

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

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

THIRD REPORT OF THE MONITOR

DATED APRIL 21, 2021

TABLE OF CONTENTS

INTRODUCTION.....	1
PURPOSE.....	5
TERMS OF REFERENCE	5
DEVELOPMENTS SINCE THE ISSUANCE OF THE TERMINATION ORDER	6
RATIONALE FOR RELIEF SOUGHT	12
RECOMMENDATIONS.....	15

APPENDICES

APPENDIX “A” – Amended and Restated Initial Order
APPENDIX “B” – First Report
APPENDIX “C” – SISP Order
APPENDIX “D” – Second Report
APPENDIX “E” – Supplemental Second Report
APPENDIX “F” – Termination Order
APPENDIX “G” – Redacted NACS LOI
APPENDIX “H” – Draft Order
CONFIDENTIAL APPENDIX “1” – Unredacted Bold LOI
CONFIDENTIAL APPENDIX “2” – Unredacted NACS LOI

INTRODUCTION

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

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

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

6. The Monitor subsequently issued a supplement to its Second Report on April 28, 2020 (the “**Supplemental Second Report**”). The Supplemental Second Report (attached hereto as Appendix “**E**”) provided details in respect of the following:
 - (a) The request for an order in respect of the termination of OGL’s CCAA Proceedings (the “**Termination Order**”) subject to the Monitor filing a certificate (the “**Termination Certificate**”), certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed. A copy of the Termination Order is attached hereto as Appendix “**F**”;
 - (b) The request for Court approval of the conduct, fees and disbursements of the Monitor and its counsel, Borden Ladner Gervais LLP (“**BLG**”) from the commencement of the CCAA Proceedings up to and including April 29, 2020 and April 26, 2020 respectively;
 - (c) Maintaining various charges and protections for the Monitor and its counsel that were granted by the Court during the CCAA Proceedings; and
 - (d) Providing the Monitor with a release in respect of its activities related to the CCAA Proceedings.

7. Notwithstanding the existence of the Administration Charge, none of the Monitor, BLG or OGL’s corporate counsel, Miller Thomson LLP (“**Miller Thomson**”), have been paid their fees and disbursements related to these CCAA Proceedings. The Monitor estimates that the aggregate amount currently outstanding in respect of these three parties is approximately CAD\$640,000. The foregoing amount is net of retainers held by certain

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

8. Shortly after the MAC Notice was issued, the Monitor undertook a number of activities in respect of OGL's primary asset, the Kearney graphite mine (the "**Mine**"). These include the following, among other things:
 - (a) Providing the Ministry of Energy, Northern Development and Mines (the "**ENDM**") and Ministry of the Environment, Conservation and Parks (the "**MECP**") with notice that OGL would be abandoning the Mine following termination of the DIP Facility and that OGL was unable to continue with its required environmental compliance activities;
 - (b) Advising ENDM and MECP that the CCAA Proceedings would be terminated upon the filing of the Termination Certificate; and
 - (c) Ensuring that the ENDM received the appropriate contact details for the individuals at the Mine site that carried out the day to day environmental compliance activities for OGL.

9. Notwithstanding that the SISP did not result in the receipt of any SISP-compliant or otherwise satisfactory offers and that the Termination Order had been granted, the Monitor became aware of certain expressions of interest received from several parties outside the context of the SISP and, in consultation with OGL and the DIP Lender, determined that it would be beneficial to the interests of OGL, its creditors and stakeholders to delay the filing of the Termination Certificate, which preserved the ability to seek a vesting order from the

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

PURPOSE

10. The Monitor files this Third Report in respect of its motion dated April 21, 2021 (the “**Motion**”). The Monitor seeks the following relief:

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

TERMS OF REFERENCE

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

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

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

- 12. Unless otherwise stated, all dollar amounts contained in this Third Report are expressed in U.S. dollars, OGL’s reporting currency.

DEVELOPMENTS SINCE THE ISSUANCE OF THE TERMINATION ORDER

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

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

14. On April 28, 2020, prior to the issuance of the Termination Order, and pursuant to section 148 of the *Mining Act*, R.S.O. 1990, c. M. 14, and as delegate of the Minister of ENDM, the Director of Mine Rehabilitation issued Directions (the “**Directions**”). Pursuant to the Directions specified employees and agents of the ENDM were required to take actions to remedy the environmental condition and environmental damage affecting the Mine. Specifically, and pursuant to the Directions, employees and agents of ENDM have taken steps to:
 - (a) manage and treat surface water at the property;
 - (b) dredge and maintain the polishing pond; and
 - (c) secure the property against unauthorized access.

15. ENDM has advised the Monitor that it has expended approximately CAD\$1.4 million (net of financial assurance previously provided to MECP by OGL) in both capital and operating disbursements in remedying the environmental condition or environmental damage affecting the Mine, as required by the Directions. While the Monitor (through its counsel) has not undertaken a full review of the priority of ENDM’s charge on the Mine assets, stakeholders currently expect the amount disbursed to be repaid to ENDM out of the proceeds of the Transaction.

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

Bold with a non-disclosure agreement (the “NDA”), which it executed. Management granted Bold access to due diligence materials as a result of the execution of the NDA.

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

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

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

RATIONALE FOR RELIEF SOUGHT

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

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

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

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

RECOMMENDATIONS

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

All of which is respectfully submitted this 21st day of April 2021.

Deloitte Restructuring Inc.

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

Per:

A handwritten signature in cursive script, appearing to read "Philip J. Reynolds".

Philip J. Reynolds, LIT
Senior Vice-President

Appendix “A”

Amended and Restated Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

BETWEEN:



ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

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

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

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

INITIAL ORDER AND INITIAL FILING DATE

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Second – DIP Lender’s Charge; and

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

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

GENERAL

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

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

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

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

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

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



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

FEB 20 2020

PER / PAR: 

IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
ORIONIS CORPORATION and ONTARIO GRAPHITE, LTD.
Applicant Respondent

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

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

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

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

John MacDonald (LSO# 25884R)
Tel: 416.862.5672
Email: jmacdonald@osler.com

Sandra Abitan (BQ# 189023-9)
Tel: 514.904.5648
Email: sabitan@osler.com

Mark Sheeley (LSO# 664730)
Tel: 416.862.6791
Email: msheeley@osler.com

Sean Stidwill (LSO# 71078J)
Tel: 416.862.4871
Email: sstidwill@osler.com

Fax: 416.862.6666

Lawyers for the Applicant,
Orionis Corporation

Appendix “B”

First Report

**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

TABLE OF CONTENTS

INTRODUCTION.....	1
PURPOSE.....	2
TERMS OF REFERENCE	3
THE MONITOR’S ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDINGS	4
DIP FINANCING.....	5
PROPOSED IRP AND IRP CHARGE.....	6
THE PROPOSED SISP.....	8
CURRENCY OF DIP TERM SHEET	11
THE CASH FLOW FORECAST	11
EXTENSION OF THE STAY PERIOD.....	12
RECOMMENDATIONS.....	13

APPENDICES

APPENDIX “A” – Pre-filing Report (without appendices)
APPENDIX “B” – Sale and Investor Solicitation Procedure
APPENDIX “C” – DIP Term Sheet
APPENDIX “D” – Cash Flow Forecast

CONFIDENTIAL APPENDIX “1” – Incentive Retention Plan Summary

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

Appendix “C”

SISP Order

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

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

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



BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

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

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

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

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

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

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

SISP

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

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

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

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

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

IRP

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

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

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


Sealing

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

General

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

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



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

FEB 20 2020

PER / PAR: 

SCHEDULE "A"
SALE AND INVESTOR SOLICITATION PROCEDURES

SALE AND INVESTMENT SOLICITATION PROCEDURE

ONTARIO GRAPHITE, LTD.

RECITALS

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

ARTICLE 1 DEFINED TERMS

In these SISP Procedures:

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

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

5.4 Qualified Bids

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

5.5 No Qualified Bids

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

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

5.6 Selection Criteria

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

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

- (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.

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

ORIONIS CORPORATION

Applicant

and ONTARIO GRAPHITE, LTD.

Respondent

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

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

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

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

John MacDonald (LSO# 25884R)
Tel: 416.862.5672 / Email: jmacdonald@osler.com

Sandra Abitan (BQ# 189023-9)
Tel: 514.904.5648 / Email: sabitan@osler.com

Mark Sheeley (LSO# 664730)
Tel: 416.862.6791 / Email: mshееley@osler.com

Sean Stidwill (LSO# 71078J)
Tel: 416.862.4871 / Email: sstidwill@osler.com

Fax: 416.862.6666

Lawyers for the Applicant,
Orionis Corporation

Our Matter No. 1165915

Appendix “D”

Second Report

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

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

SECOND REPORT OF THE MONITOR

DATED APRIL 21, 2020

TABLE OF CONTENTS

INTRODUCTION.....	1
PURPOSE.....	2
TERMS OF REFERENCE	2
ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDING	3
EFFECT OF THE DIP TERMINATION ON THE INTERIM PLAN AND OGL'S ENVIRONMENTAL COMPLIANCE	6
NEXT STEPS	8

APPENDICES

- APPENDIX "A" – Initial Order**
- APPENDIX "B" – DIP Term Sheet**
- APPENDIX "C" – SISP**
- APPENDIX "D" – DIP Termination Notice**
- APPENDIX "E" – MAC Notice**

INTRODUCTION

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

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

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

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

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

PURPOSE

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

TERMS OF REFERENCE

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

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

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

(b) Deloitte has prepared this Second Report in its capacity as Monitor to provide background to the Court for its consideration in respect of the MAC. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

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

ACTIVITIES SINCE THE COMMENCEMENT OF THE CCAA PROCEEDING

6. Since the date of the SISP Approval Order, the Monitor has taken steps to administer the SISP. A copy of the SISP is attached as Appendix “C” to this Second Report. The Monitor’s activities to administer the SISP have included:

(a) Developing marketing materials (a “teaser” and a confidential information memorandum (the “**CIM**”)) for distribution to creditors both prior to and after the execution of a non-disclosure agreement (and “**NDA**”);

(b) Along with Management, developing a list of potentially interested parties in OGL’s assets (the “**Buyers List**”). The Buyers List included 327 parties including mining companies (both graphite and other base metals, 37 parties in total), diversified metals and mining producers (75 parties), graphite producers (43 parties), users of graphite (126 parties), trading houses (15 parties), and financial buyers that focus on mining opportunities (31 parties);

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

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

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

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

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

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

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

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

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

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

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

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

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

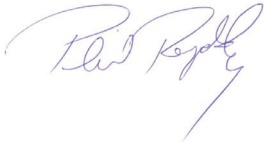
NEXT STEPS

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

All of which is respectfully submitted this 21st day of April, 2020.

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

Per:



Philip J. Reynolds, LIT
Senior Vice-President

Appendix “E”

Supplemental Second Report

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

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

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

SUPPLEMENTAL SECOND REPORT OF THE MONITOR

DATED APRIL 28, 2020

TABLE OF CONTENTS

INTRODUCTION.....	1
PURPOSE.....	2
TERMS OF REFERENCE	3
ACTIVITIES SINCE THE ISSUANCE OF THE MAC NOTICE AND THE RELIEF SOUGHT ...	4
RATIONALE FOR RELIEF SOUGHT	6
RECOMMENDATIONS.....	8

APPENDICES

- APPENDIX “A” – Draft Order**
- APPENDIX “B” – Monitor fee affidavit**
- APPENDIX “C” – BLG fee affidavit**
- APPENDIX “D” – Pre-filing Report (without appendices)**
- APPENDIX “E” – First Report (without appendices)**

INTRODUCTION

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

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

PURPOSE

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

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

TERMS OF REFERENCE

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

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

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

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

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

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

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

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

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

RATIONALE FOR RELIEF SOUGHT

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

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

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

RECOMMENDATIONS

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

All of which is respectfully submitted this 28th day of April, 2020.

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

Per:



Philip J. Reynolds, LIT
Senior Vice-President

Appendix “F”

Termination Order

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

THE HONOURABLE MADAM)
)
JUSTICE GILMORE) WEDNESDAY, THE 29th DAY
)
) OF APRIL, 2020

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

CCAA TERMINATION ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Schedule "A"

FORM OF MONITOR'S CERTIFICATE

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

MONITOR'S CERTIFICATE

RECITALS

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

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

THE MONITOR CONFIRMS the following:

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

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

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

DATED at Toronto, Ontario this _____ day of _____, 2020

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

Per: _____

Name:

Title:

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

ORIONIS CORPORATION
Applicant

-AND-

ONTARIO GRAPHITE, LTD.
Respondent

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

PROCEEDING COMMENCED AT TORONTO

CCAA TERMINATION ORDER

BORDEN LADNER GERVAIS LLP

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

Alex MacFarlane – LSO No. 28133Q

Tel: 416.367.6305
Email: amacfarlane@blg.com

Bevan Brooksbank - LSO No. 56717U

Tel: 416.367.6604
Email: bbrooksbank@blg.com

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

Appendix “G”

Redacted NACS LOI

North American Carbon Solutions, Inc.

March 29, 2021

Deloitte Restructuring Inc.
Suite 200-8 Adelaide Street West,
Toronto, ON, M5H 0A9

Attention: Deloitte Restructuring Inc. In its Capacity as Court Appointed
Monitor of Ontario Graphite, Ltd

The following sets out the conditions upon which North American Carbon Solutions, Inc., directly or through an affiliate, (the "**Bidder**" or "**NACS**") is making a binding offer (the "**Bid**") to purchase the assets (the "**Transaction**") of Ontario Graphite, Limited ("**OGL**" or the "**Company**"):

Assets to be purchased:

Bidder proposes to acquire all of OGL's assets, interests and rights (the "**Assets**"). The Assets shall be purchased on an "as is, where is" basis with no representations from any party as further detailed below.

Purchase price:

Bidder proposes to pay to OGL the sum of [REDACTED] (the "**Purchase Price**") for the Assets. The purchase price will be paid on closing of the Transaction, the date of which is estimated to be 45 days from the issuance of a final, non-appealable order from the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), or as the parties may otherwise agree.

Immediately upon acceptance of this Bid to purchase the Assets, the Bidder will make a non-refundable deposit of [REDACTED] to OGL (the "**Deposit**"). The Deposit shall be paid to and held by the monitor, Deloitte Restructuring Inc. (the "**Monitor**") in OGL's *Companies' Creditors Arrangement Act* proceeding. The Bidder shall have no recourse to the Deposit with the purpose of such Deposit being to provide OGL with working capital funding for general corporate use. Any Deposit shall be credited against the Purchase Price at closing but no other offsets or other credits (with the exception of those outlined on Exhibit A) shall be permitted.

The Bid is not conditional upon any financing condition and the Bidder has the financial wherewithal to consummate any Transaction.

Definitive documents:

The Transaction shall be subject to the execution of the usual and customary transaction documents to be settled prior to closing. The Bidder undertakes to

North American Carbon Solutions, Inc.

provide OGL and its counsel with a draft of the asset purchase agreement by no later than 3 days after issuance of a final, non-appealable order from the **Court.**

Court approval: The Bidder is aware that OGL is currently subject to a proceeding pursuant to the *Companies' Creditors Arrangement Act* and that the transaction contemplated hereby shall be subject to approval by the Court within 14 days of acceptance of this Bid. Closing shall occur once the Court has issued a final, non-appealable order approving the Transaction.

Bid is non-revocable: This Bid shall remain irrevocable for a period of not less than 5 days from the date of delivery.

Necessary approvals: This Bid is not subject to any corporate, shareholder, regulatory or other approvals on the part of the Bidder.

Contracts to be assumed: Other than any regulatory approvals/permits already obtained by OGL, the Bid is not conditional upon the assumption of any material contracts. The Bidder requires that any governmental regulatory approvals be transferred to it prior to closing of the Transaction.

The Bidder is prepared to move forward to consummate the transaction based on the timeline outlined in Exhibit B, with closing date of on or about May 30, 2021. By signing below, the Monitor agrees to the terms included herein.

Yours truly,

North American Carbon Solutions, Inc



Ellerton J, Castor, CEO

March 29, 2021
Date

The Monitor agrees to the terms set out above.

North American Carbon Solutions, Inc.

North American Carbon Solutions, Inc.

Deloitte Restructuring Inc. In its capacity as Court Appointed Monitor of Ontario Grahite Ltd.

Deloitte Restructuring Inc.

Date

North American Carbon Solutions, Inc.

Exhibit A

Nil

North American Carbon Solutions, Inc.

Exhibit B **Preliminary Timeline**

Week Beginning	CCAA Task
Day 1	<ul style="list-style-type: none">▪ Binding Bid Submitted
Day 8	<ul style="list-style-type: none">▪ Court Approval Obtained▪ Non-refundable deposit transferred
Day 15	<ul style="list-style-type: none">▪ Canadian [Ontario] Entity Formed▪ Closing Agenda circulated Canadian▪ Initial drafts of documentation provided▪ Regulatory notifications, signoffs, approvals commenced
Day 29	<ul style="list-style-type: none">▪ Execution drafts of closing documentation circulated for final approval
Day 36	<ul style="list-style-type: none">▪ Closing documents circulated
Day 60	<ul style="list-style-type: none">▪ Signing, completion, funds flow

Appendix “H”

Draft Order

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

THE HONOURABLE) THURSDAY, THE 22nd DAY
)
JUSTICE HAINEY) OF APRIL, 2021

BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

ORDER

(Expansion of the powers of the Monitor)

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

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

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

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

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

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

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

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

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

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

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

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

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist OGL and the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an

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

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

ORIONIS CORPORATION
Applicant

-AND-

ONTARIO GRAPHITE, LTD.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

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

Alex MacFarlane – LSO No. 28133Q
Tel: 416.367.6305
Email: amacfarlane@blg.com

Bevan Brooksbank - LSO No. 56717U
Tel: 416.367.6604
Email: bbrooksbank@blg.com

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

Confidential Appendix “1”

Unredacted Bold LOI