

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

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**SUPPLEMENTAL MOTION RECORD  
(Returnable March 4, 2022)**

March 1, 2022

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

**TO: SERVICE LIST**

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**I N D E X**

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

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**AMENDED NOTICE OF MOTION**

Deloitte Restructuring Inc., in its capacity as the Court-appointed Monitor (the “**Monitor**” or “**Deloitte**”) in respect of the *Companies' Creditors Arrangement Act* (“**CCAA**”) proceedings of the respondent, Ontario Graphite Ltd. (“**OGL**”), will make a Motion to Justice Conway on March 4, 2022 at 12:30pm or as soon after that time as the motion can be heard by videoconference at 330 University Avenue, Toronto, Ontario.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order providing for an extension of the Stay to December 30, 2022, to permit the closing of the Bold Transaction (as defined herein) and allow the Monitor to address certain post-closing matters prior to its discharge;
2. An Approval and Vesting Order substantially in the form attached as Schedule “A” to this Notice of Motion (the “**AVO**”):

- (a) if required, abridging the time for service of the Notice of Motion and the Motion Record and validating service so that the Motion is properly returnable on the proposed date and dispensing with the requirement for any further service thereof;
- (b) approving the Fifth Report of the Monitor dated February 24, 2022 (the “**Fifth Report**”), and the activities of the Monitor as set out in the Fifth Report;
- (c) approving the Share Purchase Agreement and a transaction whereby 1339307 B.C. Ltd. (the “**Bold Purchaser**”), an entity affiliated with Bold, will acquire a 100% interest in a new class of OGL shares (the “**New OGL Shares**”) via a “reverse vesting order” transaction (the “**Bold Transaction**”);
- (d) vesting the New OGL Shares in the Bold Purchaser, free and clear of any Encumbrances, except Permitted Encumbrances (as defined in the SPA);
- (e) authorizing the Monitor to execute certain ancillary agreements for Bold’s benefit (the “**Basserman Amendment Agreements**”) as a step in the closing of the Transaction. Such agreements modify current opinion agreements between OGL and a third party in respect of mining lease options and will be effective upon the closing of the Bold Transaction;
- (f) approving the addition of 1000063081 Ontario Inc. (“**ExcludedCo**”) as an applicant in these CCAA proceedings;
- (g) vesting the Excluded Assets and Liabilities (as defined in the SPA) in favour of ExcludedCo;
- (h) declaring that OGL ceases to be a Respondent in the CCAA proceedings;
- (i) authorizing and empowering the Monitor and any officer or director appointed in respect of ExcludedCo protection from personal liability with regard to managing and administering ExcludedCo for the benefit of OGL’s creditors;
- (j) sealing the agreement between Bold and OGL until after the Bold Transaction closes;

- (k) authorizing a distribution to NDMNRF by the Monitor for the full amount of the costs paid by NDMNRF prior to the Closing Time in connection with the implementation of the Minister's Directions 2020-003 ( which amount totalled \$2,410,109.80 as of December, 2021, plus additional amounts incurred post December 2021) (the "**NDMNRF Payment**");
- (l) upon the making of the NDMNRF Payment directing the Director of Mine Rehabilitation, pursuant to subsection 151(5)(a) of the *Mining Act* (Ontario) to register a cessation of charge in the Land Registry Office for Land Titles Division of Parry Sound (42) with respect to registration number GB13168;
- (m) authorizing the Monitor to effect a discharge of the any registrations against the OGL Property in the name of Robert James Basserman; and
- (n) granting such other relief as counsel may advise and this Court may permit.

## **THE GROUNDS FOR THE MOTION ARE**

### **Background**

3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Fifth Report. All currency is denominated in USD unless otherwise noted;
4. OGL is a company incorporated under the laws of Ontario, conducting business as the operator of a mine located in Kearney, Ontario (the "**Mine**"). The Mine is currently on "care and maintenance";
5. On February 12, 2020, upon application by the secured creditor Orionis Corporation ("**Orionis**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order commencing the CCAA Proceedings for the purpose of initiating a court-supervised sale and investment solicitation procedure ("**SISP**") with respect to the assets, undertakings and property of OGL (the "**Assets**");

### **The Initial Order**

6. The Initial Order provided *inter alia* for (i) the appointment of Deloitte as Monitor, (ii) granted a stay of proceedings through to April 29, 2020 (the “**Stay Period**”), (iii) approved a charge in respect of the fees and expenses of the Monitor and its counsel, and counsel to Orionis and OGL in the amount of \$200,000, and (iv) approved a debtor-in-possession credit facility between Orionis as lender and OGL (the “**DIP Facility**”) and related charge;
7. Pursuant to an order dated February 20, 2020 the Court approved the SISP, as administered by the Monitor, in order to market the Assets and identify potential bidders or investors for the Assets, or the business of OGL (the “**SISP Approval Order**”);

### **The Initial SISP Fails**

8. Following on the initiation of the SISP, as administered by the Monitor, three bids were received by the April 15, 2020 Phase 1 Bid Deadline (as defined in the Second Report). After receipt of further clarifications from the bidders, Orionis advised that it did not find any of the bids to be compliant with the terms of the SISP or to provide sufficient value to allow for the DIP Facility to be repaid;

### **Withdrawal of the DIP and Issuance of a MAC Notice**

9. On April 17, 2020, Orionis delivered a notice of default and termination of the DIP Facility to the Monitor and OGL; absent the DIP Facility or other third party financing, OGL had no sources of cash flow or liquidity;
10. On account of the DIP Facility being terminated, the Monitor concluded that a material adverse change (“**MAC**”) had occurred, and on April 21, 2020 the Monitor prepared and posted a Notice of MAC with copies to OGL’s creditors and all parties on the Service List;
11. After the termination of the DIP Facility and issuance of the MAC, OGL attempted to find a potential purchaser for the Mine but was unsuccessful to the point of the expiration of the stay of proceedings on April 29, 2020;

### **The CCAA Termination Order**

12. The Monitor concluded, at that time that, on account of the failure of the SISP and the withdrawal of the DIP Facility, there was no reasonable prospect of OGL proposing a plan of compromise or arrangement to its creditors, or effecting sale of the business and/or the Assets;
13. On April 29, 2020, the Monitor sought and obtained the CCAA Termination Order, which provided for the discharge of the Monitor, approval of the fees of the Monitor and its counsel, and terminated the CCAA Proceedings upon the filing of the requisite certificate by the Monitor;

### **The Bold Global Transaction**

14. On or about March 9, 2021, the Monitor was approached by a principle of Bold who expressed an interest in acquiring the Mine. Once Bold executed an NDA Bold was granted access to data room for OGL;
15. On or about March 23, 2021 Bold delivered a binding letter of intent (the “**Bold LOI**”);
16. A competing bid was submitted on March 29, 2021 by a further party, North American Carbon Solutions Inc. (“**NACS**”), but after consultations between the Monitor and Orionis it was determined that the Bold LOI constituted the superior bid;
17. Management of OGL and Bold executed the Bold LOI on April 16, 2021;
18. Subsequently, the Monitor sought a further amendment to the Initial Order which provided the Monitor with enhanced powers to permit it, on behalf of and in the name of OGL, to negotiate and enter into a definitive transaction (the “**Bold Transaction**”) substantially in accordance with the Bold LOI, or with any other person or entity the Monitor deemed appropriate;
19. The Monitor also sought an extension of the Stay Period until September 30, 2021;
20. Pursuant to an Order dated April 26, 2021, the Court granted the relief sought by the Monitor (the “**Expansion of the Powers of the Monitor Order**”). NACS did not object to the Order being granted;



### **The Stay Extension Order**

21. The Monitor subsequently brought a motion to (i) extend the Stay Period to March 31, 2022 to permit the closing of the anticipated Bold Transaction, and (ii) to obtain Court authorization to act as OGL's agent for the purpose of maintaining OGL's mining claims within the MNDMNRF Mining Lands Administration System ("**MLAS**") (the "**Expiring Mining Claims**");
22. Pursuant to an Order dated September 23, 2021, the Court granted the relief sought by the Monitor;

### **The Proposed SPA and Transactions**

23. Bold has completed its due diligence and executed the SPA with the Monitor;
24. The present motion seeks Court approval of the Bold Transaction, whereby Bold will acquire pursuant to the SPA a 100% interest in a new class of OGL shares via a "reverse vesting order" transaction. Authorization for the Monitor to execute certain ancillary agreements for Bold's benefit, i.e. the "Basserman Agreements", is also sought;
25. The Bold Transaction also contemplates the creation of an ExcludedCo, to be added as a respondent to the within CCAA Proceedings, and to hold certain identified Excluded Assets, Leases, Contracts, and Liabilities;
26. The contemplated NDMNRF Payment reflects those costs incurred by the NDMNRF to safeguard the Mine and until such time as the Bold Transaction closes. The payment is necessary in order to discharge NDMNRF's liens against any real property in which OGL has an interest and which will be conveyed pursuant to the Bold Transaction. The Monitor requests the approval of the Court to make this distribution immediately following the closing, and from the Purchase Consideration;

### **The AVO is Justified and Reasonable**

27. It is the Monitor's opinion that the Court should approve the Monitor, on behalf of OGL, entering into the Bold Transaction due to the fact that (i) OGL's assets were marketed under the Court-approved SISP, and OGL does not possess available liquidity in order to undertake a further sales process; (ii) Orionis, OGL's primary secured lender, is supportive of the Bold Transaction; (iii) no other party, apart from NACS, expressed an interest in OGL's business or assets prior to April, 2021, and the NACS offer was inferior to that contemplated by the Bold LOI; (iv) the Bold Transaction provides a significantly better outcome for the creditors of OGL than would be realized in a bankruptcy; and (v) the Purchase Consideration to be paid by Bold is reasonable and fair;
28. Lastly, the Monitor is filing a copy of the SPA redacted for sensitive purchase consideration information, and otherwise seeks an Order to seal the unredacted version of the SPA on filing and until after the Bold Transaction has closed;

### **Extension of the Stay**

29. The Monitor also seeks the extension of the Stay up to and including December 30, 2022, to allow for sufficient time to permit the Bold Transaction to close and also address post-closing matters such as distributions of funds remaining with ExcludedCo.

### **Miscellaneous**

30. Sections 11 and 36 of the CCAA and the equitable jurisdiction of the Court;
31. Rules 1.04, 1.05, 2.03, 3.02(1) and 37 of the *Rules of Civil Procedure*; and
32. Such further and other grounds as counsel may advise and the Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Second, Third, Fourth and Fifth Reports of the Monitor, and the Supplemental Fifth Report of the Monitor; and
2. Such further and other documentary evidence as counsel may advise and the Court may accept.

~~February 24, 2022~~ March 1, 2022

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capacity as Court-Appointed Monitor

**TO: SERVICE LIST** (*see attached Schedule “AB”*)

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

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

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

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

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

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

counsel for OGL, counsel for Orionis Corporation (“**Orionis**”) and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavit of service of Laura Herd sworn February 25, 2022, filed.

## **SERVICE**

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

## **DEFINED TERMS**

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

## **APPROVAL AND VESTING**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order, the Expansion of Powers Order, and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel in the fulfillment of its duties and the carrying out of the provisions of this Order.

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

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

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



**RELEASES**

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

**GENERAL**

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

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

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

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

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

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ORIONIS CORPORATION**

Applicant

- and -

**ONTARIO GRAPHITE, LTD.**

Respondent

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

**SERVICE LIST  
(As of February 25, 2022)**

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-and-

c/o Dooley Lucenti LLP  
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Attention: Andrew Wood

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**1862066 Ontario Inc. O/a Richards  
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
ORIONIS CORPORATION -and- ONTARIO GRAPHITE, LTD.

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

PROCEEDING COMMENCED AT TORONTO

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**AMENDED NOTICE OF MOTION**  
**(Returnable March 4, 2022)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
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Lawyers for Deloitte Restructuring Inc., in its capacity as  
Court-Appointed Monitor