximately \$100,000, are reasonable.
40. The Proposed Monitor will provide the Court with additional details in respect of the proposed KERP in advance of the Comeback Motion.

PROPOSED SISP

41. The Proposed Monitor has been advised that Orionis is unwilling to continue funding the operations of OGL outside of a court supervised process to maximize the value of OGL through a sale or investment by another party.
42. Given the outlook for the use of graphite in the current economy, Orionis is hopeful that the SISP will provide a structured process to identify a new investor or owner who is willing to develop the mine. One of the highest price uses of graphite is for products that are ultimately used as a heat diffuser in electronics. This market has expanded significantly since the mine was idled in 1994. It is believed that these premium uses could be attractive to a new purchaser or investor.
43. The Proposed Monitor and its counsel, Stikeman, in consultation with Orionis and its counsel (Osler, Hoskin & Harcourt LLP), have developed a proposed SISP to solicit sale and investment proposals from potentially interested parties. A copy of the proposed SISP will be provided to the Court prior to the Comeback Hearing.
44. The following table sets out a summary of the key components of the SISP (to be undertaken by the Monitor and its affiliate, Deloitte Corporate Finance Inc. (“**DCF**”)). Capitalized terms in this section are as defined in the SISP to be provided.

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"> • Subject to the Proposed Monitor being appointed, seek order approving and ratifying the SISP
Publication notice	Within two weeks of the Initial Order being granted	<ul style="list-style-type: none"> • Publication of the SISP in the Globe & Mail (National Edition) and appropriate industry publications
Phase 1		<ul style="list-style-type: none"> • The Monitor will seek to identify Qualified Phase 1 bidders and provide each with notice of same • Certain criteria are required to be met in order to be a Qualified Phase 1 Bidder • Receipt of Non-Binding Indications of Interest by the deadline of April 15, 2020 • Non-Binding Indications of Interest can be for a sale or investment in OGL
Phase 1 Bid Deadline	5:00 pm Toronto time on April 15, 2020	<ul style="list-style-type: none"> • Non-Binding Indications of Interest due to be provided to the Monitor for each bidder to continue in the process
Assessment of Non-Binding Indications of Interest		<ul style="list-style-type: none"> • 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 • Notice will be given to each party if they are a “Qualified Phase 2 Bidder” • Monitor to seek directions from the Court if no Non-Binding Indications of Interest are received
Phase 2		<ul style="list-style-type: none"> • Solicitation of a Qualified Purchase Bid or a Qualified Investment Bid • Orionis may, within 5 days of the Phase 1 Bid Deadline, determine

		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"> Qualified Phase 2 Bidders to deliver Qualified Purchase Bids or Qualified Investment Bids to the Monitor by the Phase 2 Bid Deadline
Evaluation and Selection of the Successful Bid		<ul style="list-style-type: none"> The Monitor will evaluate each Qualified Bid in conjunction with Orionis The Monitor will clarify any Qualified Bids received and further negotiation may occur The Successful Bid will be chosen and the Successful Bidder will be notified The next best Qualified Bidder will be determined to be the Backup Bidder and will receive notification of same Definitive transaction documents will be settled
Approval Hearing	On not less than 5 days' notice to the service list	<ul style="list-style-type: none"> 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
Closing	Target of June 30, 2020	

FUNDING OF THE CCAA PROCEEDING AND THE DIP TERM SHEET

45. As detailed above, OGL has no current revenue and no sources of cash at this time other than from its largest secured creditor, Orionis.
46. Orionis has agreed to fund the CCAA Proceedings in accordance with a weekly budget through August 28, 2020, prepared by Management in consultation with the Proposed

Monitor. The Cash Flow Forecast is attached hereto as Appendix “A” and summarized in the table below.

Ontario Graphite Limited	
Summary of the Cash Flow Forecast	
USD 000s	
Receipts	
Operating funding from Orionis	\$ 2,150
MECP funding from Orionis	<u>375</u>
Total funding	2,525
Disbursements	
Payroll and benefits	(510)
Mine operations	(551)
General and administrative	(234)
MECP costs	(350)
Professional fees	<u>(843)</u>
Total disbursements	(2,487)
Net cash flow	<u>\$ 38</u>

47. As set out in the Cash Flow Forecast, OGL has immediate cash needs to enable it to fund its operations. Pursuant to the DIP Term Sheet, Orionis will fund OGL up to \$200,000 until the Comeback Motion. At the Comeback Motion, Court approval of up to \$2.75 million in DIP funding will be sought.
48. The DIP Term Sheet contemplates a Court-ordered priority charge on OGL’s assets in favour of Orionis. Additional provisions of the DIP Term Sheet are set out below:
- (a) The DIP Term Sheet is a non-revolving, multi-draw term facility in the total aggregate amount of \$2.75 million. The quantum of the DIP Term Sheet is based on the total forecast needs as set out in the Cash Flow Forecast plus an allowance for a 10% cumulative monthly disbursement overage. A copy of the Cash Flow Forecast is appended to the DIP Term Sheet as a budget to be respected by the Debtor;

- (b) The facility is to be used for general working capital needs, including to fund the SISP (if approved), complete the Ordered Work and to fund the payroll of OGL's employees;
 - (c) Interest shall accrue at 15% per annum unless there is an event of default, in which case the interest rate increases to the lower of 25% or the highest rate allowed by law;
 - (d) The proposed priority charge to be granted by the Court in respect of the DIP Term Sheet (the "**DIP Lender's Charge**") shall rank ahead of all other charges, other than the Administration Charge;
 - (e) The DIP Term Sheet shall expire on August 28, 2020 but may be extended upon agreement between Orionis and OGL; and
 - (f) The DIP Term Sheet contains a number of standard covenants, events of default and conditions precedent, all of which are common in similar facilities.
49. Given OGL's lack of liquidity (other than financing obtained from Orionis) and prior unsuccessful attempts to raise capital or secure additional financing, the Proposed Monitor is supportive of approval of both the DIP Term Sheet and the related DIP Lender's Charge.

QUALIFICATIONS AND CONSENT TO ACT AS MONITOR

50. On June 3, 2019, Deloitte was retained by Orionis to act as its financial consultant to review OGL's financial circumstances and prospects.
51. Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*. In addition to this qualification, the Proposed Monitor notes the following:

- (a) The Proposed Monitor intends to engage DCFI, an entity that has significant experience selling distressed mining properties should Orionis be successful in seeking Court approval of the SISP. DCFI has assisted the Proposed Monitor since it was engaged by Orionis in June 2019;
- (b) Deloitte employs a number of geotechnical engineers that specialize in mining. Certain of these employees are part of Venmyn Deloitte, a geotechnical firm that merged with Deloitte LLP (the Proposed Monitor's ultimate parent in Canada); and
- (c) The Venmyn Deloitte personnel have unique experience that will provide significant efficiencies in marketing the Mine should the SISP be approved the Court.

52. Deloitte has consented to act as Monitor should the Court grant Orionis' CCAA application. Deloitte's consent to act is attached as Appendix "B".

All of which is respectfully submitted this 11th day of February, 2020.

Deloitte Restructuring Inc.

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

Per:



Philip J. Reynolds, LIT
Senior Vice-President

Appendix “B”

Sale and Investor Solicitation Procedure

SALE AND INVESTMENT SOLICITATION PROCEDURE

ONTARIO GRAPHITE, LTD.

RECITALS

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

ARTICLE 1 DEFINED TERMS

In these SISP Procedures:

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

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

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

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

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

ARTICLE 2 SOLICITATION

2.1 Solicitation Process

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

2.2 Sale and Investment Opportunity

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

2.3 “As Is, Where Is”

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

2.4 Solicitation of Interest

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

2.5 Participation Requirements

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

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

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

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

ARTICLE 3 DUE DILIGENCE

3.1 Due Diligence

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

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

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

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

ARTICLE 4 PHASE 1

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 PHASE 2

5.1 Seeking Qualified Bids by Qualified Phase 2 Bidders

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

5.2 Qualified Purchase Bids

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

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

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

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

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

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

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

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

5.3 Qualified Investment Bids

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

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

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

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

5.4 Qualified Bids

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

5.5 No Qualified Bids

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

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

5.6 Selection Criteria

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

- (2) Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as:
 - (a) The Investment Amount and the proposed sources and uses of such capital;
 - (b) The debt to equity structure post-closing;
 - (c) The counterparties to the transaction;
 - (d) The terms of the transaction documents;
 - (e) Other factors affecting the speed, certainty and value of the transaction;

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

5.7 Approval Hearing

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

5.8 Deposits

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

5.9 Approvals

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

5.10 Notice to the Monitor

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

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

5.11 Reservation of Rights

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

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

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

5.12 Further Orders

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

5.13 Credit Bid

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

Appendix “C”

DIP Term Sheet

CCAA DEBTOR-IN-POSSESSION FINANCING TERM SHEET

Dated as of February 10, 2020

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

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

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

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

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

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

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

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

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

3. AVAILABILITY:

The DIP Facility may be drawn down by the Debtor:

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

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

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

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

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

**4. MAXIMUM
ADVANCE AMOUNT:**

Notwithstanding any provision to the contrary herein, the Lender shall not be obliged to fund any Advances which, in the aggregate, would exceed \$2,750,000 (the “**Maximum Advance Amount**”), unless the Lender otherwise agrees.

**5. PERMITTED
VARIANCE:**

The expenditures set out in the Budget may not be exceeded without the consent of the Lender, other than a variance in the actual expenditures from the Filing Date against forecasted expenditures for such period of up to 10% on a cumulative basis, measured monthly in the last full week of each month as set out in the Budget (the “**Cumulative Permitted Variance Threshold**”).

6. INTEREST:

Interest shall accrue on all Advances from the date that each Advance is made on the outstanding balance of such Advance at an annual interest rate of 15% per annum.

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

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

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

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

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

7. SECURITY:

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

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

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

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

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

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

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

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

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

8. REPAYMENT:

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

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

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

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

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

9. TERM:

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

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

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

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

**10. CONDITIONS
PRECEDENT:**

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

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

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

11. AFFIRMATIVE COVENANTS:

The Debtor covenants and agrees to:

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

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

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

**12. NEGATIVE
COVENANTS:**

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

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

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

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

13. ADDITIONAL DOCUMENTS

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

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

14. RESTRICTIONS:

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

15. EVENTS OF DEFAULT:

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

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

(subject to the Cumulative Permitted Variance Threshold);

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

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

16. REMEDIES:

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

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

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

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

17. CURRENCY:

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

18. ENTIRE AGREEMENT

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

19. AMENDMENTS, WAIVERS, ETC.:

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

20. FURTHER ASSURANCES:

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

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

(a) in the case of the Debtor at:

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

Attention: Ellerton Castor
Email: ecastor@ontariographite.com

with a copy to:

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

Attention: Craig Mills
Email: cmills@millერთhompson.com

(b) in the case of the Lender at:

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

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

with a copy to:

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

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

26. COUNTERPARTS:

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

[Signature Page Follows]

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

ORIONIS CORPORATION

By: _____
Name:
Title:

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

ONTARIO GRAPHITE, LTD.

By: _____
Name:
Title:

SCHEDULE "A"

Budget

(see attached)

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

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

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

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

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

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

Appendix “D”

Cash Flow Forecast

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

Week ending	14-Feb-20	21-Feb-20	28-Feb-20	06-Mar-20	13-Mar-20	20-Mar-20	27-Mar-20	03-Apr-20	10-Apr-20	17-Apr-20	24-Apr-20
<i>Receipts</i>											
Orionis funding - MECP work	-	75,000	-	-	-	-	-	-	-	-	-
Orionis fundibng - Operating	300,000	-	-	225,000	-	-	-	225,000	-	-	-
Total receipts	300,000	75,000	-	225,000	-	-	-	225,000	-	-	-
<i>Disbursements</i>											
Payroll and benefits	(25,926)	(28,929)	-	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)	-
Mine operations	(58,647)	(4,500)	(4,500)	(60,588)	(4,500)	(4,500)	(4,500)	(58,713)	(4,500)	(4,500)	(4,500)
General and administrative	(22,977)	(29,250)	(28,125)	(22,977)	-	-	-	(23,277)	-	-	-
MECP costs	-	(51,158)	-	-	-	-	-	-	-	-	-
Professional fees	(92,500)	-	-	(71,250)	-	-	-	(71,250)	-	-	-
Total disbursements	(200,050)	(113,837)	(32,625)	(180,741)	(4,500)	(33,429)	(4,500)	(179,166)	(4,500)	(33,429)	(4,500)
Net cash flow	99,950	(38,837)	(32,625)	44,259	(4,500)	(33,429)	(4,500)	45,834	(4,500)	(33,429)	(4,500)
Opening bank balance	-	99,950	61,113	28,488	72,748	68,248	34,819	30,319	76,153	71,653	38,224
Net cash flow	99,950	(38,837)	(32,625)	44,259	(4,500)	(33,429)	(4,500)	45,834	(4,500)	(33,429)	(4,500)
Closing cash balance	99,950	61,113	28,488	72,748	68,248	34,819	30,319	76,153	71,653	38,224	33,724

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

Week ending	01-May-20	08-May-20	15-May-20	22-May-20	29-May-20	05-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20	03-Jul-20	10-Jul-20
<i>Receipts</i>											
Orionis funding - MECP work	50,000	50,000	75,000	75,000	-	-	-	-	-	-	-
Orionis fundibng - Operating	325,000	-	-	-	-	250,000	-	-	-	350,000	-
Total receipts	375,000	50,000	75,000	75,000	-	250,000	-	-	-	350,000	-
<i>Disbursements</i>											
Payroll and benefits	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)	-	(25,926)	-	(28,929)
Mine operations	(58,713)	(4,500)	(4,500)	(4,500)	(41,374)	(21,839)	(4,500)	(4,500)	(41,374)	(24,464)	(4,500)
General and administrative	(22,977)	-	-	-	(6,990)	(16,079)	-	-	(6,990)	(15,987)	-
MECP costs	(60,517)	(60,517)	(60,517)	(60,517)	-	-	-	-	-	-	-
Professional fees	(93,750)	-	-	-	-	(93,750)	-	-	-	(93,750)	-
Total disbursements	(261,883)	(65,017)	(93,946)	(65,017)	(74,290)	(131,668)	(33,429)	(4,500)	(74,290)	(134,201)	(33,429)
Net cash flow	113,117	(15,017)	(18,946)	9,983	(74,290)	118,332	(33,429)	(4,500)	(74,290)	215,799	(33,429)
Opening bank balance	33,724	146,841	131,823	112,877	122,859	48,569	166,901	133,472	128,972	54,682	270,481
Net cash flow	113,117	(15,017)	(18,946)	9,983	(74,290)	118,332	(33,429)	(4,500)	(74,290)	215,799	(33,429)
Closing cash balance	146,841	131,823	112,877	122,859	48,569	166,901	133,472	128,972	54,682	270,481	237,052

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

Week ending	17-Jul-20	24-Jul-20	31-Jul-20	07-Aug-20	14-Aug-20	21-Aug-20	28-Aug-20	Total
<i>Receipts</i>								
Orionis funding - MECP work	-	-	-	-	-	50,000	-	375,000
Orionis fundibng - Operating	-	-	-	475,000	-	-	-	2,150,000
Total receipts	-	-	-	475,000	-	50,000	-	2,525,000
<i>Disbursements</i>								
Payroll and benefits	-	(25,926)	-	(28,929)	-	(25,926)	(100,000)	(509,911)
Mine operations	(4,500)	(4,500)	(41,374)	(21,839)	(4,500)	(4,500)	(41,374)	(551,297)
General and administrative	-	-	(14,945)	(8,032)	-	-	(14,945)	(233,551)
MECP costs	-	-	-	-	-	(56,391)	-	(349,619)
Professional fees	-	-	(93,750)	-	-	-	(232,500)	(842,500)
Total disbursements	(4,500)	(30,426)	(150,069)	(58,800)	(4,500)	(86,817)	(388,819)	(2,486,878)
Net cash flow	(4,500)	(30,426)	(150,069)	416,200	(4,500)	(36,817)	(388,819)	38,122
Opening bank balance	237,052	232,552	202,126	52,058	468,258	463,758	426,941	-
Net cash flow	(4,500)	(30,426)	(150,069)	416,200	(4,500)	(36,817)	(388,819)	38,122
Closing cash balance	232,552	202,126	52,058	468,258	463,758	426,941	38,122	38,122

Confidential Appendix “1”

IRP Summary Chart

