

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LYDIAN INTERNATIONAL
LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION
LIMITED**

**AFFIDAVIT OF ALAN J. HUTCHENS
(Sworn April 27, 2020)**

I, ALAN J. HUTCHENS, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President at Alvarez & Marsal Canada Inc. (“**A&M**”), the Court appointed Monitor in these proceedings (the “**Monitor**”). As such, I have knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief and whereso stated, I verily believe it to be true.
2. A&M was appointed as Monitor pursuant to an Order of the Superior Court of Justice Commercial List dated December 23, 2019. The Monitor retained Thornton Grout Finnigan LLP (“**TGF**”) as its counsel in these proceedings.
3. Attached hereto as **Exhibit “A”** are copies of the invoices rendered by the Monitor for fees and disbursements incurred by A&M through the course of these proceedings for the period from March 1 to April 15, 2020 (the “**A&M Application Period**”), which are, in a couple instances, redacted for privileged, confidential and commercially sensitive information. The invoices contain the fees (including details of the billing rates and total hours of each of the members of A&M who acted on behalf of the Monitor in these proceedings), and disbursements charged by A&M in these proceedings.

4. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, and the total fees charged per invoice.
5. Attached hereto as **Exhibit "C"** is a schedule summarizing personnel, their total hours billed and their hourly rates, as well as the average hourly rate billed for the A&M Application Period.
6. The Monitor expended a total of 136.1 hours in connection with this matter during the A&M Application Period, giving rise to fees totalling \$91,181.50 and disbursements totalling \$618.19, as outlined in Exhibit "B".
7. To the best of my knowledge, A&M's rates and disbursements are consistent with those in the market for these types of matters and the hourly billing rates charged by A&M are comparable to the rates charged by A&M for services rendered in similar proceedings. A&M has had its rates and disbursements, including the rates of various professionals who provided services in these proceedings, approved by this Court in respect of similar services provided in various insolvency and restructuring files.
8. I make this affidavit in support of the Applicants' motion for, among other things, approval of the Monitor's fees and disbursements.

SWORN before me by videoconference from the Town of Oakville in the Province of Ontario to City of Toronto, in the Province of Ontario, on this 27th day of April 2020.

R. Bengino

A Commissioner for taking affidavits

Alan J. Hutchens

ALAN J. HUTCHENS

EXHIBIT “A”

This is Exhibit "A" referred to in the
affidavit of Alan J. Hutchens
sworn before me by videoconference, this 27th day of April 2020.

R. Bengino

A Commissioner for Taking Affidavits



March 17, 2020

Lydian International Limited
 5655 S Yosemite Street
 Greenwood Village, CO
 80111 USA

Attention: Mr. Bill Dean, CFO

**RE: LYDIAN INTERNATIONAL LIMITED (the “Company”)
 CCAA INVOICE #6 (817642)**

For professional services rendered in connection with our appointment as Monitor under the *Companies’ Creditors Arrangement Act* pursuant to the Initial Order granted by the Ontario Superior Court of Justice (Commercial List) on December 23, 2019, for the period March 1 to 15, 2020.

BILLING SUMMARY

	<u>Hours</u>	<u>Rate</u>	<u>Total—in CAD</u>
A. Hutchens, Managing Director	13.2	\$860	\$11,352.00
M. MacKenzie, Senior Director	59.9	\$645	38,635.50
	<u>73.1</u>		<u>\$49,987.50</u>
Add: Out of pocket expenses including telephone and travel costs			<u>601.28</u>
TOTAL AMOUNT DUE – in CAD			<u>\$50,588.78</u>

Mailing Instructions:

Alvarez & Marsal Canada ULC
 Att: Audrey Singels-Ludvik
 Royal Bank Plaza, South Tower
 200 Bay Street, Suite 2900
 P.O. Box 22
 Toronto, ON M5J 2J1

Wiring Instructions:

Bank: TD Canada Trust
 Account Name: Alvarez & Marsal Canada ULC
 Swiftcode: TDOMCATTOR
 Bank Address: 55 King Street West
 Toronto, ON
 Bank Transit #: 10202
 Institution #: 0004
 Account #: 5519970 (CAD)
 Reference #: Lydian Int’l – CCAA Inv #6 (817642)
 HST#: 83486 3367 RT0001

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 1 to 15, 2020

<u>A. Hutchens</u>	<u>Hrs.</u>	
Mar 2	Attend at Court for the hearing for the stay extension; emails from management and others on the status of open items.	2.0
Mar 3	Review the draft DIP term sheet; internal discussion and emails/emails with Stikeman and TGF on open items.	1.5
Mar 4	Review the revised draft DIP term sheet; internal emails/emails with Stikeman on open items.	0.8
Mar 5	Review and provide comments on the draft fee affidavit; internal discussion and emails on open items.	0.7
Mar 6	Emails on a number of matters; update discussion on the outcome from today’s meeting with the lenders and next steps/timing for Court materials.	0.4
Mar 8	Review the revised draft DIP term sheet; emails amongst counsel on open matters related to the upcoming Court hearing; internal update discussion.	1.2
Mar 9	Internal discussions and emails on items related to upcoming Court hearing and Third Report of the Monitor (“Third Report”); review and finalize the fee affidavit.	1.5
Mar 10	Review the revised DIP agreement; internal discussions and emails on timing/items related to tomorrow’s Court hearing; review the draft Third Report and internal discussion on same; finalize the Third Report for service.	1.8
Mar 11	Attend at Court for the hearing for the stay extension.	3.0
Mar 12	Internal emails on open items.	0.3
TOTAL – A. Hutchens		13.2 hrs.

<u>M. MacKenzie</u>	<u>Hrs.</u>	
Mar 1	Communications with A. Hutchens; call with Stikeman and TGF regarding draft DIP term sheet; call with E. Sellers; call with Stikeman, TGF, Blakes and RCF; prepare the draft Third Report to Court; update 13-week cash flow forecast; call with D.J. Miller regarding various matters; review revised draft DIP term sheet; review revised draft Sellers Affidavit.	5.5

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 1 to 15, 2020

Mar 2	Attend at Court hearing; calls with D.J. Miller to discuss near term go-forward plan and related matters; update cash flow forecast for actual results for the week ended February 18; call with lenders’ counsel, Stikeman and TGF and follow-up call with TGF; review revised draft DIP Term Sheet and provide comments in respect of same.	5.3
Mar 3	Review proposed disbursements and related emails with management; discussion with R. Waterfield regarding public company filing related costs; call with D.J. Miller regarding the status of various matters and the go-forward process; various emails among lenders’ counsel, Stikeman and TGF regarding cash flow forecast and DIP matters; review draft DIP term sheet put forward by counsel to RCF and related communications with TGF.	3.8
Mar 4	Various emails with D.J. Miller regarding work streams for follow-up and go-forward process; call with Blakes, Stikeman and TGF regarding RCF draft DIP term sheet and other go-forward matters; call with M. Caiger regarding cash flow matters; update 13-week forecast and draft DIP forecast for actual results for the week ended February 28 and communications with management in respect of same; call with E. Sellers regarding cash flow matters.	4.5
Mar 5	Communications with D.J. Miller regarding the status of various work streams and other matters; emails with BMO regarding the status of the sale process and go forward planning to monitor same; call with Orion; review responses to enquiries made to Applicants’ counsel, responses to enquiries from Orion, and revised DIP Term Sheet from Orion and provide comments in respect of same to TGF; update and revise draft fee affidavit and related communications with TGF; call with E. Sellers; call with D.J. Miller to discuss upcoming lender meeting.	6.3
Mar 6	Update draft DIP cash flow forecast and prepare companion version with certain adjustments for discussion purposes at meeting with lenders; communications with D.J. Miller in preparation for meeting with lenders and Company; attend meeting with Stikeman, TGF, lenders and their legal counsel and E. Sellers; discussion with A. Hutchens to provide a status update; revise draft DIP cash flow forecast to reflect changes agreed to meeting and circulate same to management for review; call with management to review and discuss the revised draft cash flow forecast and other related communications.	6.4

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 1 to 15, 2020

Mar 7	Review revised draft Orion DIP term sheet and provide comments in respect of same; call with E. Sellers regarding go-forward accounting/finance function and cash flow matters; communications with TGF and Stikeman regarding certain provisions in the draft DIP term sheet and related concerns; email to management regarding cash flow related enquiries; email to Stikeman to enquire regarding workstreams involving Mourant; update DIP forecast and 13-week cash flow forecast and related emails with management; update draft Third Report.	4.3
Mar 8	Communications with TGF regarding preparation of Court Report and timing of materials; further revision to DIP cash flow forecast and 13-week cash flow forecast per additional information provided by management and update draft Third Report; review Sellers BMO Affidavit and provide comments in respect of same; review RCF comments regarding draft DIP term sheet; review revised Sellers Affidavit in support of the Applicants’ upcoming motion; various emails regarding comments and responses to same in respect of the DIP term sheet; call with D.J. Miller to follow-up in respect of group call to resolve concerns raised by E. Sellers; revise draft Third Report and related communications with TGF.	5.0
Mar 9	Numerous emails regarding draft DIP term sheet; finalize fee affidavit of A. Hutchens; various calls with TGF to progress DIP related matters and the Third Report and related appendices; review draft orders; review draft Sellers Affidavit; call with Orion to discuss DIP matters and follow-up calls with L. Pillon and TGF; status update discussions with A. Hutchens.	6.3
Mar 10	Revise fee Affidavit of A. Hutchens to include confidential Exhibit; call with TGF to discuss process to complete Third Report and address comments from Stikeman; review revisions to draft Third Report; status update emails to A. Hutchens; various emails regarding matters related to the DIP term sheet.	5.5
Mar 11	Attend Court hearing and related follow-up call with D.J. Miller; review external deliverables matrix in association with the closing of the Denver office; communications with E. Sellers regarding interim accounting position.	4.0
Mar 12	Communications with management regarding Director and Officer liability insurance; review draft draw request and related communications; status update call with A. Hutchens; and email from E. Sellers regarding interim accounting position.	1.2

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 1 to 15, 2020

Mar 13	Communications with E. Sellers regarding interim accounting position; status update call with D.J. Miller; and status update call with A. Hutchens.	1.0
Mar 14	Call with E. Sellers regarding various matters and follow-up in respect of same.	0.8
TOTAL – M. MacKenzie		59.9 hrs.



April 1, 2020

Lydian International Limited
 5655 S Yosemite Street
 Greenwood Village, CO
 80111 USA

Attention: Mr. Bill Dean, CFO

**RE: LYDIAN INTERNATIONAL LIMITED (the “Company”)
 CCAA INVOICE #7 (817642)**

For professional services rendered in connection with our appointment as Monitor under the *Companies’ Creditors Arrangement Act* pursuant to the Initial Order granted by the Ontario Superior Court of Justice (Commercial List) on December 23, 2019, for the period March 16 to 31, 2020.

BILLING SUMMARY

	<u>Hours</u>	<u>Rate</u>	<u>Total—in CAD</u>
A. Hutchens, Managing Director	1.7	\$860	\$1,462.00
M. MacKenzie, Senior Director	30.4	\$645	19,608.00
	<u>32.1</u>		<u>\$21,070.00</u>
TOTAL AMOUNT DUE – in CAD			<u>\$21,070.00</u>

Mailing Instructions:

Alvarez & Marsal Canada ULC
 Att: Audrey Singels-Ludvik
 Royal Bank Plaza, South Tower
 200 Bay Street, Suite 2900
 P.O. Box 22
 Toronto, ON M5J 2J1

Wiring Instructions:

Bank: TD Canada Trust
 Account Name: Alvarez & Marsal Canada ULC
 Swiftcode: TDOMCATTOR
 Bank Address: 55 King Street West
 Toronto, ON
 Bank Transit #: 10202
 Institution #: 0004
 Account #: 5519970 (CAD)
 Reference #: Lydian Int’l – CCAA Inv #7 (817642)
 HST#: 83486 3367 RT0001

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 16 to 31, 2020

<u>A. Hutchens</u>		<u>Hrs.</u>
Mar 16	Read the Endorsement from the March 11 Court hearing; read update email from management.	0.4
Mar 18	Internal emails on open items.	0.3
Mar 19	Internal emails on open items.	0.2
Mar 25	Internal update discussion.	0.2
Mar 26	Internal update discussion.	0.3
Mar 27	Internal update discussion.	0.3
TOTAL – A. Hutchens		1.7 hrs.

<u>M. MacKenzie</u>		<u>Hrs.</u>
Mar 16	Review update email from E. Sellers; call with E. Sellers regarding various matters; communications with B. Linsome regarding DIP cash flow forecast; call with Richter regarding interim management position.	1.3
Mar 17	Review draft letter to Armenian Environmental Front and provide comments to TGF in respect of same.	1.5
Mar 18	Review reasons issued by Jersey Court and arrange to have same posted to the case website; call with E. Sellers regarding various matters; review variance analysis for week 1 of DIP cash flow forecast.	1.3
Mar 19	Call with TGF to discuss first AEF letter and go-forward plan regarding various workstreams; update DIP forecast for actual results for week 1 and communications with management regarding same; emails with E. Sellers on insurance matters.	1.8
Mar 20	Review and respond to various emails; call with management regarding cash flow matters.	0.8
Mar 23	Call with Stikeman and TGF regarding the status of a number of matters and follow-up call with TGF; various email correspondence.	1.1

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 16 to 31, 2020

Mar 24	Call with M. Caiger regarding the sale process; call with C. de Grosbois regarding composition of recent DIP draw as between the senior lenders and related email; review contracts for M. Farrant and B. Linscome; communications with TGF.	1.3
Mar 25	Call with E. Sellers regarding the status of various matters; call with E. Sellers, B. Linscome and M. Farrant to discuss onboarding, cash flow and go-forward reporting matters; review DIP cash flow forecast; call with TGF on the sale process.	4.3
Mar 26	Draft a rolling version of the DIP cash flow forecast and update same for actual results of weeks 1 and 2; analyze components to support the next DIP draw request and correspondence with TGF on same; call with B. Linscome and M. Farrant to review and discuss the draft analysis to support the DIP draw request; internal discussion on status of open items.	3.8
Mar 27	Review comments from B. Linscome in respect of rolling DIP forecast for weeks 3 through 5 and analysis of funding requirements and provide comments in respect of same; call with E. Sellers regarding DIP draw request, other cash flow matters and the status of the term sheet negotiations between the senior lenders; coordinate posting of document to the case website; call with B. Linscome and M. Farrant to review and discuss support for draw request and to discuss other matters related to cash flow; call with E. Sellers regarding mechanics of DIP draw request and variance reporting and follow-up call with B. Linscome; call with E. Sellers, BMO, Stikeman, and TGF regarding status of term sheet and related negotiations; prepare draft variance analysis for discussion with B. Linscome and M. Farrant, call with B. Linscome in respect of same and related emails; summarize relevant points from DIP agreement for management; further review and revisions to the rolling forecast and related communications with management; internal update discussion.	7.0
Mar 28	Review and revise the rolling DIP cash flow forecast based on discussions with management; call with B. Linscome regarding DIP reporting deliverables.	1.0
Mar 29	Review comments from E. Sellers regarding rolling DIP forecast, incorporate revisions and call in respect of same; further revisions and related discussions with management.	1.1
Mar 30	Review correspondence regarding insurance.	0.3

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – March 16 to 31, 2020

Mar 31	Communications with management regarding lender expenses in the context of the DIP draws, review DIP agreement in respect of same, related emails with E. Sellers and TGF; call with E. Sellers for an update regarding lender positions in respect of [REDACTED] term sheet; review week 3 variance analysis provided by management and call with E. Sellers, M. Farrant and B. Linscome to review and discuss same; further call with E. Sellers to discuss lender positions in respect of [REDACTED] term sheet; update rolling cash flow forecast for week 3 results.	3.8
TOTAL – M. MacKenzie		30.4 hrs.



April 16, 2020

Lydian International Limited
 5655 S Yosemite Street
 Greenwood Village, CO
 80111 USA

Attention: Mr. Bill Dean, CFO

**RE: LYDIAN INTERNATIONAL LIMITED (the “Company”)
 CCAA INVOICE #8 (817642)**

For professional services rendered in connection with our appointment as Monitor under the *Companies’ Creditors Arrangement Act* pursuant to the Initial Order granted by the Ontario Superior Court of Justice (Commercial List) on December 23, 2019, for the period April 1 to 15, 2020.

BILLING SUMMARY

	<u>Hours</u>	<u>Rate</u>	<u>Total—in CAD</u>
A. Hutchens, Managing Director	0.9	\$860	\$774.00
M. MacKenzie, Senior Director	30.0	\$645	19,350.00
	<u>30.9</u>		<u>\$20,124.00</u>
Add: Out of pocket expenses - telephone			16.91
TOTAL AMOUNT DUE – in CAD			<u>\$20,140.91</u>

Mailing Instructions:

Alvarez & Marsal Canada ULC
 Att: Audrey Singels-Ludvik
 Royal Bank Plaza, South Tower
 200 Bay Street, Suite 2900
 P.O. Box 22
 Toronto, ON M5J 2J1

Wiring Instructions:

Bank: TD Canada Trust
 Account Name: Alvarez & Marsal Canada ULC
 Swiftcode: TDOMCATTTOR
 Bank Address: 55 King Street West
 Toronto, ON
 Bank Transit #: 10202
 Institution #: 0004
 Account #: 5519970 (CAD)
 Reference #: Lydian Int’l – CCAA Inv #8 (817642)
 HST#: 83158 2127 RT0001

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – April 1 to 15, 2020

<u>A. Hutchens</u>		<u>Hrs.</u>
Apr 7	Internal emails on status/open items.	0.3
Apr 10	Internal update discussion.	0.3
Apr 14	Internal update discussion.	0.3
TOTAL – A. Hutchens		0.9 hrs.

<u>M. MacKenzie</u>		<u>Hrs.</u>
Apr 1	Call with TGF to discuss the status of various matters and go-forward plan; review updated schedule of actual receipts and disbursements for week 3 of the DIP Forecast period and update rolling cash flow forecast and rolling variance analysis; review proposed disbursements for week 4 and email management on same; various communications in respect of next call regarding the sale process; emails with BMO regarding its invoice.	2.5
Apr 2	Call with Stikeman, TGF and E. Sellers regarding the status of various matters and follow-up call with TGF; review draft term sheets circulated by BMO.	1.8
Apr 3	Call with BMO in advance of lender call; call with senior lender group, M. Caiger and E. Sellers; call with E. Sellers following lender call; review proposed disbursements and emails with management on same; update emails to TGF.	2.0
Apr 6	Review proposed disbursement schedule and respond in respect of same; various communications with B. Linscome; review draft term sheets sent to interested party; communications with TGF.	1.3
Apr 7	Review responses to inquiries in respect of proposed disbursements and related communications with B. Linscome; communications with B. Linscome regarding foreign exchange.	2.0
Apr 8	Status update call with E. Sellers; various emails.	2.0
Apr 9	Call with management regarding week 4 cash flow variances and related matters and incorporate same into variance reporting; various communications with TGF; update email from E. Sellers in respect of CAT.	2.3

Lydian International Limited (“Lydian”) – 817642
DETAILED SUMMARY – April 1 to 15, 2020

Apr 10	Review week 5 cash flow variances, related inquiries of management and incorporate week 4 and 5 actual results into rolling cash flow and update same accordingly; status update call with TGF; call with A. Hutchens; various email communications.	2.0
Apr 11	Set up bi-weekly variance reporting for lenders pursuant to the DIP agreement; further update draft rolling cash flow forecast for actuals, review remaining period for any required updates, reconcile same and related communications with management; communications with management regarding Freshfields invoicing and certain other matters.	2.5
Apr 13	Review email from B. Linscome regarding rolling DIP Forecast, incorporate comments as appropriate, email in response to same and related email to management; call with E. Sellers regarding various matters; communications with TGF; emails with management regarding cash flow matters; call with management and E. Sellers to review and discuss variance analysis through week 4 of the DIP Forecast and the rolling DIP Forecast, and related follow-up.	3.5
Apr 14	Review additional and revised information provided by management in respect of week 5 actual disbursements and Armenian disbursements made to-date in week 6, review additional information provided by management and certain professional fee invoices and estimates provided, and review and revise variance analysis and rolling DIP forecast as per discussion with management and to incorporate additional information provided; review email from E. Sellers with an update in respect of Georgia Resource Company and related email with TGF; various emails with management; status discussion with A. Hutchens.	3.3
Apr 15	Further review and revision to variance analysis and rolling DIP Forecast and related communications with management and respond to comments and inquiries on same; review and respond to various emails; call with E. Sellers, M. Farrant and B. Linscome regarding variance analysis, rolling DIP Forecast, trailing accounts payable and related matters, and follow-up on same; call in respect of same with B. Linscome; prepare schedule of trailing accounts payable and finalize same along with variance analysis and rolling DIP Forecast for provision to lenders and follow-up emails with management.	4.8
TOTAL – M. MacKenzie		30.0 hrs.

EXHIBIT “B

This is Exhibit "B" referred to in the
affidavit of Alan J. Hutchens
sworn before me by videoconference, this 27th day of April 2020.

R. Bengino

A Commissioner for Taking Affidavits

**COURT-APPOINTED MONITOR OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

FOR THE PERIOD MARCH 1 TO APRIL 15, 2020

Invoice	Fees (\$)	Disbursements (\$)	Total Hours	Total Billed (\$)
6	49,987.50	601.28	73.1	50,588.78
7	21,070.00	-	32.1	21,070.00
8	20,124.00	16.91	30.9	20,140.91
Totals	91,181.50	618.19	136.1	91,799.69

EXHIBIT “C”

This is Exhibit "C" referred to in the
affidavit of Alan J. Hutchens
sworn before me by videoconference, this 27th day of April 2020.

R. Bengino

A Commissioner for Taking Affidavits

**ALVAREZ & MARSAL CANADA INC.
COURT-APPOINTED MONITOR OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

FOR THE PERIOD MARCH 1 TO APRIL 15, 2020

Staff Member	Title	Total Hours	Rate (\$CAD)	Amuont Invoiced (\$CAD)
Alan Hutchens	Managing Director	15.8	860.0	13,588.00
Melanie MacKenzie	Senior Director	120.3	645.0	77,593.50
			Avg. Rate	
Total		136.1	669.96	91,181.50

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED,
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ALAN J. HUTCHENS
(sworn April 27, 2020)**

THORNTON GROUT FINNIGAN LLP
Barristers and Solicitors
Toronto Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, Ontario M5K 1K7

D.J. Miller LSO# 344393P
djmillier@tgf.ca

Rachel Bengino LSO# 68348V
rbengino@tgf.ca

Tel: 416.304.1616
Fax: 416.304.1313

Lawyers for the Monitor

APPENDIX F

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

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

**AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**AFFIDAVIT OF D.J. MILLER
(Sworn April 27, 2020)**

I, **D.J. MILLER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and I am a partner at Thornton Grout Finnigan LLP (“**TGF**”), lawyers for Alvarez & Marsal Canada Inc., the Court-appointed Monitor (the “**Monitor**”) of the Applicants and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as **Exhibit “A”** are copies of the invoices issued to the Monitor by TGF for fees and disbursements incurred by TGF through the course of these proceedings between March 1, 2020 through to April 13, 2020, which have been redacted in specific instances for purposes of privilege and confidential.

3. Attached hereto as **Exhibit “B”** is a schedule summarizing each invoice in Exhibit “A”, the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. Attached hereto as **Exhibit “C”** is a schedule summarizing the respective years of call and billing rates of each of the solicitors at TGF who acted for the Monitor.

5. To the best of my knowledge, the rates charged by TGF throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

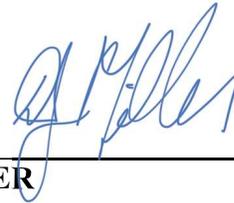
6. The hourly billing rates outlined in **Exhibit “C”** to this affidavit are comparable to the hourly rates charged by TGF for services rendered in relation to similar proceedings.

7. I make this affidavit in support of a motion by the Applicants for, *inter alia*, approval of the fees and disbursements of the Monitor’s counsel.

SWORN before me by video conference from the Town of Corbeil, in the Province of Ontario, to the City of Toronto, in the Province of Ontario this 27th day of April, 2020.

R. Bengino

Commissioner for Taking Affidavits



D.J. MILLER

EXHIBIT “A”

This is Exhibit "A" referred to in the
Affidavit of D.J. Miller sworn before me
this 27th day of April, 2020.

R. Bengino

A Commissioner for taking affidavits



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Alvarez & Marsal Canada Inc
Royal Bank Plaza, South Tower
200 Bay St., Suite 2900
Toronto, ON M5J 2J1

April 2, 2020

**Attention: Al Hutchens
Melanie MacKenzie**

Invoice No. 34738

File No. 1807-002

RE: Lydian International Limited

**TO ALL PROFESSIONAL SERVICES RENDERED HEREIN INCLUDING THE FOLLOWING
for the period ending: March 31, 2020**

FEES

Mar-01-20	Emails to and from Applicants' counsel as to advancing issues; discussions with Applicants' counsel as to status of term sheet, DIP terms, governance considerations; emails to the lender group and Applicants' counsel as to conference call to discuss DIP term sheet; prior conference call with the Applicants' counsel on Orion DIP terms; conference call with RCF's counsel and Applicants' counsel as to potential other DIP terms; call with M. MacKenzie as to items discussed and next steps; emails from Applicants' counsel as to draft materials and exchanging comments on same;	2.80	DJM
	Emails with respect to monitor's third report; review detailed email from E. Sellers with respect to call with senior lenders on Friday; emails with applicant with respect to term sheet and review comments on same; conference call to discuss same; attend conference call with lender to discuss potential DIP; review revised term sheet provided by Stikeman to lenders; review revised affidavit; drafting monitor's report;	3.60	RB
Mar-02-20	Attend in Court before Justice Morawetz for 3 day stay extension; discussion with counsel for Lenders in attendance; discussion with the Monitor as to reporting to the Court on correspondence from concerned citizens in Armenia and other aspects of Third Report to be drafted; emails to and from Applicants' counsel as to advancing discussions on DIP and governance; emails to Lenders' counsel as to conference call to discuss these matters; participate on conference call with lenders and counsel regarding DIP terms offered by Orion, restrictions as to activities to be undertaken, other work requested by RCF and details to be provided, consideration as to nature and quantum of interim financing required, and trailing and accruing nature of certain liabilities to be addressed; call from	5.20	DJM

M. Caiger and discussion as to status of discussions with purchaser, impact of delays in resolving governance matters and view of most efficient path forward on a transaction; telephone discussion with M. MacKenzie as to these aspects; emails to the Lenders' counsel as to return date of March 11 and discuss same with R. Bengino; receive and review updated Term Sheet from Orion and discussions and emails with the Monitor and R. Bengino as to same; communicate comments on various aspects to Applicants' counsel; emails from E. Sellers with updates on various aspects; review email from B. Dean as to insurance matters; receive and review updated corporate organizational chart and consider any amendment to include new Canadian entity as a CCAA Applicant;

Drafting Monitor's Third Report; discussion with D.J. Miller with respect to Court attendance today; email from L. Pillon with respect to same; review email from E. Sellers with respect to terms of potential DIP; emails with respect to scheduling call with lenders; receive and review issued Order and Endorsement; attend conference call with lenders to discuss DIP terms and governance issues; review and consider revised DIP term sheet and email comments on same to Monitor for consideration; review and consider additional comments on DIP term sheet from Monitor; revise draft DIP term sheet and circulate same to counsel to Applicants for consideration;

3.70 RB

Mar-03-20 Emails with the Monitor as to various work streams and upcoming Third Report; discussions with R. Bengino as to same; receive and review DIP Term Sheet from RCF and consider same; emails to and from Applicants' counsel as to obtaining confirmation from all parties as to path forward; emails to and from Orion's counsel as to potential funding and terms of same; call from M. Caiger and discussion regarding impediments in the process causing delay; telephone discussion with L. Pillon; emails as to advancing the governance and funding issues; emails to and from Applicants' counsel as to terms of RCF DIP; emails from and to E. Sellers as to various issues in play amongst the lender group; review update provided to Board; emails from and to counsel for RCF and the Applicants to schedule call to discuss RCF DIP; consider questions to be answered by lender group to provide direction to the Applicants;

3.50 DJM

Emails with respect to fee affidavit; review DIP term sheet provided by lender and consider same; review email from Orion with respect to cash flow; preparation of fee affidavit; several emails with Monitor and Applicants with respect to RCF DIP Agreement; review email from E. Sellers with respect to Orion DIP Agreement; review structural comments from Applicants on RCF DIP Agreement; review email to RCF with respect to same; emails with respect to scheduling call to discuss same;

1.80 RB

Mar-04-20 Conference call with counsel for RCF and the Applicants, and the Monitor to discuss draft RCF DIP Term Sheet; further discussion with the Monitor as to same; calls to Applicants' counsel and discussion as to status of all issues, information required for cash flow forecast and stay extension; timing of finalizing and filing motion materials and Monitor's Report; discussion with L. Pillon as to actual information required by the

3.30 DJM

Applicants from the lenders and consider same; draft list of questions of the Monitor to the Applicants for assistance on various issues; draft detailed email and list of questions for the lenders for which input and decisions are required by Applicants and Monitor for reporting purposes; receive and review copy of Jersey recognition Order; email from E. Sellers as to anticipated pricing if D&O extension is available; emails to lenders as to providing response on Orion DIP terms; emails to and from Stikemans as to comparison of DIP availability and cash requirements; review email update to counsel for the equipment lessors; review emails from RCF's counsel to other lenders as to RCF DIP term sheet; emails from and to Orion's counsel as to revised cash flow forecasts;

Emails with respect to scheduling call today; instructions to M. Magni with respect to circulating dial in for call; attend conference call with counsel to RCF and Applicants to discuss RCF DIP; review emails with Applicants with respect to questions to be posed to lenders; review email to Applicants with respect to questions to be answered; review email to Lenders with respect to questions to be answered; review update to Special Committee from E. Sellers; receive and review updated RCF DIP Term Sheet;

Mar-05-20 Emails to and from the Monitor and BMO as to status of [REDACTED] transaction and discussions on that term sheet; consider benefit of weekly or biweekly call to discuss term sheet progress; emails from and to the Applicants' counsel as to responses to Monitor's questions to be provided; consider status of discussions as to [REDACTED] term sheet and discussions with equipment lessors; receive and review responses to questions from the Applicants as posed by the Monitor; consider timing for serving materials in respect of March 11 motion; review and finalize fee affidavit for upcoming motion; discussion with R. Bengino as to information to be included in Monitor's Third Report; various calls to and from M MacKenzie; email from D. Bish with response provided by Orion to questions posed by the Monitor and consider same; consider requesting a meeting of all Lenders and Applicants to advance and finalize governance, DIP and path forward and discussion with the Monitor as to same; emails to and from the Applicants' counsel and the Monitor; email to the Lenders' counsel as to request for meeting by the Monitor; call from various lenders' counsel; receive and review memo as to AEF Complaint as to the Armenian blockades; telephone call with the Monitor to discuss responses received from the Applicants and Orion; call from P. Rubin and P. Huff and discussion as to the structure and contents of RCF's DIP Term Sheet; discuss same with the Monitor and Applicants' counsel; review further revisions to each DIP term sheet; telephone discussion with M. MacKenzie as to issues she has discussed with E. Sellers in preparation for Lenders' meeting tomorrow; prepare for Lenders' meeting tomorrow; emails from and to Applicants' counsel as to any circulation of responses to questions provided;

Review emails with respect to status of term sheet for sale transaction; review responses from applicants with respect to questions raised by the Monitor; review revised DIP agreement and responses from lender to

questions posed; call with Monitor to discuss same; emails with respect to scheduling meeting with lenders tomorrow; review email with respect to call with counsel to potential DIP lender;

Mar-06-20	<p>Review revised DIP Term Sheet circulated by RCF; email to M. MacKenzie as to updated cash flow forecast to be prepared and circulated to Lenders in advance of meeting today; emails to and from the Monitor as to cash flow forecast; receive and review two versions of same; emails to and from the Applicants' counsel as to providing comments on RCF Term Sheet; call from P. Huff and P. Rubin as to various aspects of RCF Term Sheet and clarification as to [REDACTED] of potential transaction; emails to and from M. Caiger as to nature of consideration under transaction; discussion with P. Huff as to same; emails with counsel for Applicants and Orion as to status of their draft DIP Term Sheet and whether circulated to other Lenders; receive and review information from Stikemans in response to information requests, and in relation to situation in Armenia; emails to and from Applicants as to potential quantum of VAT refund; emails to and from Applicants' counsel as to potential quantum of post-filing obligations being incurred; confirm support and participation by Osisko in either DIP structure; receive and review responses to the Monitor's questions from Osisko as lender; prepare list of discussion points for meeting and conference call with all lenders and counsel; attend meeting and conference call with all lenders and counsel to discuss and finalize terms of DIP, governance structure, path forward and [REDACTED]; emails to and from the Applicants to obtain information as to information and documents, IT questions to be addressed; email from E. Sellers as to availability for meeting / call; review of emails with counsel for equipment lessors and Applicants' counsel; review and revise Orion DIP Term Sheet to reflect consensus on various items discussed at the lender meeting; emails to and from Applicants' counsel as to revised DIP Term Sheet and advancing same; consider information to be included in Monitor's Third Report to the Court and emails to the Monitor as to same; telephone discussion with M. MacKenzie;</p>	5.50	DJM
	<p>Review emails with respect to revised DIP term sheets and meeting today; discussion with D.J. Miller to create list of issues for discussion today; attend meeting with Applicants and lenders; to resolve outstanding items and DIP; revise draft DIP agreement to reflect discussions with Lenders today; discussions with D.J. Miller with respect to same; send same to Monitor and applicants for review; further emails with respect to same;</p>	5.20	RB
Mar-07-20	<p>Various emails as to revised DIP Term Sheet circulated, [REDACTED], review email from E. Sellers and mark-up of DIP Term Sheet; emails to and from M. MacKenzie as to various aspects of materials to be prepared and Third Report to the Court; emails to and from R. Bengino as to same; emails to and from Applicants' counsel as to various aspects for materials and next steps and timing; review email and draft language sent to equipment lessors; consider email received by Monitor from concerned citizens of Armenia and respond to same; email to M. MacKenzie as to reporting on same as part of Third Report; receive and review updated</p>	2.50	DJM

cash flow forecast from the Monitor;

	Review revised DIP Agreement sent to lenders; emails with respect to same; emails with Monitor with respect to same and lenders' commitment to fund expenses incurred; email to Stikeman with respect to same; emails with respect to scope of [REDACTED]; emails with respect to cash flow forecast; review comments from E. Sellers on DIP Agreement; emails with Monitor with respect to draft report; review comments from lender on DIP Agreement;	1.30	RB
Mar-08-20	Numerous calls and emails throughout the day and evening to advance discussions amongst the parties as to DIP Term Sheet, governance issues and the path forward; calls from and to counsel for Applicants and Lenders; review and provide comments on DIP Term Sheet; emails to and from the Applicants' counsel as to addressing obligations incurred that are outside of Cash Flow Forecast; various emails to the Monitor as to same; receive and review various tweaks to the cash flow forecast and discussions as to impact on DIP and related matters; continue to advance the draft Third Report to the Court and discussions as to various aspects of same; receive and review draft materials from the Applicants' counsel and consider same and provide comments; emails as to BMO engagement letter and terms of same; consider request for sealing by the Applicants; receive and review updated corporate organizational chart to reflect new director company being incorporated; consider status of asset insurance and any extension to coverage and discuss same with the Monitor; discussion with R. Bengino as to memo provided as to AEF letter and considering same; emails from Orion's counsel with updated draft of DIP Term Sheet; discussions with R. Bengino as to materials being finalized and timing of same; telephone discussions with M. MacKenzie as to various aspects; consideration as to presentation of cash flow for Applicants in Third Report; review and respond to emails between Applicants' counsel and counsel for CAT and ING on terms of resolution, letter reflecting same, and form of Order to be sought; emails to the Applicants and Monitor as to ranking of Transaction Charge in favour of BMO; telephone discussion with M. Caiger as to same; review further updated DIP Term Sheet from Applicants' counsel; emails to and from E. Sellers as to manner of dealing with certain aspects; conference call with the Applicants' counsel and the Monitor as to these issues; discussion with R. Bengino as to addressing same; call from RCF's counsel (x2) as to changes to be made to DIP; various emails with the Monitor as to amounts comprising various aspects of the cash flow;	8.40	DJM
	Drafting third report; review and consider memorandum from Lydian with respect to allegations set forth in AEF letter; email to D.J. Miller with respect to same; email to M. Mackenzie with respect to same; receive and review draft updated Sellers affidavits with respect to upcoming motion; continue drafting third report; review comments on draft DIP Agreement and consider Same; email to Monitor with respect to same; review further revised DIP Agreement and several emails with respect to Same; conference call with Applicants to discuss same; review emails with respect to report; further revise same; review Monitor's Fee Affidavit;	11.40	RB

review draft stay extension order; revise same and provide comments on same; review revised cash flow forecast; review revised DIP and emails with respect to same; further revise draft report and circulate same for review;

Mar-09-20	<p>from the Monitor as to their fee affidavit; emails to and from Stikemans as to any consideration of including DirectorCo as a CCAA Applicant; emails amongst the lenders and Applicants as to Board meeting being held, approval of DIP being sought, various outstanding issues to be resolved with and amongst the Lender group; emails as to reconciling cash flow forecast and amounts included; continue to assist the Monitor in drafting and revising the Third Report to the Court; discussions with the Applicants' counsel as to confirming factual aspects; emails to and from Applicants' counsel as to Monitor's intentions with respect to relief sought based on current state of play and addressing outstanding issues; email to the Lenders' counsel as to the Monitor's concerns with particular aspects; email from E. Sellers as to asset coverage insurance and terms of expiry; emails with Stikemans as to amounts and ranking of charges granted and to be sought; further various emails with continuing drafts of the DIP Term Sheet and lender issues with particular aspects; calls from P. Huff as to [REDACTED]; call D. Bish as to outstanding issues and timing for response from Orion; attempt to assist lenders in resolving issues of concern; review BMO Affidavit; emails to and from Applicants' counsel as to timing for materials to be served and delivered to Chief Justice Morawetz; continue to advance these issues and drafting and finalizing of materials; numerous calls with the Monitor; emails as to discussions with UK counsel on next steps; telephone discussion with E. Pillon; emails to and from E. Sellers; conference call with E. Sellers and Applicants' counsel as to issue of concern and potential means of addressing same; further exchange of emails and documents with counsel for CAT; emails from and to Applicants' counsel as to presentation of materials;</p>	6.80	DJM
	<p>Review emails with respect to DIP Agreement and draft Stay Extension Order; instructions to M. Magni with respect to fee affidavits and Court report; review draft BMO Affidavit and provide comments on same; review several emails among lenders with respect to DIP Agreement; review draft Stay Extension Affidavit and emails with respect to same; review email with respect to status of employee contract extension; review revised Order; review emails with respect to DIP Agreement and trailing accounts payable; calls with Monitor; further review and revise draft report; review consent order with respect to resolution of CAT objection; review affidavit of A. Hutchens and emails with respect to same; further revise draft report and discussions with the Applicants with respect to same; discussions with respect to extent of redactions to DIP Agreement; review revised affidavit and further revise draft report; emails with Monitor with respect to same; call with D.J. Miller with respect to swearing fee affidavit; review comments on consent order from ING; review position of DIP lenders with respect to trailing obligations;</p>	7.30	RB
Mar-10-20	<p>Emails to and from Applicants' counsel and Lenders' counsel as to any agreement on final outstanding issue for DIP Term Sheet and means of</p>	5.60	DJM

addressing other points; continue to advance and finalize Monitor's Third Report to the Court; review and provide comments on all other materials including draft Order, final form of cash flow forecast; review final form of DIP Term Sheet; update Report based on final terms; confirm final terms of BMO engagement letter, terms and priority of Charge and update Monitor's Report; emails as to form of Order for ING; emails amongst the lenders as to amendments to certain definitions and resolving same; emails to Chief Justice Morawetz as to timing of materials and attendance tomorrow; finalizing all materials; delivering materials to His Honour; review of Applicants' final materials; confirming service of Monitor's Report on Service List; discussion with R. Bengino as to preparation for motion tomorrow, issues to be addressed in Court; emails to M. MacKenzie and from the Monitor as to various notes to be finalized; consider next steps and information to be obtained by Monitor for path forward; obtain confirmation from all Lenders as to final approval of DIP and confirm same in Monitor's Third Report; emails amongst Lender counsel as to amendment to Intercreditor Agreement; discussion with R. Bengino as to relaying message from His Honour to the Service List as to potential impact of late service of materials on timing of motion tomorrow;

	Emails with respect to finalizing DIP Agreement; calls with D.J. Miller and M. Mackenzie to discuss report and cash flow; revise draft report and send same to Stikeman; finalize appendices for report; finalize and compile report; review redacted DIP Agreement; send final report to Justice Morawetz; several calls with Monitor with respect to service of report and status of DIP Agreement; instructions to M. Magni with respect to service; serve report on Service List; swear Affidavit of Service; calls with M. Hou with respect to filing of materials; review Applicants' motion record, factum and order; prepare for motion returnable tomorrow; further emails with respect to execution of DIP Agreement;	9.20	RB
Mar-11-20	Emails with the Applicants' counsel as to additional correspondence received from AEF yesterday; email from E. Sellers as to various updates including shut down of Denver office; emails regarding amendment to Intercreditor Agreement; emails from and to Applicants' counsel as to response to AEF correspondence; discussion with R. Bengino as to results of Court attendance today, issues raised with Justice Morawetz, further material to be provided, and next steps; emails to and from the Monitor and Applicants' counsel as to court attendance and next steps; review Order and brief Endorsement; email from Applicants' counsel as to draw request to be made tomorrow;	1.90	DJM
	Prepare for and attend motion returnable today; discussion with Monitor; emails with respect to response to AEF;	4.30	RB
Mar-12-20	Email from E. Seller as to extension of D&O coverage; emails as to DIP advance and finalizing Intercreditor agreement; review formal DIP draw request; email with fully-executed copy of Intercreditor Agreement;	0.80	DJM
	Review comments on draft Intercreditor agreement; Review emails and documents with respect to DIP Drawdown request; Review email from E.	0.80	RB

	Sellers to insurer with respect to extension of insurance coverage;		
Mar-13-20	Review email from E. Sellers as to financial advisor to be retained on contract basis; consider same and discuss with M. MacKenzie; email from and to M. MacKenzie as to contract being considered; review email from M. MacKenzie to E. Sellers; emails from and to Applicants' counsel as to BMO engagement letter and redacted form of same to be provided to CJO Morawetz; email from E. Sellers as to same; emails from and to M. MacKenzie as to inquiries as to financial contract worker to assist CEO; receive and review initial Endorsement from the Court; emails to and from Applicants' counsel as to same; discussion with R. Bengino as to form of Endorsement; email from L. Pillon with further version of redacted BMO engagement letter; telephone discussion with M. MacKenzie;	2.10	DJM
	Review emails with respect to employment of potential interim executive and salary with respect to same; review proposed redactions to BMO engagement letter and emails with respect to same; review draft Reasons of Justice Morawetz and revise same; emails with respect to same;	1.70	RB
Mar-14-20	Email from L. Pillon as to BMO Engagement Letter to be sent to CJO Morawetz, per his request;	0.10	DJM
Mar-15-20	Review email from L. Pillon to CJO Morawetz with redacted form of BMO Engagement Letter per the Court's endorsement;	0.10	DJM
Mar-16-20	Emails from and to the Court as to materials provided by L. Pillon and issued Order; emails to and from L. Pillon as to same; email from the Court as to longer form of Endorsement; discussion with R. Bengino as to response to be provided to AEF Initiative in accordance with the Court's direction; review and revise draft form of letter to be sent to AEF; receive and review email from E. Sellers with update provided to the lenders; email to M. MacKenzie as to uploading Endorsement and Order on Monitor's website; discussion with R. Bengino as to description of AEF response to be provided in update to lenders; emails from Stikemans as to draw request under DIP; emails from and to the Monitor as to item in cash flow forecast;	1.70	DJM
	Prepare responding correspondence from Monitor to send to the AEF Civil Initiative; review Endorsement of Justice Morawetz and revise draft correspondence; email to D.J. Miller with respect to same; review email from E. Sellers with respect to summary of issues and status update for the company; email to D.J. Miller with respect to same;	1.40	RB
Mar-17-20	Emails from and to Applicants' counsel as to telephone discussion with Armenian counsel and further correspondence received from AEF; emails to and from M. MacKenzie as to same; review and revise draft letter to AEF in response to their correspondence to the Monitor; emails to and from M. MacKenzie with comments on draft letter to AEF;	0.90	DJM
	Prepare responding letter to AEF Civil Initiative; emails with D.J. Miller with respect to same;	0.70	RB
Mar-18-20	Finalize letter to be sent to AEF; receive and review Judgement of Jersey	1.20	DJM

Court in connection with recognition order; consider terms of same; emails to and from R. Bengino and Applicants' counsel as to same; emails to and from Applicants' counsel as to providing Judgment from Jersey Court to CJO Morawetz as part of next Report; review email from E. Sellers as to appropriation of information and trademarks for online game [REDACTED]; email to the Monitor and R. Bengino as to conference call to discuss status of various aspects and coordinate same; emails from and to Applicants' counsel as to letter in response to AEF correspondence;

[REDACTED]; Review Jersey reasons for decision; emails with respect to same; email same to Monitor to post on website; review emails with respect to [REDACTED]; review email from D.J. Miller with respect to call to discuss next steps and respond to same; 1.00 RB

Mar-19-20 Conference call with M. MacKenzie and R. Bengino as to various outstanding issues, information to be requested from Applicants, and obtaining updates on various aspects; review email to Applicants' counsel with our information requests and discuss same with R. Bengino; emails from E. Sellers and the Monitor as to asset coverage insurance and status of various insurance aspects; further email exchange between the Monitor and E. Sellers; 1.20 DJM

Finalize and send letter to AEF Civil Initiative; review AEF Letter and responding documents provided to us by Stikeman and consider same, including memorandums and court documents; conference call with Monitor to discuss various outstanding matters; draft email to Stikeman with outstanding various points for discussion and send same to monitor for review; Review emails with respect to insurance policies; 3.20 RB

Mar-20-20 Review of emails from E. Sellers to the Monitor providing updates on various aspects including asset insurance coverage; emails from E. Sellers to the Monitor as to consideration of candidates for Interim CFO position following closing of Denver office; emails to Monitor as to same; telephone discussion with M. MacKenzie; 0.80 DJM

Review and consider comments from M. Mackenzie on draft letter to Stikeman and finalize and send email; Review email from E. Seller to insurer; 0.30 RB

Mar-23-20 Emails from and to the Monitor as to call held by BMO and E. Sellers with lenders as to Term Sheet; emails to and from Applicants' counsel to schedule call to discuss status of various aspects; conference call with the Monitor and Applicants' counsel and discussion re: various issues and advancing same; emails from the Applicants' counsel as to status of interview for interim financial position, work being undertaken by Freshfield's and related matters; 1.50 DJM

Emails with respect to scheduling call with Stikeman and topics to discuss on call; Attend conference call with Stikeman; review emails with respect to [REDACTED]; 1.20 RB

Mar-24-20	Email from R. Bengino and to Applicants' counsel as to letter sent to AEF; emails from E. Sellers as to contractor agreement for financial work and transition to new roles; emails from and to M. MacKenzie as to conference call to be scheduled to progress various matters;	0.50	DJM
Mar-25-20	Emails from and to M. MacKenzie as to various calls she has had and updates to be provided; conference all with the Monitor and R. Bengino and discussion as to various matters and progress of same; conference call with M. MacKenzie and R. Bengino and discuss status of various aspects and updates to be received as to Term Sheet discussions;	1.00	DJM
	Attend conference call with Monitor to get update on status of sale process;	0.60	RB
Mar-26-20	Email from Stikemans as to final recognition Judgment and Reasons being released by Jersey Court; consideration as to advising CJO Morawetz; emails to and from E. Pillon as to same;	0.40	DJM
	Emails with respect to published reasons for judgment in the Jersey Proceedings;	0.10	RB
Mar-27-20	Emails from E. Sellers and M. Caiger as to conference call to discuss status of various aspects including Term Sheet; participate on conference call with the Monitor, the Applicants, E Sellers, BMO and discussion as to status of all aspects in the proceeding; emails to and from the Monitor; emails from and to E. Pillon as to providing notification to CJO Morawetz as to final decision of Jersey Court;	1.60	DJM
	Emails with respect to scheduling conference call; attend conference call with applicants to discuss SISP;	1.30	RB
Mar-28-20	Calls from and to M. MacKenzie and discussion as to various aspects including signing officers, reporting under DIP and other issues; emails to and from M. MacKenzie as to same; receive Term Sheets from BMO and emails to and from M. MacKenzie and R. Bengino as to same; consider timing for delivery of Term Sheets to the prospective purchaser;	1.20	DJM
	Preliminary review of draft term sheet and compare to previous comments provided; email to Monitor with respect to same;	0.60	RB
Mar-30-20	Email from Applicants' counsel to Justice Morawetz as to final Jersey Order; email from E Sellers with update as to asset insurance and related matters;	0.30	DJM
Mar-31-20	Emails from and to M MacKenzie as to DIP and deductions to advance made; review documents and email to Monitor as to same; email with Rachel; emails to and from Monitor to schedule call for tomorrow to discuss status update on various aspects;	0.50	DJM
	Review email from E. Sellers with respect to insurance; review email from M. Mackenzie with respect to DIP draw reduced by lender fees and consider and respond to same;	0.30	RB

And to all other necessary telephone communications, attendances and correspondence with respect to the conduct of this matter.

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
D. J. Miller	67.20	\$1,000.00	\$67,200.00
Rachel Bengino	65.80	\$600.00	\$39,480.00
Total Fees			\$106,680.00
HST (@ 13%) on Fees			<u>\$13,868.40</u>
Total Fees and HST			\$120,548.40
<u>DISBURSEMENTS</u>			
Photocopies			\$295.25
Photocopies - Colour			\$3.00
Binding			\$3.66
Conference Calls			<u>\$41.18</u>
Total Taxable Disbursements			\$343.09
HST (@ 13%) on Taxable Disbursements			\$44.60
Total *Non-Taxable Disbursements			<u>\$0.00</u>
Total Disbursements and HST			<u>\$387.69</u>
TOTAL NOW DUE			<u>\$120,936.09</u>

THORNTON GROUT FINNIGAN LLP

R. Bengino

Per: Rachel Bengino

E.& O.E.

GST/HST #87042 1039 RT0001 * GST/HST Exempt

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 33 of The Solicitor's Act, interest will be charged at the rate of 4.00% per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.



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April 14, 2020

**Attention: Al Hutchens
Melanie MacKenzie**

Invoice No. 34840

File No. 1807-002

RE: Lydian International Limited

**TO ALL PROFESSIONAL SERVICES RENDERED HEREIN INCLUDING THE FOLLOWING
for the period ending: April 13, 2020**

FEES

Apr-01-20	Call with M. MacKenzie and R. Bengino; consideration as to call with E. Sellers, BMO and Stikemans; emails from and to the Monitor as to same; coordinate call with other parties for tomorrow;	0.90	DJM
	Attend conference call with Monitor to discuss sale process;	0.60	RB
Apr-02-20	Conference call with BMO, E. Sellers, the Monitor and Stikemans as to status of discussions on Term Sheet, next steps, issues to consider as to other aspects of proceeding; emails to and from the Monitor as to same;	1.00	DJM
	Attend conference call with Stikeman and Monitor to discuss status of term sheet and next steps; follow up call with Monitor; review proposed term sheets and consider same;	2.00	RB
Apr-03-20	Email from M. MacKenzie as to telephone discussion with M. Caiger, status of discussions on Term Sheet and potential next steps; emails to and from M. MacKenzie as to same; further exchange of emails with the Monitor as to discussions with E. Sellers, and consideration of same;	0.80	DJM
	Review email from Monitor with respect to pre-call with E. Sellers; review update on call from M. Mackenzie;	0.30	RB
Apr-04-20	Email from the Monitor forwarding email from BMO as to various Term Sheets and consider same and summary provided; consideration as to information that may be helpful for parties to consider as part of	0.80	DJM

next steps and emails to and from the Monitor as to same;

Apr-05-20	Email from M. MacKenzie as to final term sheets sent to prospective purchaser;	0.10	DJM
Apr-06-20	Emails from the Monitor as to status of term sheets, and review emails from E. Sellers as to same; further emails to and from the Monitor as to same; emails to and from R. Bengino as to information to be received from Applicants' counsel as to facts surrounding AEF letter;	0.90	DJM
	Review amended term sheet and analyses with respect to same; review emails with respect to same; email to D.J. Miller and M. Mackenzie with respect to response to AEF letter;	0.60	RB
Apr-07-20	Review email from E. Sellers with update to the Monitor and consider email update he has provided to the lenders; discussion with M. MacKenzie as to update call to be held with E. Sellers; discussion with R. Bengino as to following up on outstanding information requests; review email to Stikemans;	0.70	DJM
	Send email to Stikeman with respect to responses to issues raised in AEF Letter dated February 28, 2020;	0.10	RB
Apr-08-20	Email from Stikemans as to information to be delivered and preparation for April 30 court hearing;	0.10	DJM
Apr-09-20	Email from E. Sellers as to update provided to lenders; emails from and to Monitor and schedule call for tomorrow; emails from and to Stikemans as to email being provided in response to information request and timing and scheduling for next court attendance including stay extension;	0.60	DJM
	Email from M. Mackenzie with respect to update and to schedule call tomorrow; email from S. Sopic with respect to scheduling next stay extension motion;	0.20	RB
Apr-10-20	Emails from and to L. Pillon to schedule update call; emails from Monitor providing copies of email updates from E. Sellers to the lenders, emails regarding discussions with prospective purchaser on Term Sheets; conference call with the Monitor and R. Bengino and discussion as to next court hearing and matters to be reported on, status of various issues within the proceeding, and further information to be obtained in response to prior requests;	1.10	DJM
	Review and consider email from E. Sellers to lenders providing update and various matters; email to Monitor with respect to same; review email correspondence between E. Sellers and lender; attend conference call with D.J. Miller and M. Mackenzie to discuss update on file, outstanding matters and Monitor's next report to the Court;	1.40	RB

Apr-11-20	Email from Stikemans with response to certain questions on AEF matter;	0.20	DJM
Apr-13-20	Call from L Pillon and discussion regarding various discussions with the lenders, information on current status of various aspects in the proceeding including Term Sheet, other options, upcoming court hearing for stay extension and next steps to be undertaken by the Applicants; emails to and from R. Bengino and the Monitor as to initiatives in process and potential virtual meeting to be held with all lenders, the Monitor and the Applicants; consider relief to be sought by the Applicants at next court hearing and matters to be reported on by the Monitor; email to the Monitor as to same; discussion with R. Bengino as to CAT and ING Orders, and upcoming date of April 30; receive and review email from E Sellers with update provided to lenders and responses to inquiries from CAT; email from L Pillon as to preparation for April 30 court date; email from E Sellers providing update as to communications with lender on Georgia subsidiary; email from Stikemans to CAT counsel as to executed agreement;	1.80	DJM
	Review update from D.J. Miller with respect to preparation for upcoming stay extension motion; email to S. Sopic with respect to orders being held in escrow; review email from E. Sellers with respect to status update on Kela;	0.30	RB

And to all other necessary telephone communications, attendances and correspondence with respect to the conduct of this matter.

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
D. J. Miller	9.00	\$1,000.00	\$9,000.00
Rachel Bengino	5.50	\$600.00	\$3,300.00
Total Fees			\$12,300.00
HST (@ 13%) on Fees			<u>\$1,599.00</u>
Total Fees and HST			<u>\$13,899.00</u>
TOTAL NOW DUE			<u>\$13,899.00</u>

THORNTON GROUT FINNIGAN LLP

R. Bengino

Per: Rachel Bengino

E.& O.E.
GST/HST #87042 1039 RT0001 * GST/HST Exempt

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 33 of The Solicitor's Act, interest will be charged at the rate of 4.00% per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

EXHIBIT “B

This is Exhibit "B" referred to in the
Affidavit of D.J. Miller sworn before me
this 27th day of April, 2020.

R. Bengino

A Commissioner for taking affidavits

EXHIBIT "B"

**Calculation of Average Hourly Billing Rates of
Thornton Grout Finnigan LLP
for the period March 1, 2020 to April 13, 2020**

Invoice No.	Fees	Disbursements	HST	Hours	Average Rate	Total
34738	\$106,680.00	\$343.09	\$13,913.00	133.00	\$802.00	\$120,936.09
34840	\$12,300.00	00.00	\$1,599.00	14.50	\$848.30	\$13,899.00
TOTALS:	\$118,980.00	\$343.09	\$15,512.00	147.50	\$825.20	<u>\$134,835.09</u>

EXHIBIT “C”

This is Exhibit "C" referred to in the
Affidavit of D.J. Miller sworn before me
this 27th day of April, 2020.

R. Bengino

A Commissioner for taking affidavits

EXHIBIT “C”

Billing Rates of Thornton Grout Finnigan LLP

For the period March 1, 2020 to April 13, 2020

	<u>Rate</u>	<u>Year of Call</u>
D.J. Miller	\$1,000	1993
Rachel Bengino	\$600	2015

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA
VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

Court File No.: CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF D.J. MILLER

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Lawyers for the Monitor

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION, AND LYDIAN U.K.
CORPORATION LIMITED**

Court File No.:
CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

**MONITOR'S
FOURTH REPORT**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**SUPPLEMENT TO THE FOURTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

APRIL 29, 2020

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Appendix A – Updated Cash Flow Forecast for the 11-Week Period Ending July 3, 2020

1.0 INTRODUCTION

1.1 This Supplement (the “**Supplement**”) to the Fourth Report dated April 27, 2020 (the “**Fourth Report**”) of Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed Monitor (in such capacity, the “**Monitor**”) of Lydian International Limited (“**Lydian International**”), Lydian Canada Ventures Corporation (“**Lydian Canada**”) and Lydian U.K. Corporation Limited (“**Lydian U.K.**”) (collectively, the “**Applicants**”) is filed in connection with the Applicants’ motion (the “**Stay Extension Motion**”) returnable on April 30, 2020.

1.2 This Supplement should be read in conjunction with the Fourth Report, the affidavit of Edward A. Sellers sworn April 27, 2020 (the “**Sellers Affidavit**”) in support of the Stay Extension Motion, and the supplemental affidavit of Edward A. Sellers sworn April 29, 2020 (the “**Sellers Supplemental Affidavit**”) each of which will be posted to the Monitor’s Website. Edward A. Sellers is the Interim President and Chief Executive Officer of Lydian International and a director of the other Applicants in these CCAA Proceedings.

1.3 All capitalized terms not otherwise defined herein are as defined in the Fourth Report. Unless otherwise stated, all monetary amounts contained herein are expressed in US Dollars.

1.4 In the Fourth Report, the Monitor advised, among other things, that:

- a) in connection with the Stay Extension Motion, the Applicants are seeking an order to, among other things, extend the Stay Period in respect of the Applicants

and the Non-Applicant Stay Parties to June 30, 2020, subject to finalizing the DIP Amendment;

- b) the DIP Amendment will provide for an increase in the DIP Facility which is expected to provide the Applicants and the Non-Applicant Stay Parties sufficient funding through the proposed stay extension period to June 30, 2020, and was the subject of continuing negotiations between the Applicants and the Lenders, in consultation with the Monitor, and had not yet been signed at the date of the Fourth Report; and
- c) the Monitor intended to serve and file a supplement to the Fourth Report upon finalization of the DIP Amendment.

1.5 The purpose of this Supplement is to:

- a) provide the Court with:
 - i. information in respect of the DIP Amendment; and
 - ii. the Applicants' updated cash flow forecast for the 11-week period ending July 3, 2020; and
- b) support the Applicants' request for the Stay Extension Order, among other things:
 - i. approving the DIP Amendment to provide for an increase in the DIP Facility to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the stay extension period to June 30, 2020, to be secured by the DIP Charge, subject to the terms of the DIP Amendment;
 - ii. sealing the unredacted DIP Amendment; and

c) provide the Court with the Monitor's recommendations in respect of the foregoing, as applicable.

1.6 The terms of reference and disclaimer in the Fourth Report also apply to this Supplement.

2.0 DEBTOR-IN-POSSESSION FINANCING

2.1 The Applicants have been negotiating the terms of the DIP Amendment with the Lenders, with the assistance of the Monitor. The DIP Amendment was finalized on the morning of April 29, 2020 leading to the late filing of the Sellers Supplemental Affidavit and this Supplement, reporting on same.

2.2 The Monitor understands that a redacted copy of the DIP Amendment will be described in and appended to the Sellers Supplemental Affidavit. Further, the Applicants are seeking an Order sealing the unredacted copy of the DIP Amendment.

2.3 The DIP Amendment provides for an increase in the DIP Facility, which will allow the Applicants and the Non-Applicant Stay Parties the necessary funding to continue to pursue the SISP and otherwise continue their operations in an effort to pursue a restructuring in these CCAA proceedings. The DIP Amendment also includes a milestone that requires the Applicants to develop and present the terms, transactions, steps and timelines for the Applicants' proposed completion of its restructuring and CCAA proceedings by a specified date, in form satisfactory to the Lenders as set out in the DIP Amendment.

2.4 The Monitor is in support of the Applicants entering into the DIP Amendment with the Lenders on the terms negotiated by the parties, and is of the view that there would be no

material financial prejudice to other stakeholders as a result of this further advance. Accordingly, the Monitor recommends that the Court approve the DIP Amendment.

- 2.5 Further, the DIP Amendment contains confidential terms, consistent with those portions of the DIP Agreement which were previously subject to sealing by the Court. The Court granted the DIP Approval Order, which sealed portions of the DIP Agreement, and the Monitor is of the view that the DIP Amendment should be sealed on the same basis. In addition, the Monitor is of the view that providing details of certain terms, including the milestone date contained in the DIP Amendment, could hinder the Applicants' efforts to advance the various work streams that are currently underway.

3.0 UPDATED CASH FLOW FORECAST

- 3.1 The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") for the 11-week period April 18 to July 3, 2020 (the "**Updated Cash Flow Period**") in respect of the Applicants. A copy of the Updated Cash Flow Forecast, together with the accompanying notes, is attached to this Supplement as **Appendix "A"**. A summary of the Updated Cash Flow Forecast is set out in the following table.

Lydian International Limited., et. al.	
Schedule of Forecast Receipts and Disbursements	
For the 11-Week Period Ending July 3, 2020	
(\$ USD)	
	Total
Cash Receipts	<u>-</u>
Cash Disbursements	
Salaries and benefits	(298,678)
Insurance	(178,070)
Board of Directors	(90,000)
Office, IT and bank	(33,638)
Travel	(15,000)
Miscellaneous	(5,500)
Professional fees	(2,045,802)
Contingency	(101,032)
Total Cash Disbursements	<u>(2,767,720)</u>
Net Cash Flow, Before Debt Service	<u>(2,767,720)</u>
Beginning Cash Balance	440
Net cash flow from above	(2,767,720)
Intercompany transfers	2,768,000
Ending Cash Balance	<u>720</u>

3.2 Disbursements include payments in the ordinary course within the CCAA Proceedings, on normal trade terms.

3.3 Insurance related disbursements include the payment of premiums in respect of director and officer liability insurance to June 30, 2020. The coverage currently in place expires on May 1, 2020. The Monitor understands the Applicants are in discussions with their insurance provider in order to seek a further extension of coverage.

3.4 During the Updated Cash Flow Period, net cash outflows are forecast to be approximately \$2.77 million, which are anticipated to be funded through intercompany advances from Lydian Armenia through the DIP Facility, in accordance with the existing Cash Management System as previously approved in the Amended and Restated Initial Order.

4.0 MONITOR'S RECOMMENDATION

4.1 For the reasons set out in this Supplement, the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Court grant the relief sought by the Applicants.

All of which is respectfully submitted to this Court this 29th day of April 2020.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Lydian International Limited,
Lydian Canada Ventures Corporation and
Lydian U.K. Corporation Limited
and in no other capacity**



Per: Alan J. Hutchens
Senior Vice President

APPENDIX A

Lydian International Limited, et. al.

11 Week Cash Flow Forecast For the Period Ending July 3, 2020
Amounts in USD

Forecast Week	Week Ending (Friday)	Notes	21-Apr-20	1-May-20	8-May-20	15-May-20	22-May-20	29-May-20	5-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20	3-Jul-20	11 Week Total
			Wk-1	Wk-2	Wk-3	Wk-4	Wk-5	Wk-6	Wk-7	Wk-8	Wk-9	Wk-10	Wk-11	
Receipts			-	-	-	-	-	-	-	-	-	-	-	-
Disbursements														
Salaries & Benefits	1		(84,678)	(61,000)	-	-	(29,000)	(61,000)	-	-	-	-	(63,000)	(298,678)
Insurance	2		(14,070)	-	-	(82,000)	-	-	-	(82,000)	-	-	-	(178,070)
Board of Directors			-	(30,000)	-	-	(30,000)	-	-	-	-	-	(30,000)	(90,000)
Office, IT & Bank			(728)	(1,410)	(1,000)	(17,000)	(200)	(950)	(1,000)	(9,200)	(200)	(950)	(1,000)	(33,638)
Travel			-	(15,000)	-	-	-	-	-	-	-	-	-	(15,000)
Miscellaneous			-	(1,000)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(5,500)
Professional Fees	3		(182,798)	(178,534)	(302,590)	(40,432)	(214,375)	(184,000)	(277,871)	(42,000)	(227,806)	(15,000)	(380,396)	(2,045,802)
Contingency			(1,032)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(101,032)
Net Cash Inflows / (Outflows)			(283,306)	(296,944)	(314,090)	(149,932)	(254,075)	(286,450)	(289,371)	(143,700)	(238,506)	(26,450)	(484,896)	(2,767,720)
Available Cash (excludes DSR)														
Beginning Available Balance			440	297,134	190	150,100	168	287,093	643	144,272	572	512,066	485,616	440
Net Cash Inflows / (Outflows)			(283,306)	(296,944)	(314,090)	(149,932)	(254,075)	(286,450)	(289,371)	(143,700)	(238,506)	(26,450)	(484,896)	(2,767,720)
Inter-company transfer	4		580,000	-	464,000	-	541,000	-	433,000	-	750,000	-	-	2,768,000
Ending Available Balance			297,134	190	150,100	168	287,093	643	144,272	572	512,066	485,616	720	720

NOTES:

Disclaimer:

This cash flow forecast ("Forecast") is based on assumptions about future events and conditions that are not ascertainable. Actual results during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

1. Includes payroll and taxes for certain senior management as well as payment obligations to certain former employees of the Companies.
2. Comprised of political violence insurance and director and officer liability insurance. D&O insurance is assumed to be available until June 30, 2020 only.
3. Includes payments to the Companies' restructuring advisors, legal counsel, CCAA Monitor, CCAA Monitor's legal counsel and other professionals, including those involved with the Company's public company reporting obligations.
4. As provided for in the Initial Order, the Company may transfer cash in increments from the non-Applicant Stay parties Lydian Armenia and Lydian U.S. Corporation. Such intercompany transfers are funded through the DIP Facility.

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION, AND LYDIAN U.K.
CORPORATION LIMITED**

Court File No.:
CV-19-00633392-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MONITOR'S

SUPPLEMENT TO THE FOURTH REPORT

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Lawyers for the Monitor

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**FIFTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

JUNE 16, 2020

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Appendix C	Press Release issued by Lydian International Limited on June 15, 2020
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Appendix E	Letter from the Monitor to Andrew Clarke dated May 15, 2020
Appendix F	Email correspondence between Israfil Baykal and the Monitor
Appendix G	Post-Plan Implementation Date Organizational Charts
Appendix H	Post-Plan Implementation Date Expenses (Schedule “B” to the Plan of Arrangement dated June 15, 2020)
Appendix I	Quantum of Affected Claims held by the Affected Creditors under the Plan of Arrangement dated June 15, 2020
Appendix J	Letter from Resource Capital Fund VI L.P. to the Applicants dated June 16, 2020

1.0 INTRODUCTION AND STATUS OF CCAA PROCEEDINGS

1.1 On December 23, 2019, Lydian International Limited (“**Lydian International**”), Lydian Canada Ventures Corporation (“**Lydian Canada**”) and Lydian U.K. Corporation Limited (“**Lydian U.K.**”) (collectively, the “**Applicants**”) applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an order of the Court dated December 23, 2019 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**”). Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order.

1.2 The Initial Order, among other things:

- a) granted a stay of proceedings until January 2, 2020 (the “**Stay Period**”) as against the Applicants;
- b) provided that during the Stay Period, no proceedings could be commenced or continued against or in respect of Lydian Armenia CJSC (“**Lydian Armenia**”), Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (“**Lydian U.S.**”) (collectively, the “**Non-Applicant Stay Parties**”);

- c) granted a first ranking charge (the “**Administration Charge**”) for the benefit of the Monitor, its counsel, and the Applicants’ counsel in the amount of CAD\$460,740 (being US\$350,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for their professional fees and disbursements;
 - d) granted a second ranking charge (the “**Directors Charge**”) for the benefit of the Applicants’ directors and officers in an amount not to exceed CAD\$263,280 (being US\$200,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for the indemnity of the Applicants in favour of the directors and officers for any obligations or liabilities incurred after the commencement of the CCAA Proceedings, subject to the exceptions set out in the Initial Order; and
 - e) authorized the Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options, including refinancing the Business or Property, subject to approval of the Court prior to any material refinancing.
- 1.3 For ease of reference, attached at **Appendix “A”** is a corporate organizational chart showing the various members of the Lydian Group as they currently exist prior to implementation of the Plan (as defined below), identifying the entities by how they are defined in the Plan and highlighting the Applicants and Non-Applicant Stay Parties for the benefit of the Court.
- 1.4 On January 2, 2020, the Court issued an order extending the Stay Period in favour of the Applicants and the Non-Applicant Stay Parties to January 23, 2020.

- 1.5 The Monitor’s First Report to the Court, dated January 21, 2020 was filed in support of the Applicants’ motion returnable on January 23, 2020 (the “**Comeback Motion**”) at which motion the Court issued an order extending the Stay Period to March 2, 2020.
- 1.6 At the Comeback Motion, the Court also issued an order (the “**Amended and Restated Initial Order**”) amending the Initial Order to expand the Applicants’ restructuring capabilities within the CCAA Proceedings and to expand the Monitor’s authority within the CCAA Proceedings, including its interactions with the Non-Applicant Stay Parties in specified circumstances.
- 1.7 On March 2, 2020, the Court issued an order to extend the Stay Period to March 11, 2020.
- 1.8 The Monitor’s Third Report to the Court dated March 10, 2020 (the “**Third Report**”) was filed in support of the Applicants’ motion returnable on March 11, 2020 for an order (the “**DIP Approval Order**”), among other things:
- a) extending the Stay Period in respect of the Applicants and the Non-Applicant Stay Parties to April 30, 2020;
 - b) increasing the Administration Charge to CAD\$658,200 (being US\$500,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for the professional fees and disbursements of the Applicants’ counsel, the Monitor and its counsel, and BMO Capital Markets (“**BMO**”), the Applicants’ financial advisor, in respect of the monthly fee provided for in its engagement

letter with the Applicants and Lydian Armenian dated February 21, 2020 (the “**BMO Engagement Letter**”);

- c) adding a Transaction Charge in favour of BMO to secure the Recapitalization Fee provided for in the BMO Engagement Letter;
- d) approving the Applicants’ ability to enter into the Sixteenth Amending Agreement (the “**DIP Agreement**”) between the Senior Lenders (as defined below), Lydian Armenia, as Borrower, and the Applicants, remaining Non-Applicant Stay Parties and remaining members of the Lydian group as guarantors, dated March 10, 2020 to fund certain obligations of the Applicants and the Non-Applicant Stay parties through the extension of the Stay Period and secured by a super-priority charge (the “**DIP Charge**”); and
- e) approving the fees and disbursements of the Monitor and its legal counsel.

1.9 On March 11, 2020, the Court issued the DIP Approval Order.

1.10 The Monitor’s Fourth Report to the Court dated April 27, 2020 (the “**Fourth Report**”) and the Monitor’s Supplement to the Fourth Report to Court dated April 29, 2020 (the “**Supplemental Fourth Report**”) were filed in support of the Applicants’ motion returnable on April 30, 2020 for an order (the “**Stay Extension Order**”), among other things:

- a) extending the Stay Period in respect of the Applicants and the Non-Applicant Stay Parties to June 30, 2020;

- b) approving the Applicants’ ability to enter into the Seventeenth Amending Agreement, being an amendment to the DIP Agreement (the “**DIP Amendment**”) between the Senior Lenders, Lydian Armenia, as Borrower, and the Applicants, remaining Non-Applicant Stay Parties and remaining members of the Lydian group as guarantors, to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the extension of the Stay Period and to be secured by the DIP Charge;
 - c) approving the fees and disbursements of the Monitor and its legal counsel disclosed in the Fourth Report; and
 - d) approving the Third Report, the Fourth Report and the Supplemental Fourth Report and activities as set out therein.
- 1.11 On April 30, 2020, the Court issued the Stay Extension Order.
- 1.12 On May 4, 2020, with the consent of the Applicants, the Court issued orders lifting the stay of proceedings to enable Caterpillar Financial Services (UK) Limited (“**CAT**”) and ING Bank NV (“**ING**”) to take enforcement steps with respect to their equipment located in Armenia. The Monitor is not aware of any further enforcement steps having been taken by either of CAT or ING, however, they are in a position to do so at any time.
- 1.13 The Monitor also notes that Lydian Armenia, with a copy to Lydian International, received a default letter from Ameriabank CJSC, one of Lydian Armenia’s equipment financiers, dated June 15, 2020. The letter advised that Lydian Armenia has overdue payments owing to Ameriabank CJSC in the amount of \$3,275,001.85 as of June 15,

2020, and demanding payment of that amount within seven business days of the receipt of the letter. The Monitor has been advised by the Applicants that the intercreditor arrangements as amongst the lenders provide for a standstill period of 120 days in favour of Orion (as defined herein). A copy of the default letter is attached hereto as **Appendix “B”**.

1.14 Further information regarding these CCAA Proceedings, including motion materials, orders issued by the Court, affidavits, reports of the Monitor, and all other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at <http://www.alvarezandmarsal.com/lydian> (the “**Monitor’s Website**”).

1.15 The purpose of this report (the “**Fifth Report**”) is to:

- a) provide the Court with information in respect of the status of the CCAA Proceedings since the date of the Fourth Report;
- b) provide the Court with cash flow results relative to forecast in respect of the cash flow forecast set out in the Fourth Supplemental Report;
- c) discuss the Applicants’ motion returnable on June 18, 2020 for an order (the “**Meeting Order**”), among other things:
 - i. authorizing and directing the Applicants to call, hold and conduct a meeting of their Affected Creditors (as defined below) on June 19, 2020 (the “**Meeting**”) to vote on the plan of compromise and arrangement of the Applicants (the “**Plan**”) under the CCAA and the *Business Corporations Act* (British Columbia) (“**BCBCA**”) dated June 15, 2020;

- ii. accepting the filing of the Plan with the Court;
 - iii. approving, pursuant to section 22 of the CCAA, the classification of creditors as set out in the Plan for the purposes of the Meeting and voting on the Plan;
 - iv. authorizing notice of the Meeting to be effected through service of the Meeting Order (when issued) on all Affected Creditors (as defined below);
and
 - v. setting June 29, 2020 for the hearing of the Applicants’ motion for an order sanctioning the Plan, if approved by the Required Majority (as defined in the Plan) (the “**Sanction Hearing**”); and
- d) provide the Court with the Monitor’s recommendations in respect of the foregoing, as applicable.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Fifth Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicants and Lydian Armenia (“**Senior Management**”); and discussions with Senior Management (collectively, the “**Information**”).

2.2 With respect to any of the Applicants’ cash flow forecasts and projections:

- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has neither