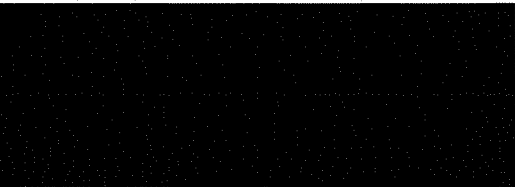


in such amounts as the Borrower requests, provided that (i) the amount of the requested Advance is in accordance with the Cash Flow Forecast, subject to immaterial or timing variances, and (ii) all conditions precedent to such Advance have been satisfied or waived by the DIP Lenders. Each Advance of a DIP Loan shall be made by the DIP Lenders in accordance with the following Applicable Percentages: 48.08% in respect of Orion; 34.37% in respect of Osisko; and 17.55% in respect of RCF, which may be adjusted in the event RCF funds any Additional Arbitration Funding Amount.

**3.5.3 Conditions Precedent to DIP Loans.** The following conditions precedent shall be satisfied, or waived by the DIP Lenders, in their sole discretion, prior to each Advance of a DIP Loan:

- (a) each DIP Loan (together with all previous DIP Loans) must be no greater than the amount shown on the Cash Flow Forecast for the applicable period, subject to immaterial or timing variances, and, in aggregate, the principal amount of all DIP Loans shall not exceed the Maximum DIP Amount;
- (b) the Administrative Agent shall have received a copy of an Order of the Court (the “**DIP Order**”) in form and substance reasonably satisfactory to the Administrative Agent (i) authorizing the DIP Loans on the terms and conditions set out herein, and (ii) granting the DIP Charge;
- (c) neither the Initial Order nor the DIP Order shall have been vacated, stayed or otherwise caused to become ineffective, and neither the Initial Order nor the DIP Order shall have been amended in a manner that is prejudicial to the DIP Lenders, as determined by the DIP Lenders, acting reasonably;
- (d) the DIP Lenders shall have received, as and when required hereunder, all information to which they are entitled hereunder (including, without limitation, the updated cash flow information required pursuant to Section 3.5.4(b), which such information shall be satisfactory to the DIP Lenders);
- (e) no Additional Event of Default shall have occurred and be continuing, nor will any such event occur as a result of the Advance of the DIP Loan; and
- (f) there shall be no pending motions for leave to appeal, appeals, injunctions or other legal impediments relating to the DIP Loans, or pending litigation seeking to restrain, vary or prohibit the operation of all or any part of this Agreement.

**3.5.4 Covenants.** The Lydian Group Members shall:

- (a) notwithstanding Section 7.15.25, 



- (b) keep the DIP Lenders apprised on a bi-weekly basis of their cash flow requirements by providing: (i) an updated cash flow forecast for the same period as the Cash Flow Forecast, such updated cash flow projection to be in a form consistent with the Cash Flow Forecast; (ii) actual cash flow results from the immediately preceding bi-weekly period; and (iii) a comparison of the actual cash flow results from the immediately preceding bi-weekly period as against the Cash Flow Forecast for such bi-weekly period (as may be updated), such information to be delivered to the DIP Lenders by no later than 5:00 p.m. (Toronto time) on the Wednesday of every second week;
- (c) keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Lydian Group Members;
- (e) forthwith notify the DIP Lenders of the occurrence of any Additional Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Additional Event of Default;
- (f) forthwith notify the DIP Lenders, upon becoming aware of the commencement of, or of the receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting any Lydian Group Member;

- (g) promptly after the same is available, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of any Lydian Group Member or the Monitor in the CCAA Proceedings;
- (h) ensure that all motion records, pleadings, application records, orders and other documents filed, proposed, sought and served by any Lydian Group Member or in respect of which any Lydian Group Member consents or supports, in or in connection with the CCAA Proceedings shall be in form and substance reasonably satisfactory to the Majority DIP Lenders, and provide to the DIP Lenders copies of such documents as soon as practicable prior to any filing or service in the CCAA Proceedings; and
- (i) ensure that no Lydian Group Member enters into any material contract or material engagement without the consent of the Majority DIP Lenders.

3.5.5 *Security.* In addition to the existing Security, all Obligations arising from the DIP Loans shall be secured by the DIP Charge. Any enforcement of the DIP Charge may only be made by the Administrative Agent on the instructions of the Majority DIP Lenders. The DIP Lenders acknowledge, confirm and agree that notwithstanding any of the rights and remedies available to them hereunder, the DIP Charge cannot be enforced by the Administrative Agent without an order being obtained from the Court in the CCAA Proceedings.

3.5.6 *Events of Default.* The occurrence of any one or more of the following events shall constitute “**Additional Events of Default**”:

- (a) the issuance of an Order terminating the CCAA Proceedings or lifting the stay in the CCAA Proceedings as it relates to any of the Lydian Group Members to permit the enforcement of any security against any Obligor or the Collateral, other than as may be agreed to by the CCAA Applicants with the consent of the DIP Lenders and the Monitor, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against any Obligor or the Collateral;
- (b) the issuance of an Order (i) granting an Encumbrance of equal or superior status to that of the DIP Charge, other than as provided in the definition of “DIP Charge”, or (ii) staying, reversing, vacating or otherwise modifying the DIP Charge;
- (c) any update to the Cash Flow Forecast required to be made in accordance with Section 3.5.4 indicating that the Lydian Group Members would require additional funding above the Maximum DIP Amount to meet their obligations at any time during the period of the Cash Flow Forecast, without the prior consent of the DIP Lenders;
- (d) an Order is made (whether in the CCAA Proceedings or otherwise), a liability arises or an event occurs, including any change in the business,

assets, or conditions, financial or otherwise, of any Obligor, that has or will have a Material Adverse Effect;

- (e) any material violation or breach by any Lydian Group Member of any Order in connection with the CCAA Proceedings upon receipt by any Lydian Group Member of notice from the Administrative Agent of such violation or breach;
- (f) the failure of any Lydian Group Member to perform or comply with any other term or covenant under the Sixteenth Amending Agreement;
- (g) the seeking or support by any Obligor, or the issuance, of any Order (in the CCAA Proceedings or otherwise) that is adverse or potentially adverse to the interests of the DIP Lenders (including, without limitation, in respect of the validity, enforceability or quantum of the Obligations or the DIP Charge); or
- (h) the occurrence of any Event of Default listed in Section 9.1, other than those existing as of the date of the Sixteenth Amending Agreement, and which Event of Default either (y) has been disclosed to the Lenders in writing prior to the date of the Sixteenth Amending Agreement, or (z) the Lenders have actual knowledge of as of the date of the Sixteenth Amending Agreement.

Upon the occurrence and during the continuance of any Additional Event of Default, subject to section 3.5.5, the DIP Charge shall become enforceable.

## **ARTICLE 2**

### **REPRESENTATIONS, WARRANTIES AND CONFIRMATIONS**

- 2.1 Each of the Obligors represents, warrants and covenants that upon the DIP Order being obtained:
- (a) this Agreement and each other agreement, document or instrument to be executed and delivered by an Obligor in connection herewith (i) has been duly executed and delivered by the applicable Obligor; and (ii) constitutes a legal, valid and binding agreement of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to the qualification that equitable remedies may be granted in the discretion of a court of competent jurisdiction;
  - (b) the Cash Flow Forecast includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Lydian Group Members on the date hereof that become due and payable during the period covered by the Cash Flow Forecast; and



- (c) except as otherwise disclosed to the DIP Lenders in writing prior to the date hereof, no Default or Event of Default has occurred and is continuing, or will occur as a result of an Advance of DIP Loans.
- 2.2 Each Obligor acknowledges, confirms and agrees that (a) all (i) guarantees granted by such Obligor to and in favour of the Administrative Agent, for its benefit and for the ratable benefit of the Lenders, and (ii) security granted by such Obligor to and in favour of the Collateral Agent, for its benefit and for the ratable benefit of the Secured Parties (as defined in the Stream Intercreditor Agreement), in each case as security for the Obligations, among other things, remains in full force and effect, unamended, and is hereby ratified and confirmed, and (b) the security interests, mortgages, charges, liens, assignments, transfers and pledges granted by each such Obligor in favour of the Collateral Agent, for its benefit and for the ratable benefit of the Secured Parties, will continue to secure and will extend to, *inter alia*, all debts, liabilities and obligations of each such Obligor, whether direct or indirect, absolute or contingent, present or future, pursuant to, arising out of, or in connection with, the Credit Agreement and the other Loan Documents to which it is a party.

### ARTICLE 3 CONDITIONS TO EFFECTIVENESS

- 3.1 This Sixteenth Amending Agreement, including the amendments contained herein, shall not be effective unless and until (such date, the “**Effective Date**”):
- (a) the Administrative Agent has received a copy of this Sixteenth Amending Agreement, duly executed and delivered by all parties hereto;
  - (b) the Administrative Agent has received a copy of a duly executed amendment to the Stream Intercreditor Agreement providing that the DIP Loans be repaid in priority to the Lender Priority Obligations (as defined therein);
  - (c) the Administrative Agent has received a copy of the DIP Order;
  - (d) each of the equipment financiers party to the Forbearance Agreement shall be bound to comply with the terms of the Initial Order and the DIP Order with respect to the stay of any enforcement proceedings against any of the Lydian Group Members [REDACTED] or such later date as such equipment financiers may agree; and
  - (e) the DIP Lenders have received a summary of the compensation payable to the directors and officers of the Lydian Group Members.

### ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1

[REDACTED]

- 4.2 On and after the Effective Date, any reference to “this Agreement” or “the Agreement” in the Existing Credit Agreement, as applicable, and any reference to the “Credit Agreement” in any other agreements, will mean the Existing Credit Agreement, as amended by this Sixteenth Amending Agreement. This Sixteenth Amending Agreement is a Loan Document.
- 4.3 After the Effective Date, this Agreement will be binding upon and enure to the benefit of the signatories and their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.
- 4.4 This Sixteenth Amending Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 4.5 This Sixteenth Amending Agreement may be executed in any number of separate counterparts and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this Sixteenth Amending Agreement, a party may send a copy of its original signature on the execution page hereof to the other parties by facsimile or other means of recorded electronic transmission and such transmission (including in PDF form) shall constitute delivery of an executed copy of this Sixteenth Amending Agreement to the receiving party.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF the undersigned have executed this Sixteenth Amending Agreement as of the date first written above.

**Borrower:**

**Lydian ARMENIA CJSC, by the  
shareholder representative, 11910728  
CANADA INC., of its sole shareholder,  
LYDIAN RESOURCES ARMENIA  
LIMITED**

By: \_\_\_\_\_  
Authorized Signing Officer

**CCAA Applicants:**

**LYDIAN INTERNATIONAL LIMITED**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN CANADA VENTURES  
CORPORATION**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN U.K. CORPORATION  
LIMITED**

By: \_\_\_\_\_  
Authorized Signing Officer

**Other Guarantors:**

**LYDIAN INTERNATIONAL  
HOLDINGS LIMITED, by its director,  
11910728 CANADA INC.**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN RESOURCES ARMENIA  
LIMITED, by its director, 11910728  
CANADA INC.**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN US CORPORATION**

By: \_\_\_\_\_  
Authorized Signing Officer

**KAVKAZ ZOLOTO CJSC**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN RESOURCES GEORGIA  
LIMITED**

By: \_\_\_\_\_  
Authorized Signing Officer

**LYDIAN RESOURCES KOSOVO  
LIMITED**

By: \_\_\_\_\_  
Authorized Signing Officer

**GEORGIAN RESOURCE COMPANY  
LLC**

By: \_\_\_\_\_  
Authorized Signing Officer

**ORION CO IV (ED) LIMITED**, in its  
capacity as Administrative Agent

By: \_\_\_\_\_  
Authorized Signing Officer

**ORION CO IV (ED) LIMITED**, in its  
capacity as a Lender

By: \_\_\_\_\_  
Authorized Signing Officer

**RESOURCE CAPITAL FUND VI L.P.**

By: Resource Capital Associates VI L.P.,  
General Partner

By: RCA VI GP Ltd., General Partner, in  
its capacity as a Lender

By: \_\_\_\_\_  
Authorized Signing Officer



**OSISKO BERMUDA LIMITED**, in its  
capacity as a Lender

By: \_\_\_\_\_  
Authorized Signing Officer

**Exhibit “1”**  
**Cash Flow Forecast**

*[Redacted]*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF EDWARD A. SELLERS**  
Sworn March 10, 2020

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
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Toronto, Canada M5L 1B9

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Fax: (416) 947-0866

**Lawyers for the Applicants**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 11 <sup>TH</sup>
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF MARCH, 2020

**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**

Applicants

**ORDER**

**(Re Approval of BMO Engagement, DIP Agreement and Extension of the Stay of  
Proceedings)**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 130 Queen Street West, Toronto, Ontario.

**ON READING** the affidavit of Edward A. Sellers sworn March 10, 2020 (the "**Sellers Stay Extension Affidavit**") and the Exhibits thereto, the affidavits of Edward A. Sellers sworn March 10, 2020 (the "**Second Sellers BMO Affidavit**") and January 21, 2020 (the "**First Sellers BMO Affidavit**") and the Exhibits thereto, and the Third Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated March 10, 2020 (the "**Third Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor, Caterpillar Financial Services (UK) Limited ("**CAT**"), Orion Capital Management, Resource Capital Fund VI LP, Osisko Bermuda Limited and ING Bank N.V./ ABS Svensk Exportkredit (publ) ("**ING**"), and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

## **EXTENSION OF STAY PERIOD**

1. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the “**Amended and Restated Initial Order**”) is extended until and including April 30, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

## **APPROVAL OF FINANCIAL ADVISOR’S ENGAGEMENT, INCREASE TO ADMINISTRATION CHARGE AND TRANSACTION CHARGE**

2. **THIS COURT ORDERS** that the Applicants are authorized to continue the engagement of BMO Nesbitt Burns Inc. (“**BMO**”) on the terms and conditions set out in the Revised BMO Engagement Letter (as defined in the Second Sellers BMO Affidavit).

3. **THIS COURT ORDERS** that BMO shall be paid its fees and expenses in accordance with the terms of the Revised BMO Engagement Letter, whether incurred prior to or after the date of this Order, by the Applicants, and shall be entitled to the benefit of the Administration Charge (the “**Administration Charge**”) provided for in paragraph 32 of the Amended and Restated Initial Order in respect of its Monthly Fee (as defined in the Second Sellers BMO Affidavit) and a charge (the “**Transaction Charge**”) on the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) to secure the Recapitalization Fee (as defined in the Second Sellers BMO Affidavit). The Transaction Charge shall have the priority set out in paragraphs 10 and 12 hereof.

4. **THIS COURT ORDERS** that the Administration Charge shall be increased to secure the Monthly Fee, up to the maximum aggregate amount of \$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 Monitor, counsel to the Monitor, the Applicants’ counsel and BMO, incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 10 and 12 hereof.

## **DIP FINANCING**

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place among the Applicants, the Non-Applicant

Stay Parties and any other of the entities in the Lydian Group, as set out in the Amended and Restated Initial Order.

6. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to guarantee a credit facility from Orion Co IV (ED) Limited, Resource Capital Fund VI L.P. and Osisko Bermuda Limited (collectively, the “**DIP Lenders**”) in connection with the Sixteenth Amending Agreement dated March 10, 2020 between the DIP Lenders, Lydian Armenia CJSC (“**Lydian Armenia**”) as Borrower and the Applicants and the other Lydian Group entities listed therein as guarantors (the “**DIP Agreement**”), in order to finance working capital requirements of the Applicants and Non-Applicant Stay Parties, and other general corporate purposes, all as specifically provided for in the DIP Agreement.

7. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”) on Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 10 and 12 hereof.

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

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Charge;
- (b) upon the occurrence of an event of default under the DIP Agreement, the DIP Lenders may apply to the Court to exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement and the DIP Charge, including without limitation, to cease making advances under the DIP Agreement and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Agreement or the DIP 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

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

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

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

10. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors’ Charge (as each of those terms is defined in the Amended and Restated Initial Order), the Transaction Charge and the DIP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$658,200 (being US\$500,000 as per the Bank of Canada’s published exchange rate on December 20, 2019));

Second- the Directors’ Charge (to the maximum amount of \$263,280);

Third- the Transaction Charge (to the maximum amount of \$5,923,800 (being US\$4,500,000 as per the Bank of Canada’s published exchange rate on December 20, 2019));

Fourth- the DIP Charge.

11. **THIS COURT ORDERS** that, for greater certainty, the Administration Charge, the Director’s Charge, the Transaction Charge and the DIP Charge shall not apply to the equipment owned by Lydian Armenia intended for use in connection with the Amulsar Project (as defined in the Sellers Stay Extension Affidavit) and financed by equipment financiers including CAT and ING.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors’ Charge, the Transaction Charge or the DIP Charge (collectively, the “Charges”) shall not be required, and that the Charges 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.

13. **THIS COURT ORDERS** that each of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges 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.

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

15. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the Transaction Charge and the DIP 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**") 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 the 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 Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants 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 the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, 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.

#### **MONITOR'S FEES AND ACTIVITIES**

16. **THIS COURT ORDERS** that the Monitor's activities, as set out in the Second Report of the Monitor dated February 28, 2020 and the Third Report, be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel, Thornton Grout Finnigan LLP, as disclosed in the Third Report and detailed in the Affidavit of Alan Hutchens sworn March 10, 2020 (the "**Hutchens Affidavit**") and the Affidavit of D.J. Miller sworn March 10 2020 (the "**Miller Affidavit**"), respectively, as appended to the Third Report, be and hereby are approved.

#### **SEALING**

18. **THIS COURT ORDERS** that the First Sellers BMO Affidavit, the Second Sellers BMO Affidavit, the BMO Engagement Letter, the Revised BMO Engagement Letter, the CAT Settlement and the ING Settlement (as each of the foregoing terms are defined in the Sellers Stay Extension Affidavit), the unredacted DIP Agreement, the unredacted Sellers Stay Extension Affidavit, and the unredacted invoices attached as Confidential Exhibit 1 to each of the Hutchens Affidavit and Miller Affidavit are hereby sealed and shall not form part of the public record until further order of the Court.

#### **GENERAL**

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the

Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b>	
Proceeding commenced at Toronto	
<b>ORDER</b> <b>(Re Approval of BMO Engagement, DIP Agreement and Extension of the Stay of Proceedings)</b>	
<b>Stikeman Elliott LLP</b> Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9	
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<b>Sanja Sopic LSO#: 66487P</b> Tel: (416) 869-6825 Email: <a href="mailto:ssopic@stikeman.com">ssopic@stikeman.com</a>	
<b>Nicholas Avis LSO#: 76781Q</b> Tel: (416) 869-5504 Email: <a href="mailto:navis@stikeman.com">navis@stikeman.com</a> Fax: (416) 947-0866	
<b>Lawyers for the Applicants</b>	

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD**

**(Re: Approval of BMO Engagement, DIP  
Agreement, Stay Extension)  
(Returnable March 11, 2020)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
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199 Bay Street  
Toronto, Canada M5L 1B9

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**Lawyers for the Applicants**



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

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THURSDAY, THE 30<sup>TH</sup>  
DAY OF APRIL, 2020

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

Applicants

ORDER

(Re Approval of DIP Amendment and Extension of the Stay of Proceedings)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was proceeded by way of videoconference due to the COVID-19 crisis on this day.

ON READING the affidavit of Edward A. Sellers sworn April 27, 2020 (the "**April Stay Extension Affidavit**"), the supplementary affidavit of Edward A. Sellers sworn April 29, 2020 (the "**Supplementary April Stay Extension Affidavit**") and the Exhibits thereto, the Third Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated March 10, 2020 (the "**Third Report**"), the Fourth Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor dated April 27, 2020 (the "**Fourth Report**"), and the Supplemental Fourth Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor dated April 29, 2020 (the "**Supplemental Fourth Report**") and on hearing the submissions of counsel for the Applicants, the Monitor, Caterpillar Financial Services (UK) Limited, Orion Capital Management, Resource Capital Fund VI LP, Osisko Bermuda Limited and ING Bank N.V./ ABS Svensk Exportkredit (publ), and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

#### EXTENSION OF STAY PERIOD

1. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the "**Amended and Restated Initial Order**") is extended until and including June 30, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

#### DIP FINANCING

2. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the DIP Amendment (as defined in the April Stay Extension Affidavit) in order to finance working capital requirements of the Applicants and Non-Applicant Stay Parties, and other general corporate purposes, all as specifically provided for in the DIP Amendment.

3. **THIS COURT ORDERS** that, for greater certainty, in connection with the Applicants' obligations under the DIP Amendment, the DIP Lenders (as defined in the April Stay Extension Affidavit) shall be entitled to the benefit of the DIP Charge referred to in paragraph 7 of the Order of this Court dated March 11, 2020 (the "**March 11 Order**"), which DIP Charge has the priority set out in paragraphs 10 and 12 of the March 11 Order.

#### MONITOR'S FEES AND ACTIVITIES

4. **THIS COURT ORDERS** that the Monitor's activities, as set out in the Third Report, the Fourth Report and the Supplemental Fourth Report be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel, Thornton Grout Finnigan LLP, as disclosed in the Fourth Report and detailed in the Affidavit of Alan Hutchens sworn April 27, 2020 (the "**Hutchens Affidavit**") and the Affidavit of D.J. Miller sworn April 27, 2020 (the "**Miller Affidavit**"), respectively, as appended to the Fourth Report, be and hereby are approved.

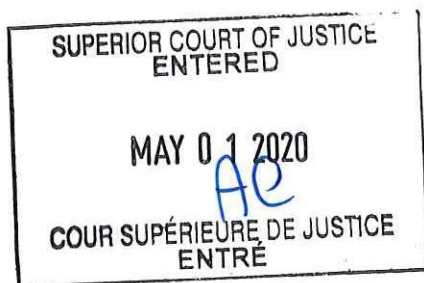


## SEALING

6. THIS COURT ORDERS that the unredacted April Stay Extension Affidavit, the unredacted Supplementary April Stay Extension Affidavit, and the unredacted DIP Amendment, are hereby sealed and shall not form part of the public record until further order of the Court.

## GENERAL

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



A handwritten signature in black ink, appearing to be "J.P. Justice", written over a horizontal line.

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

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

(Re Approval of DIP Amendment and  
Extension of the Stay of Proceedings)

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Lawyers for the Applicants



**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**

Applicants

**AFFIDAVIT OF EDWARD A. SELLERS  
(Sworn April 27, 2020)**

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.
2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.
3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit (the “**April Stay Extension Affidavit**”) is sworn in support of a motion brought by the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”) seeking:

- a) an Order substantially in the form of the draft order attached as Tab 3 of the Motion Record,
  - (i) extending the stay of proceedings (the “**Stay Period**”) in respect of the Applicants and the Non-Applicant Stay Parties to June 30, 2020;
  - (ii) approving amendments (the “**DIP Amendment**”) to the Applicants’ debtor-in-possession financing agreement approved by this Court on March 11, 2020 (the “**DIP Agreement**”) to provide for an increase in the Applicants’ DIP Facility (as defined below) 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 previously approved by this Court on March 11, 2020 (“**DIP Charge**”);
  - (iii) sealing the unredacted DIP Amendment;
  - (iv) sealing the unredacted April Stay Extension Affidavit, and any unredacted supplementary affidavit, to be filed;
  - (v) approving the fees of the Monitor and its counsel, as detailed in the affidavit of Alan Hutchens to be sworn and the affidavit of D.J. Miller to be sworn, each of which are appended to the Monitor’s Fourth Report to the Court, to be filed (the “**Fourth Report**”);
  - (vi) approving the Monitor’s activities to date as set out in its Third Report to the Court dated March 10, 2020 and the Fourth Report; and
- b) such further and other relief as the Court deems just.

#### **PART 1 - STATUS OF THE CCAA PROCEEDINGS**

5. I repeat and rely on my affidavits sworn December 22, 2019 (the “**Initial Affidavit**”), January 20, 2020 (the “**Comeback Affidavit**”), and March 10, 2020 (the “**March Stay Extension Affidavit**”) in support of this motion. Copies of the Comeback Affidavit and the redacted March Stay Extension Affidavit (without exhibits) are attached hereto as **Exhibit “A”** and **“B”**

respectively. Capitalized terms not otherwise defined herein are as defined in the Comeback Affidavit. A copy of the Initial Affidavit is available, together with all other filings in the CCAA Proceedings, on the Monitor's website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

6. The Applicants' business consists of the exploration and development of a gold mine located in south-central Armenia (the "**Amulsar Project**" or "**Amulsar**"). The Initial Order was granted on December 23, 2019, and the Stay Period was subsequently extended to January 23, 2020. At the Applicants' motion returnable on January 23, 2020 (the "**Comeback Motion**"), the Court issued an Amended and Restated Initial Order which, among other things, expanded the Applicants' restructuring capabilities within the CCAA Proceedings, granted additional protections to the Monitor and extended the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties until March 2, 2020, which was subsequently extended to March 11, 2020. On March 11, 2020 (the "**March Stay Extension Motion**"), the Court issued an Order approving BMO's engagement as the Applicants' financial advisor, approving the DIP Agreement, and extending the stay of proceedings until April 30, 2020 (the "**March Stay Extension Order**"). Copies of the Amended and Restated Initial Order and the March Stay Extension Order are attached hereto as **Exhibit "C"** and **"D"**, respectively.

**A. The Applicants' Activities Since the March Stay Extension Motion**

7. Since the granting of the March Stay Extension Order, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of their business operations, continue discussions with their senior lenders and other stakeholders, and advance discussions regarding a potential sale involving the Lydian Group.

8. The Applicants' activities since the March Stay Extension Motion include the following:

- (a) attempting to engage in a further dialogue with the GOA with respect to regaining access to the Amulsar site, [REDACTED]  
[REDACTED]
- (b) communicating and meeting with BMO and the Lydian Group's lenders regarding a variety of topics including the progress of negotiations with various

stakeholders, the lenders' position regarding a viable path forward to maximize stakeholder value for the Lydian Group, and the progress of the SISP;

- (c) [REDACTED]  
[REDACTED]  
[REDACTED]
- (d) continuing to advance discussions with respect to implementing a transaction with the SISP Party, as defined and further described below;
- (e) negotiating the DIP Amendment with the Applicants' senior lenders;
- (f) communicating with the Lydian Group's insurance broker regarding the availability of an extension of the Applicants' Third Party Liability and Political Violence insurance coverage. Following these discussions, the Applicants were able to obtain an extension of coverage until June 30, 2020;
- (g) making efforts to obtain an extension of the Applicants' Course of Construction insurance coverage for the equipment on the Amulsar site beyond March 31, 2020, or obtain substitute asset insurance coverage. However, these efforts were unsuccessful due to a combination of a hardening insurance market affecting all property risks globally, hesitancy to underwrite risks in Armenia and the fact the Project has been stalled for more than 18-months. The Applicants' Course of Construction insurance coverage lapsed on March 31, 2020. The Monitor and the Lydian Group's secured lenders were kept informed at material points through the attempted renewal process;
- (h) continuing a dialogue with the Lydian Group's insurance broker to understand the potential availability of any D&O insurance coverage beyond May 1, 2020. These discussions remain ongoing;
- (i) as contemplated in the March Stay Extension Affidavit, implementing certain governance changes with respect to Lydian International, Lydian Canada and Lydian UK, as further described below;

- (j) prior to the hearing of the March Stay Extension Motion, Lydian International completed its audited year-end financial reporting and public markets disclosure as required by Reporting Issuers subject to Canadian securities laws. Due to the onset of the COVID-19 pandemic, the Ontario Securities Commissions (the “OSC”) has granted a 45 day extension for any annual or interim filings that are due before June 1, 2020. As a result of this extension, and due to Lydian International’s financial constraints, Lydian International has alerted the OSC that it is not able to continue with its public markets disclosure going forward. Lydian International and the Monitor will be keeping stakeholders and the public updated about the Applicant’s financial status through the CCAA proceedings;
- (k) closing the Denver office of the Lydian Group, transferring substantially all corporate functionality formerly performed in Denver to Lydian Armenia personnel and establishing virtual office connectivity for a continuing contract employee in Denver. This led to the departure of all remaining employees of the Lydian Group in Denver, including Lydian’s CFO and Corporate Controller prior to the end of March;
- (l) conducting a search with the assistance of a number of professional advisory firms to attract and retain on contract a consultant with advanced financial control, accounting, reporting and treasury skills, as well as significant experience working with mining sector issuers active in the Canadian public markets;
- (m) implementing a previously announced series of redundancies in March and April 2020 affecting 15 employees of Lydian Armenia (the “Redundancies”), and managing the re-allocation of their responsibilities to Lydian Armenia’s remaining employees;
- (n) as discussed in greater detail below, responding to the country-wide lockdown imposed in Armenia due to the COVID-19 pandemic;
- (o) continuing to review weekly site reports provided by security contactors who are able to access the Amulsar Project site in shifts, and monitoring asset status at the site;

- (p) corresponding with the GOA, Armenian police and the Company's secured lenders, including Ameriabank, regarding significant leakage of water through the roof of the main camp buildings at the Amulsar site following a period of heavy rains in early April. Due to the Lydian Group's inability to gain access to the Amulsar site to complete winterization procedures last Fall, scheduled repairs to the camp roof could not take place, and significant damage occurred to the ceilings and floor of the camp buildings. The Lydian Group is unable to address this damage as access to the Amulsar site remains blocked;
- (q) providing information requested by the Monitor to assist the Monitor in fully considering the issues raised in the communications sent to the Court by AEF (as defined and described below); and
- (r) preparing a cash flow forecast for the period requested for the stay extension, and related financial information on potential scenarios under consideration as part of the path forward, in consultation with the Monitor.

9. On February 25, 2020, the Royal Court of Jersey issued an order (the "**Recognition Order**"), a copy of which was appended to the March Stay Extension Affidavit, recognizing the Amended and Restated Initial Order in Jersey and granting certain protections to Lydian International and the Monitor in Jersey. The Recognition Order further provided that reasons would be set out in a judgment to be delivered by the Deputy Bailiff at a later date. On March 17, 2020, the Royal Court published reasons to accompany the Recognition Order (the "**Recognition Reasons**"). A copy of the Recognition Reasons is attached hereto as **Exhibit "E"**.

10. As noted in the March Stay Extension Affidavit, effective February 21, 2020, the Applicants implemented certain governance changes with respect to the Applicants' subsidiaries in the British Virgin Islands, as well as Lydian Armenia. Following the March Stay Extension Motion, and as contemplated in the March Stay Extension Affidavit, the Applicants also implemented additional governance changes with respect to Lydian International, Lydian Canada and Lydian UK, as further outlined below.

11. The Applicants continue to engage in discussions with their lenders regarding a viable path forward to maximize stakeholder value, and have been advancing discussions with a potential purchaser who emerged through the SISP (the “**SISP Party**”).

12. As described in the March Stay Extension Affidavit, the Applicants and their counsel, in consultation with the Monitor, negotiated the DIP Agreement with the Applicants’ secured lenders, being Orion Co IV (ED) Limited, a division of Orion Capital Management (“**Orion**”) Resource Capital Fund VI L.P. (“**RCF**”) and Osisko Bermuda Limited (“**Osisko**”) (collectively, the “**DIP Lenders**”). The terms of the DIP Agreement were described in the March Stay Extension Affidavit.

13. Due to their inability to access additional liquidity generally, the Applicants will require additional interim financing in order to continue their efforts in pursuing a transactional outcome for the Lydian Group and pursue other steps beyond April 30, 2020. The Applicants and their counsel, in consultation with the Monitor, are in the process of negotiating the DIP Amendment with the DIP Lenders, which is expected to provide the Applicants with sufficient liquidity to pay for obligations incurred and scheduled to be paid through to the requested extension of the Stay Period.

**(a) Impact of COVID-19 Pandemic on Armenian Operations**

14. Due to the COVID-19 pandemic, on March 16, 2020, the GOA declared a State of Emergency until April 14, 2020, which was subsequently extended until May 14, 2020. On March 24, 2020, the GOA introduced stringent measures to contain the spread of the virus, which include the closure of schools and universities, prohibition of events with more than 20 persons in attendance, restrictions on movement within the country through a nationwide lockdown, screening and quarantine measures, and restriction of entry into the country.

15. In order to comply with the containment steps taken by the GOA, people in Armenia began or continued to work from home or remote locations. In late February, Lydian Armenia had established a remote working policy to permit persons in Armenia to work outside the office and remain connected electronically. As a result, Lydian Armenia’s office personnel have been able to respond to the measures introduced by the GOA with relatively minor adjustments. There are, however, some aspects of Lydian Armenia’s affairs which are not capable of being conducted

using remote access. For example, with the permission of the landlord and local authorities, arrangements need to be made on a regular basis for certain personnel to attend at Lydian Armenia's offices in shifts to complete tasks which cannot be done remotely.

16. Subsequent to the implementation of the Redundancies, Lydian Armenia's ability to conduct its affairs has been diminished materially but it continues to provide the level of support necessary to permit the Applicants to maintain their business and meet their information obligations to the Lydian Group's lenders.

**(b) Communication to the Court by Members of the Armenian Environmental Front Civil Initiative**

17. As noted in the March Stay Extension Affidavit, on February 28, 2020, the Monitor received an email from Arpine Galfayan, on behalf of the Armenian Environmental Front ("AEF") Civil Initiative. Attached to the email was a letter to the Court (the "AEF Letter") from certain individuals who identify themselves as Armenian citizens and members of the AEF Civil Initiative, which they describe as a volunteer environmental watchdog group. The email and AEF Letter were also emailed directly to the Court, without being served on the service list. A copy of the AEF Letter, with the enclosure referred to therein, is attached hereto as **Exhibit "F"**.

18. As outlined in my March Stay Extension Affidavit, the AEF Letter alleges that there were certain factual misrepresentations contained in my Initial Affidavit, including with respect to (i) the April 10, 2019 ruling issued by Armenia's Administrative Court concluding that the blockaders had trespassed on Lydian Armenia's property, and issuing an order directing the police to remove the trespassers and their property from Lydian Armenia's land (the "**Removal Order**"), and (ii) the findings contained in the August 7, 2019 report of Earth Link and Advanced Resources Development ("**ELARD**"), following the environmental audit conducted by ELARD in 2019. The AEF Letter also implies that Lydian Armenia inappropriately entered into a settlement agreement with the Jermuk Health Centre CJSC (the "**Jermuk Health Centre**") related to the termination of a long-term lease agreement.

19. On March 2, 2020, in its endorsement in connection with the Applicants' request for a short extension of the Stay Period from March 2, 2020 to March 11, 2020, the Court directed the Monitor to report to the Court on the matters raised in the AEF Letter. Ahead of the March Stay



Extension Motion, the Applicants provided extensive and detailed documentation to the Monitor addressing certain of the points raised in the AEF Letter, much of which is technically complex.

20. On March 10, 2020, the day before the hearing of the March Stay Extension Motion, the Monitor received another email from the AEF, enclosing a Memorandum authored by Ann Maest, who was represented as a scientist associated with an environmental consulting firm in Colorado, USA (the “**Maest Memo**”). In the Maest Memo, the author concludes that the September 2019 National Instrument 43-101 Report Technical Report, which was commissioned by the Lydian Group to address the full impact of the blockade on construction, and the resulting delay in the ramp up to full production, underestimated the risks, costs, and associated uncertainties for its Amulsar Project. A copy of this email and the Maest Memo are attached hereto as **Exhibit “G”**.

21. The AEF’s second email communication and the Maest Memo were brought to the Court’s attention at the commencement of the hearing of the March Stay Extension Motion. In this Court’s endorsement in connection with the March Stay Extension Motion, this Court requested that in the future, the AEF electronically serve on the service list and file all materials it wishes to be brought to the attention of the Court in accordance with the Ontario *Rules of Civil Procedure* (the “**Rules**”). On March 19, 2020, the Monitor wrote to Mr. Galfayan of the AEF setting this out, and noting that in order to raise issues or make submissions with the Court, the AEF must take certain procedural steps in accordance with the Rules, and is not permitted to communicate directly with the Court. A copy of this letter is attached hereto as **Exhibit “H”**.

22. Since the March Stay Extension Motion, the Applicants have worked with the Monitor to compile the necessary information and documentation to respond to the issues raised in the AEF Letter. I understand that the Monitor will be including a report on its consideration of these issues in its Fourth Report.

**(c) Governance Changes**

23. As described in the March Stay Extension Affidavit, effective February 21, 2020, the Applicants implemented certain governance changes with respect to the Applicants’ subsidiaries in the British Virgin Islands, as well as Lydian Armenia.

24. Further, as contemplated in the March Stay Extension affidavit, the Applicants implemented certain additional governance changes, as follows:

- a) the members of the existing Board of Directors of Lydian International, other than Victor Flores and I, resigned;
- b) the other directors and officers of Lydian Canada and Lydian UK, resigned. I have stayed on as director; and
- c) Victor Flores was appointed a director of 11910728 Canada Inc. ("**DirectorCo**"), a corporation incorporated under the laws of the *Canada Business Corporations Act*, which is a direct, wholly-owned subsidiary of Lydian Canada.

25. Additional directors have not yet been appointed to one or more of the boards of Lydian International, Lydian Canada, Lydian UK and DirectorCo following consultation with the Lydian Group's senior lenders.

**(d) SISP**

26. BMO and the Applicants, in consultation with their lenders, have continued to engage and advance discussions with the SISP Party, including through a term sheet for a potential transaction.

27. In addition, in early April, a party who was previously involved in the SISP approached the Applicants with renewed interest in a transaction through a related company. BMO granted this party access to the data room created for the SISP following the execution of a non-disclosure agreement. The party recently informed BMO it was no longer pursuing an interest in a transaction with the Applicants.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

## **PART 2 - RELIEF REQUESTED BY THE APPLICANTS**

### **A. DIP Amendment Approval**

32. As described in the March Stay Extension Affidavit, the Applicants and their counsel, in consultation with the Monitor, negotiated the DIP Agreement pursuant to which the Applicants obtained access to the DIP Facility in the amount of \$2.376 million plus an amount intended to address any trailing accounts payable aggregating up to \$490,000, which was provided for as additional draws under the Term Facility B. The terms of the DIP Agreement were described in the March Stay Extension Affidavit.

33. In connection with their request to extend the Stay Period to June 30, 2020, the Applicants and their counsel, in consultation with the Monitor, are in the process of negotiating the DIP Amendment, which is expected to provide the Applicants with sufficient liquidity to pay for obligations incurred and scheduled to be paid through to the requested extension of the Stay Period. The DIP Amendment will be provided to the Court when it is final.

34. This Court previously sealed the DIP Agreement, finding that it contained commercially sensitive information. It is anticipated that the DIP Amendment will similarly contain commercially sensitive information, and accordingly the Applicants will be seeking that the unredacted version of the within affidavit and, any relevant supplementary affidavit to be filed, and the unredacted version of the DIP Amendment, be sealed pending further Order of this Court.

#### **B. Approval of Monitor's Fees and Activities**

35. I understand that the Monitor will be filing the Fourth Report in connection with the within motion seeking approval of its activities, as detailed in the Third Report and the Fourth Report, as well as fees of the Monitor and its counsel from the period of March 1, 2020 to April 15, 2020.

#### **C. Stay Extension**

36. Since the March Stay Extension Motion, the Applicants, with the oversight and assistance of the Monitor, have been focused on maintaining operational stability of the Lydian Group while closing its Denver office and implementing the Redundancies, as it continued to engage with lenders and various stakeholders on a viable path forward. The Lydian Group has also advanced discussions with BMO, the SISP Party and its lenders relating to a potential transaction involving the Lydian Group, while implementing the first phase of the Arbitration Preservation Steps.

37. The Applicants are requesting an extension of the Stay Period until and including June 30, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders. During the extended Stay Period through to June 30, 2020, the Applicants will conduct the activities provided for in the DIP Amendment, and intend to continue to negotiate a transactional outcome with the SISP Party

and continue their dialogue with the GOA to see whether an agreement can be reached regarding access to the Amulsar Project.

38. It is anticipated that the DIP Amendment, when finalized, will provide the Applicants with sufficient funding to continue operations through the requested extension of the Stay Period, and this will be reflected in the Applicants' cash flows, to be filed by the Monitor.

39. Since the granting of the Amended and Restated Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings, and will continue to do so during the proposed extension of the Stay Period.

SWORN BEFORE ME via Zoom in the  
City of Toronto, Province of Ontario, on  
April 27, 2020.

DocuSigned by:

*Sanja Sopic*

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Commissioner for Taking Affidavits

DocuSigned by:

*Edward A. Sellers*

8F33066161C145B...

Edward A. Sellers

# EXHIBIT “A”

*THIS IS EXHIBIT "A", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27<sup>th</sup>, 2020.*

DocuSigned by:  
*Sanja Sopic*  
E820930A2731482...

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*Commissioner for Taking Affidavits*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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AND LYDIAN U.K. CORPORATION LIMITED

Applicants

AFFIDAVIT OF EDWARD A. SELLERS  
(Sworn January 20, 2020)

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.
2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.
3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.
4. This affidavit is sworn in support of a motion brought by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and such proceedings, the "**CCAA Proceedings**") seeking:



- a) an Amended and Restated Initial Order providing for certain amendments to the Initial Order substantially in the form of the draft order attached as Tab 3 of the Motion Record, including provisions expanding the Applicants' restructuring capabilities within the CCAA Proceedings, increasing the Administration Charge and adding a Transaction Charge (as defined below) to include the fees payable to the Applicants' financial advisor;
- b) an order substantially in the form of the draft order attached as Tab 4 of the Motion Record: (i) extending the stay of proceedings (the "**Stay Period**") in respect of the Applicants and the Non-Applicant Stay Parties to February 25, 2020; (ii) sealing the unredacted version of the BMO Engagement Letter; (iii) approving the Monitor's activities to date; and
- c) such further and other relief as the Court deems just.

#### **PART 1 - BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS**

5. I repeat and rely on my affidavit sworn December 22, 2019 (the "**Initial Affidavit**") in support of this motion. A copy of the Initial Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

6. The Applicants are part of a corporate enterprise (the "**Lydian Group**") ultimately owned by Lydian International whose business consists of the exploration and development of a gold mine located in south-central Armenia (the "**Amulsar Project**" or "**Amulsar**").

7. The Applicant Lydian International is a corporation continued under the laws of Jersey from the Province of Alberta, and is the parent corporation of the Lydian Group. The other two Applicants, Lydian Canada Ventures Corporation ("**Lydian Canada**") and Lydian U.K. Corporation Limited ("**Lydian UK**"), are subsidiaries of Lydian International. Due to the complete integration of the business and operations of the Lydian Group, the Applicants also sought and obtained an extension of the stay of proceedings over other members of the Lydian Group, including Lydian Armenia CJSC ("**Lydian Armenia**"), the principal operating subsidiary in the Lydian Group. The corporate structure of the Lydian Group is described in greater detail in the Initial Affidavit. For ease of reference, a copy of the Lydian Group's corporate chart is attached hereto as **Exhibit "B"**.

8. As set out in greater detail in my Initial Affidavit, the Applicants sought, and obtained CCAA protection, on December 23, 2019 due to the confluence of a number of factors, including (i) ongoing illegal blockades at the Amulsar site since June 2018 which prevented Lydian Armenia from accessing the site and completing construction, and caused the Lydian Group to default on its obligations to its lenders, (ii) certain actions and inactions of the Government of Armenia (the "GOA"), which continue to prevent the resumption of construction activity at the Amulsar site, despite the findings of audits that Lydian Armenia is in compliance with all environmental requirements, and (iii) the expiration of the Lydian Group's forbearance arrangements with their lenders.

9. As a result of these and other factors described in the Initial Affidavit, the Applicants sought and obtained creditor protection and related relief under the CCAA pursuant to a December 23, 2019 order of this Court (the "**Initial Order**"). Alvarez & Marsal Canada Inc. ("**A&M**") was appointed Monitor of the Applicants (the "**Monitor**") in the CCAA Proceedings. On January 2, 2020, this Court issued an Order extending the Stay Period with respect to the Applicants to January 23, 2020 (the "**Stay Order**"). Copies of the Initial Order and the Stay Order are attached hereto as **Exhibit "C"**, and **"D"**, respectively, and are available, together with all other filings in the CCAA Proceedings, on the Monitor's website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

**A. Status of Proceedings**

10. Since the granting of the Initial Order on December 23, 2019, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of their business operations, continue discussions with their senior lenders and other stakeholders, and advance discussions regarding a potential sale involving the Lydian Group or a financing of the Lydian Group's Treaty Arbitration, which is described in the Initial Affidavit.

11. The Applicants' activities since the Initial Order include the following:

- (a) making several follow up requests to the GOA to confirm the GOA's intentions with respect to restoring Lydian Armenia's access to the Amulsar site, to which no response was received. During my recent visit to the Amulsar Project with the Monitor, the GOA did not make itself available to meet with Lydian

representatives, and the Applicants are uncertain whether further meetings will occur in the near term;

- (b) making repeated requests and engaging in a dialogue with the GOA with respect to regaining access to the Amulsar site to permit winterization to be completed. These efforts were not successful, as the blockaders have refused to permit Lydian Armenia to access the site to complete winterization and the GOA has failed to take action to restore access for this purpose. The Applicants will continue their efforts in this regard and will maintain an advanced state of readiness to effect winterization, including maintaining all necessary supplies and making arrangements with service providers;
- (c) responding to information requests from the Lydian Group's lenders regarding a variety of topics including the progress of negotiations with various stakeholders, the Lydian Group's intentions regarding a viable path forward to maximize stakeholder value, the status of the equipment at the Amulsar site and the progress of the strategic sale and investment solicitation process ("SISP") and Treaty Arbitration financing process;
- (d) advancing discussions relating to a potential purchaser who participated in the SISP carried out by BMO Nesbitt Burns Inc. ("BMO"), as further described below;
- (e) responding to inquiries from and engaging with various parties who have expressed an interest in financing the Treaty Arbitration, as further described below;
- (f) communicating with Ameriabank CJSC ("**Ameriabank**") regarding amounts swept from Lydian Armenia's bank accounts following the CCAA filing;
- (g) preparing materials, together with the Monitor, seeking the recognition of the Initial Order and CCAA Proceedings by the Royal Court of Jersey, as further outlined below;

- (h) continuing a dialogue with the Lydian Group's insurance broker to understand the potential availability of any D&O insurance coverage beyond January 31, 2020. Following discussions with their D&O insurance providers, the Applicants were able to obtain an initial one month extension of D&O insurance coverage from December 31, 2019 to January 31, 2020. A further one month extension of D&O insurance coverage has been obtained following discussions, which included the Monitor, with the Applicant's D&O insurance providers;
- (i) finalizing arrangements with the Applicants' insurance broker to extend coverage for Cost of Construction insurance, including coverage for on-site equipment, until March 31, 2020 in consultation with the Monitor, and advancing discussions with Applicant's insurance broker regarding replacement insurance for asset protection;
- (j) meeting with employees in Armenia, together with the Monitor, to explain the CCAA Proceedings and answer any employee questions regarding the path forward;
- (k) planning for further cost reductions in consultation with the Monitor, including implementing certain further employee reductions in Armenia which have become necessary due to the circumstances arising from the GOA's failure to restore Lydian Armenia's access to the Amulsar site; and
- (l) preparing a cash flow forecast for the period requested for the stay extension, and related financial information on potential scenarios under consideration as part of the path forward, in consultation with the Monitor.

12. In light of timing of the commencement of the Applicants' CCAA Proceedings shortly before the beginning of the 2019 Holiday Season in North America and through the new year in Armenia, and the short extension of the stay of proceedings through to January 23, 2020 granted through the Stay Order, the Applicants have not made definitive decisions regarding the direction of their restructuring and require more time to continue their discussions with their stakeholders and to consider their options to maximize value.

**(a) SISP**

13. As described in the Initial Affidavit, the Lydian Group retained BMO in 2018 to canvas potential refinancing or sale options and carry out the SISP. The 2018 process generated potential interest from several parties but no transaction resulted from it. In the Fall of 2019, BMO renewed its efforts in connection with the SISP based on the GOA's statements that they would support the reopening of the Amulsar Project. BMO reached out to a broad range of potential strategic and financial counterparties. Several counterparties expressed concerns regarding the situation in Armenia, and Lydian Armenia's continued inability to access the Amulsar site.

14. BMO and the Applicants are reviewing the current status of the SISP and a non-binding draft term sheet setting out a proposal for a transaction with respect to the Amulsar Project. The Applicants and BMO were engaged in discussions with a potential purchaser prior to the commencement of the CCAA Proceedings. Discussions have been ongoing between the potential purchaser and one of the Applicant's secured lenders to determine if a transaction can be implemented, with the support of the Applicants' stakeholders.

15. The Applicants and BMO, with the assistance and oversight of the Monitor, intend to take carriage of those discussions within the current SISP to determine if a viable proposal can be submitted to the Applicants' stakeholders and the Court.

**(b) Treaty Arbitration Financing**

16. As outlined in the Initial Affidavit, in October 2019, the Lydian Group, with the assistance of BMO, commenced a process to solicit interest in financing the Treaty Arbitration. BMO contacted a variety of established litigation financing companies with substantial funds under their management. Parties were provided with access to a Virtual Data Room ("VDR") containing a selected set of arbitration-related documentation, following execution of a Common Interest Privilege and Confidentiality Agreement. Additional parties approached BMO after the commencement of the CCAA Proceedings to seek the opportunity to consider the potential arbitration financing. This solicitation process has generated several non-binding expressions of interest to date. The Applicants and BMO, with the assistance and oversight of the Monitor, intend to continue with the Treaty Arbitration financing solicitation process during the proposed stay extension period.

(c) **Jersey Recognition Proceedings**

17. On December 23, 2019 the Applicants sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing the Applicants’ restructuring proceedings. Since the Letter of Request was issued, the Applicants have worked with their Jersey counsel to prepare materials seeking the recognition of the CCAA Proceedings by the Royal Court, and those materials have been finalized as of the date of the swearing of this affidavit. I understand from Jersey counsel that there is a hearing scheduled before the Royal Court on January 24, 2020, at which time the Applicants will be seeking an Order of the Royal Court formally recognizing the CCAA Proceedings in Jersey. The Monitor is filing an affidavit to assist the Jersey Court in connection with the request for recognition, and the form of such affidavit has also been finalized. Applicants will update the Court on developments in that regard on January 23, 2020.

**PART 2 - THE AMENDED AND RESTATED INITIAL ORDER**

18. The proposed Amended and Restated Initial Order provides for certain amendments to the Initial Order, namely the insertion of certain provisions contained in the standard form template CCAA Initial Order developed by the model order subcommittee of the Commercial List Users’ Committee of the Ontario Superior Court of Justice (the “**Model Initial Order**”). These include more fulsome restructuring provisions and provisions expanding the Monitor’s rights to assist with the Applicants’ restructuring efforts, and the granting of a Transaction Charge (as defined and described below). A blackline comparison showing the proposed amendments to the Model Initial Order is attached at Tab 5 to the Applicant’s motion record.

**A. Restructuring Provisions**

19. At the time the CCAA Proceedings were commenced, the Applicants needed urgent relief to permit them to stabilize their situation and explore the best avenues to maximize recoveries for their stakeholders. As a result, the Applicants did not seek to include certain restructuring provisions from the Model Initial Order in the Initial Order. The Applicants now intend to seek those more expansive restructuring provisions in the Amended and Restated Initial Order in order to enable them to take certain steps that may become necessary during the CCAA Proceedings, including: reducing or shutting down their business or operations, terminating

employees, and pursuing all avenues of refinancing for all or part of the Lydian Group's business, in whole or in part.

20. Further, through the Amended and Restated Initial Order, the Applicants are seeking to expand the Monitor's ability, as contemplated in the Model Initial Order, to advise the Applicants in the development of a Plan of Compromise or Arrangement, hold and administer meeting(s) for voting purposes, as well as returning some of the additional protective language found in the Model Initial Order.

## **B. Charges**

### **(a) D&O Charge**

21. In light of the extension of the Applicants' D&O insurance coverage through to March 2, 2020, the Applicants do not intend to seek an increase in the D& O Charge of USD \$200,000 at this time.

### **(b) BMO Engagement and Transaction Charge**

22. The Applicants do not currently anticipate seeking to increase their Administration Charge as it relates to counsel or the Monitor at this time. The Applicants are seeking to expand the Administration Charge to grant protection to the Applicants' financial advisor, BMO. BMO's services in connection with the SISP and the solicitation process for the financing of the Treaty Arbitration were provided pursuant to an engagement letter between BMO and Lydian International, which was most recently amended on October 1, 2019 (the "**BMO Engagement Letter**"). The BMO Engagement letter (in the form to be filed) sets out the scope of BMO's services as financial advisor to Lydian International, and provides for a monthly work fee and a transaction fee payable to BMO upon the completion of a successful sale or refinancing transaction, consisting of a percentage of the transaction value.

23. In order to secure Lydian International's obligations under the BMO Engagement Letter, the Applicants are seeking to increase the Administration Charge to cover BMO's monthly work fee, to the maximum amount of USD\$500,000. In addition, the Applicants will also be seeking a charge, in an amount to be determined and disclosed prior to the hearing of this motion (the "**Transaction Charge**") to secure BMO's potential transaction fee payable if a successful

transaction is implemented. The Amended and Restated Initial Order provides that the Transaction Charge shall rank third on the property of the Applicants, and that the unredacted form of the BMO Engagement Letter be sealed.

24. BMOs has worked extensively with Lydian International since its initial engagement and has significant knowledge with respect to the business, operations and finances of the Lydian Group. As noted, BMO has worked diligently to assist the Applicants in carrying out the SISP and the solicitation for the financing of the Treaty Arbitration. BMO's continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for stakeholders.

### **PART 3 - STAY EXTENSION**

25. Since the Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings. To date, the Applicants and their advisors have been largely focused on maintaining operational stability of the Lydian Group, while continuing to engage with lenders and various stakeholders on a viable path forward, including advancing discussions relating to parties interested in pursuing a transactional outcome for the Lydian Group and/or financing the Treaty Arbitration.

26. The Stay Period granted in the Initial Order, as extended through the Stay Order, had the effect of imposing a stay of proceedings until and including January 23, 2020. The Applicants are requesting an extension of the Stay Period until and including February 25, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders.

27. During the extended Stay Period through to February 25, 2020, the Applicants will:

- (a) attempt to continue discussions with the GOA regarding regaining access to the Amulsar site;
- (b) continue negotiating a transactional outcome with a potential purchaser who emerged through the SISP;
- (c) continue canvassing financing options for the Treaty Arbitration. As noted, the Applicants have been approached by additional parties potentially interested in



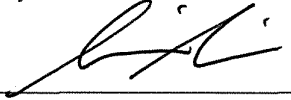
financing the Treaty Arbitration since the commencement of the CCAA Proceedings; and

(d) consider whether to take any steps to advance the Treaty Arbitration.

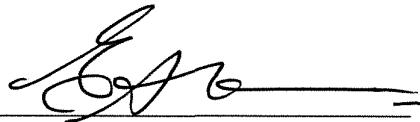
28. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the Applicants will have sufficient funds to continue operating through the proposed Stay Period. Funding for the proposed Stay Period includes a continuation of the Applicants' practice of transferring funds from Lydian Armenia (a Non-Applicant Stay Party) to Lydian International (an Applicant) pursuant to the Cash Management System, on an as-needed basis, and may include transfers from other members of the Lydian Group.

29. To the extent that the Applicants will need debtor-in-possession financing to fund the next phase of the CCAA Proceedings, the Applicants will report to the Court on those requirements on February 25, 2020. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

SWORN BEFORE ME at the City of  
Toronto, Province of Ontario, on  
January 20, 2020.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

*Sanja Sopic*

  
\_\_\_\_\_  
Edward A. Sellers

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF EDWARD A. SELLERS**  
Sworn January 20, 2020

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**Lawyers for the Applicants**

# EXHIBIT “B”

*THIS IS EXHIBIT "B", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27<sup>th</sup>, 2020.*

DocuSigned by:

*Sanja Sopic*

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*Commissioner for Taking Affidavits*

**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**

Applicants

**AFFIDAVIT OF EDWARD A. SELLERS  
(Sworn March 10, 2020)**

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("Lydian International"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.

2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit (the “**Sellers Stay Extension Affidavit**”) is sworn in support of a motion brought by the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”) seeking:

- a) an Order substantially in the form of the draft order attached as Tab 3 of the Motion Record,
  - (i) approving the Engagement Letter between BMO Nesbitt Burns Inc. (“**BMO**”) and the Applicants and Lydian Armenia CJSC (“**Lydian Armenia**”) dated February 21, 2020 (the “**Revised BMO Engagement Letter**”), increasing the Administration Charge to include BMO’s Monthly Fee (as defined and described below) and adding a Transaction Charge to the Amended and Restated Initial Order granted in these proceedings to include BMO’s Recapitalization Fee (as defined and described below);
  - (ii) sealing the Revised BMO Engagement Letter and the Affidavit of Edward Sellers sworn March 10, 2020 describing the terms of the Revised BMO Engagement Letter (the “**Second Sellers BMO Affidavit**”), and continuing to seal the Affidavit of Edward Sellers sworn January 1, 2020 (the “**First Sellers BMO Affidavit**”) and the Engagement Letter between BMO and Lydian International dated October 1, 2019 exhibited thereto (the “**BMO Engagement Letter**”);
  - (iii) approving the Applicants’ ability to enter into an agreement regarding debtor-in-possession financing (the “**DIP Agreement**”) pursuant to which the Applicants will obtain access to a DIP Facility (as defined below) to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the stay extension period to April 30, 2020, which is to be secured by a charge over the Applicants’ property (“**DIP Charge**”);
  - (iv) sealing the unredacted DIP Agreement, the unredacted Sellers Stay Extension Affidavit, CAT Settlement and the ING Settlement (as defined below);
  - (v) extending the stay of proceedings (the “**Stay Period**”) in respect of the Applicants and the Non-Applicant Stay Parties to April 30, 2020;

- (vi) approving the fees of the Monitor and its counsel;
  - (vii) sealing Confidential Exhibit “1” attached to the Affidavit of Alan Hutchens sworn March 9, 2020 and Confidential Exhibit “1” attached to the Affidavit of D.J. Miller sworn March 9, 2020, each of which are appended to the Monitor’s Third Report to the Court dated March 9, 2020 (the “**Third Report**”) and contain unredacted invoices issued by the Monitor and its counsel, respectively; and
  - (viii) approving the Monitor’s activities to date as set out in its Second Report to the Court dated February 28, 2020 and the Third Report; and
- b) such further and other relief as the Court deems just.

#### **PART 1 - STATUS OF THE CCAA PROCEEDINGS**

5. I repeat and rely on my affidavits sworn December 22, 2019 (the “**Initial Affidavit**”) and January 20, 2020 (the “**Comeback Affidavit**”) in support of this motion. Copies of the Initial Affidavit and the Comeback Affidavit (without exhibits) are attached hereto as **Exhibit “A”** and **Exhibit “B”**, respectively. Capitalized terms not otherwise defined herein are as defined in the Comeback Affidavit.

6. The Applicants’ business consists of the exploration and development of a gold mine located in south-central Armenia (the “**Amulsar Project**” or “**Amulsar**”). The Initial Order was granted on December 23, 2019. On January 2, 2020, the Court issued an Order extending the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties to January 23, 2020. At the Applicants’ motion returnable on January 23, 2020 (the “**Comeback Motion**”), the Court issued an Amended and Restated Initial Order which, among other things, expanded the Applicants’ restructuring capabilities within the CCAA Proceedings, granted additional protections to the Monitor and extended the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties until March 2, 2020. At the Applicants’ motion returnable on March 2, 2020, this Court further extended the Stay Period to March 11, 2020. A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit “C”**, and is available, together with all other filings in the CCAA Proceedings, on the Monitor’s website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

**A. The Applicants' Activities Since the Comeback Motion**

7. Since the granting of the Amended and Restated Initial Order, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of their business operations, continue discussions with their senior lenders and other stakeholders, and advance discussions regarding a potential sale involving the Lydian Group. On the basis of input received from the Lydian Group's senior lenders, since the Comeback Motion the Applicants have not taken any material steps to advance the solicitation process for the financing of the Lydian Group's Treaty Arbitration.

8. The Applicants' activities since the Comeback Motion include the following:

- (a) attempting to engage in a further dialogue with the GOA with respect to regaining access to the Amulsar site;
- (b) finalizing materials, together with the Monitor, seeking the recognition of the Initial Order, Amended and Restated Initial Order and CCAA Proceedings by the Royal Court of Jersey, as further outlined below;
- (c) communicating and meeting with the Lydian Group's lenders regarding a variety of topics including the progress of negotiations with various stakeholders, the lenders' position regarding a viable path forward to maximize stakeholder value for the Lydian Group, the status of the equipment at the Amulsar site and the progress of the SISF;
- (d) negotiating the DIP Agreement with the Applicants' senior lenders;
- (e) continuing to advance discussions with respect to implementing a transaction with a potential purchaser who participated in the SISF, as further described below;
- (f) communicating with one of the Applicants' equipment lessors, Caterpillar Financial Services (UK) Limited ("**CAT**") in response to the objection (the "**CAT Objection**") filed in connection with the Comeback Motion, objecting to the Applicants' request to extend the stay of proceedings, on the basis that CAT seeks to take immediate possession of its equipment located at the Amulsar Project. The



CAT Objection was scheduled to be heard on March 5, 2020. The Applicants have reached a consensual resolution to the CAT Objection (the “**CAT Settlement**”), a copy of which will be filed under seal with this Court;

- (g) preparing materials to respond to CAT’s documentary production requests in connection with the CAT Objection, and preparing for potential cross-examinations, as outlined below;
- (h) communicating with another equipment lessor of the Applicants, ING Bank N.V, and AB Svensk Exportkredit (publ) (“**ING**”) regarding the proposed treatment of ING’s equipment located at the Amulsar Project during the pendency of the CCAA Proceedings;
- (i) communicating with the Lydian Group’s insurance broker regarding extending the Course of Construction insurance coverage for the equipment on the Amulsar site beyond March 31, 2020, or obtaining substitute asset insurance coverage. I understand that although a few markets initially expressed interest in providing substitute asset insurance coverage, a combination of a hardening insurance market affecting all property risks globally, hesitancy to underwrite risks in Armenia and the fact the project has been stalled for more than 18-months have proven to be challenging factors in obtaining replacement insurance. The Applicants continue to pursue insurance options;
- (j) continuing a dialogue with the Lydian Group’s insurance broker to understand the potential availability of any D&O insurance coverage beyond March 2, 2020. Following discussions with their D&O insurance providers, the Applicants were able to obtain a 14-day extension of D&O insurance coverage from March 2, 2020 to March 16, 2020. I understand a further extension is available through the proposed extension of the Stay Period, provided various conditions are met, including financial support for the Applicants through the proposed extension of the Stay Period;

- (k) implementing certain governance changes with respect to certain subsidiaries of the Applicants in the British Virgin Islands and Lydian Armenia, as further described below;
- (l) engaging in a dialogue with the Lydian Group's lenders, equipment financiers and counsel in Canada, the United Kingdom and Armenia in order to determine the most efficient way to streamline the Applicants' governance structure;
- (m) completing audited year-end financial reporting and making public markets disclosure as required by Reporting Issuers subject to Canadian securities laws;
- (n) making arrangements to close the Denver office of the Lydian Group and source alternative resources and support to continue with adequate levels of financial control and reporting for the Lydian Group during the proposed extension of the Stay Period; and
- (o) preparing a cash flow forecast for the period requested for the stay extension, and related financial information on potential scenarios under consideration as part of the path forward, in consultation with the Monitor.

9. As will be outlined below, the Applicants implemented certain governance changes with respect to the Applicants' subsidiaries in the British Virgin Islands, as well as Lydian Armenia. These governance changes became effective on February 21, 2020.

10. Further, the Applicants intend to implement additional governance changes with respect to other members of the Lydian Group. The changes are described below.

11. The Applicants continue to engage in discussions with their lenders regarding a viable path forward to maximize stakeholder value. To that end, the Applicants have been advancing discussions with a purchaser who emerged through the SISP (the "**SISP Party**").

12. Due to their inability to access additional liquidity generally, the Applicants will require DIP financing in order to continue their efforts in pursuing a transactional outcome for the Lydian Group and pursue other steps beyond March 11, 2020. As will be described in greater detail below, the Applicants' secured lenders, being Orion Co IV (ED) Limited, a division of Orion Capital Management ("**Orion**") Resource Capital Fund VI L.P. ("**RCF**") and Osisko Bermuda

Limited (“**Osisko**”) (collectively, the “**DIP Lenders**”), have agreed to provide the Applicants with a DIP Facility to support the Applicants through to the requested extension of the Stay Period to April 30, 2020.

(a) **Jersey Recognition Proceedings**

13. On December 23, 2019, as amended on January 23, 2020, the Applicants sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing the Applicants’ restructuring proceedings. Since the Letter of Request was issued, the Applicants have worked with their Jersey counsel to prepare and finalize materials seeking the recognition of the CCAA Proceedings by the Royal Court, including supporting affidavits from the Applicants’ Canadian counsel and the Monitor and providing notification of the recognition proceedings to Lydian International’s creditors, in accordance with the requirements of Jersey law. On February 25, 2020, the Royal Court issued an Order (the “**Recognition Order**”), ordering that the Amended and Restated Initial Order be recognized and given effect to provide that:

- a) Alvarez & Marsal Canada Inc. shall be appointed as Monitor of Lydian International, with such appointment to be registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
- b) Lydian International is to remain in possession of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey;
- c) subject to further order of the Ontario Court (as defined in the Recognition Order), Lydian International shall continue to carry on its business in a manner consistent with the preservation of its business and property; and
- d) no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International, or affecting its business or the property, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court.

14. The Recognition Order further provides that reasons will be set out in a judgment to be delivered by the Deputy Bailiff at a later date, which the Applicants have not yet received. A copy of the Recognition Order is attached hereto as **Exhibit "D"**.

**(b) CAT Objection**

15. On January 22, 2020, CAT filed an objection in connection with the Comeback Motion, for the purpose of initiating steps to enforce on equipment supplied to Lydian Armenia currently located at the Amulsar site (the "**CAT Equipment**"). On January 22, 2020, I swore an affidavit in response to the CAT Objection (the "**CAT Responding Affidavit**"). The parties agreed to adjourn the hearing of the CAT Objection pending the next hearing (which was then scheduled to occur on March 2, 2020), and to provide the parties an opportunity to discuss potential resolution of the CAT Objection.

16. On January 27, 2020, CAT's counsel sought the production of certain documents in anticipation of conducting a cross-examination on the CAT Responding Affidavit. The Applicants worked with their counsel to compile the necessary documentation to respond to CAT's production request and to prepare for potential cross examinations.

17. On February 19, 2020, CAT filed a Supplementary Motion Record in connection with the CAT Objection, (the "**CAT Reply Materials**").

18. Following further discussions between the Applicants, CAT, and the Lydian Group's senior lenders, the Applicants and CAT have reached a consensual resolution regarding the CAT Objection. I understand that pursuant to the CAT Settlement, CAT has agreed that the CAT Equipment can stay at the Amulsar site [REDACTED]. The terms of the CAT Settlement are confidential and will be filed under seal with the Court.

19. During our Court attendance on January 23, 2020, counsel for ING advised that their client would also be opposing future stay extensions and he anticipated delivering motion materials similar to the CAT Objection. While motion materials were not ultimately delivered, the Applicants have also reached a resolution with ING (the "**ING Settlement**") which would ensure their support [REDACTED]. The terms of the settlement with ING are confidential and will be filed under seal with the Court.

(c) **Governance Changes Implemented to Date**

20. The corporate structure of the Lydian Group on the date of the commencement of the CCAA Proceedings (the “**Filing Date**”) was described in detail in my Initial Affidavit. For ease of reference, a copy of the Lydian Group’s corporate chart as of the Filing Date is attached hereto as **Exhibit “E”**.

21. In mid-February 2020, the Applicants became aware of material potential director or officer liability arguments under Armenian law.

22. In order to address this risk, and to ensure that there was continuing financial support for payment obligations which were or may be incurred by Lydian Armenia, the following governance changes were implemented with respect to the Lydian Group:

- a) William Dean, Hayk Aloyan and I, as the three directors of Lydian International Holdings Limited (“**Lydian Holdings**”), a corporation incorporated under the laws of the British Virgin Islands which is a direct, wholly-owned subsidiary of Lydian UK, resigned. 11910728 Canada Inc.(“**DirectorCo**”), a corporation incorporated under the laws of the *Canada Business Corporations Act*, which is a direct, wholly-owned subsidiary of Lydian Canada, was appointed as the sole director of Lydian Holdings, in accordance with the corporate law requirements of the British Virgin Islands. I am the sole officer and director of DirectorCo;
- b) William Dean, Hayk Aloyan and I, as the three directors of Lydian Resources Armenia Limited (“**Lydian Resources**”), a corporation incorporated under the laws of the British Virgin Islands which is a direct, wholly-owned subsidiary of Lydian Holdings and wholly owns Lydian Armenia, resigned. DirectorCo was appointed as the sole director of Lydian Resources;
- c) all directors and officers of Lydian Armenia, other than the Managing Director Hayk Aloyan, resigned in their capacities as directors and officers, though they remained employees of Lydian Armenia, if so employed. DirectorCo was named the sole shareholder representative for Lydian Armenia in accordance with Armenian law requirements. This enables DirectorCo to exercise authority as shareholder of Lydian Armenia. Mr. Aloyan retained his officer role as Managing

Director, subject to the direction of DirectorCo as shareholder representative of Lydian Resources.

23. An updated version of the Lydian Group's corporate chart, which reflects these changes, is attached hereto as **Exhibit "F"**.

24. The above governance changes are intended to address the potential liability issues arising under Armenian law referred to above while leaving the powers to direct Lydian Armenia's activities within the existing chain of authority below Lydian International.

**(d) Upcoming Governance Changes**

25. As noted, the Applicants sought and were able to obtain a 14-day extension of D&O insurance coverage from March 2, 2020 to March 16, 2020.

26. The Applicants considered their governance needs in each jurisdiction where members of the Lydian Group are incorporated, being Jersey, Canada, the United Kingdom, the British Virgin Islands and Armenia. Following this review and extensive consultations with the senior lenders, it is anticipated that the following governance changes will occur prior to advances being available under the proposed DIP Agreement:

- a) I will continue to serve as Interim President and Chief Executive Officer of Lydian International through the proposed extension of the Stay Period to April 30, 2020;
- b) the members of the existing Board of Directors of Lydian International, other than Victor Flores and I, will resign;
- c) the other directors and officers of Lydian Canada and Lydian UK, will resign. I will stay on as director, and Victor Flores will also be appointed as a director of those entities;
- d) Victor Flores will also be appointed a director of DirectorCo; and
- e) A third director may also be appointed in the future to one or more of the boards of Lydian International, Lydian Canada, Lydian UK and DirectorCo following consultation with the Lydian Group's senior lenders.

27. I have been advised a further extension of the D&O insurance coverage is available for the ongoing directors and officers through the proposed extension of the Stay Period to April 30,

2020, provided various conditions are met, including financial support being available to the Applicants through the proposed extension of the Stay Period. I understand that the Monitor will be filing a report in connection with the within motion, showing that the DIP Facility will provide the necessary financial support to the Applicants through to April 30, 2020.

(e) **SISP**

28. BMO and the Applicants, in consultation with their lenders, are continuing to engage and advance discussions with the SISP Party.

(f) **Communication to the Court by Members of the Armenian Environmental Front Civil Initiative**

29. I understand that early on February 28, 2020, the Monitor received an email from Arpine Galfayan, on behalf of the Armenian Environmental Front (“AEF”) Civil Initiative. Attached to the email was a letter to the Court (the “**AEF Letter**”) from certain individuals who identify themselves as Armenian citizens and members of the AEF Civil Initiative, which they describe as a volunteer environmental watchdog group. It appears that the email and AEF Letter were also emailed directly to the Court, without being served on the service list. A copy of the AEF Letter, with the enclosure referred to therein, is attached hereto as **Exhibit “G”**.

30. In short, the AEF Letter alleges that there were certain factual misrepresentations contained in my Initial Affidavit, including with respect to (i) the April 10, 2019 ruling issued by Armenia’s Administrative Court concluding that the blockaders had trespassed on Lydian Armenia’s property, and issuing an order directing the police to remove the trespassers and their property from Lydian Armenia’s land (the “**Removal Order**”), an English translation of which was attached to the Initial Affidavit, and which is attached again hereto as **Exhibit “H”**, and (ii) the findings contained in the August 7, 2019 report of Earth Link and Advanced Resources Development (“**ELARD**”), following the environmental audit conducted by ELARD in 2019. The AEF Letter also implies that Lydian Armenia inappropriately entered into a settlement agreement with the Jermuk Health Centre CJSC (the “**Jermuk Health Centre**”) related to the termination of a long term lease agreement.

31. The Applicants have provided extensive and detailed documentation to the Monitor addressing the points raised in the AEF Letter, much of which is technically complex. I did not

have time to sit with the Monitor to take them through the materials or swear a responding affidavit, but will turn to it promptly after the hearing of the extension motion.

## **PART 2 - RELIEF REQUESTED BY THE APPLICANTS**

### **A. BMO Engagement and Transaction Charge**

32. As outlined in the Comeback Affidavit, BMO's services in connection with the SISF were provided pursuant to the BMO Engagement Letter. The Applicants filed a copy of the BMO Engagement Letter under seal with this Court in connection with the Comeback Motion, as an exhibit to the First Sellers BMO Affidavit. At the Comeback Motion, the Applicants advised the Court that the issue of the BMO Engagement Letter would be determined at a later date. The Applicants, with the Monitor's assistance, were able to continue discussions with their senior lenders and a consensus was reached on the terms of the relief being sought by the Applicants relating to the BMO Engagement Letter.

33. The BMO Engagement Letter was amended on February 21, 2020 to address this arrangement and add additional members of the Lydian Group as signatories (the "**Revised BMO Engagement Letter**"). The Revised BMO Engagement letter sets out the scope of BMO's services as financial advisor to the Applicants, and provides for a monthly work fee (the "**Monthly Fee**") and a transaction fee payable to BMO upon the completion of a successful sale or refinancing transaction, consisting of a percentage of the transaction value (the "**Recapitalization Fee**"). .

34. In order to secure the Applicants' obligations under the Revised BMO Engagement Letter, the Applicants are seeking to increase the Administration Charge to the maximum total amount of \$500,000 to secure the Monthly Fee and add the Transaction Charge to secure the Recapitalization Fee, to the maximum total amount of \$4,500,000. The Administration Charge and the Transaction Charge shall not apply to the equipment financed by the equipment financiers, including CAT and ING. I understand the Applicants' senior lenders are supportive of the increase to the Administration Charge and the granting of the Transaction Charge.

35. BMO has worked extensively with the Applicants since its initial engagement and has significant knowledge with respect to the business, operations and finances of the Lydian Group. As noted in the Comeback Affidavit, BMO has worked diligently to assist the Applicants in carrying out the SISF and the solicitation for the financing of the Treaty Arbitration. Since the



Comeback Motion, BMO has worked with the Applicants to advance discussions with the SISP Party. BMO's continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for stakeholders.

36. I have sworn a further affidavit (the "**Second Sellers BMO Affidavit**") in connection with the Applicants' request attaching the Revised BMO Engagement Letter as an exhibit, which will also be filed under seal. Due to the commercially sensitive nature of the information contained in the engagement letters between BMO and Lydian International, and consistent with what I am advised is BMO's past practice, the Applicants are seeking the approval and sealing of the Revised BMO Engagement Letter, and the sealing of the Second Sellers BMO Affidavit and exhibits thereto, pending further Order of this Court. The Applicants are also seeking a continuation of the sealing of the First Sellers BMO Affidavit. I note that in connection with the sealing order for the First Sellers BMO Affidavit and the BMO Engagement Letter granted at the Comeback Motion, Chief Justice Morawetz noted in his endorsement (the "**Comeback Endorsement**") that "I am satisfied that these two documents contain sensitive commercial information, the disclosure of which could be harmful to the stakeholders and as such these documents are to be sealed pending further order." A copy of the Comeback Endorsement is attached hereto as **Exhibit "I"**.

#### **B. DIP Agreement Approval and DIP Charge**

37. As was demonstrated by the cash flow forecast filed with the Initial Affidavit, and is set out in the Monitor's First Report dated January 21, 2020 (the "**First Report**"), a copy of which is attached hereto as **Exhibit "J"**, at the time of the Comeback Motion, and the updated cashflows filed in respect of the March 2, 2020 motion, the Applicants identified that interim financing would be required beyond March 11, 2020.

38. The Applicants, in consultation with the Monitor, prepared an updated 13-week cash flow forecast for the period between March 6, 2020 to May 1, 2020, which illustrates that the Applicants will require financing in order to continue operations through the extension of the Stay Period to April 30, 2020.

39. As set out in the Initial Affidavit, in January 2019, certain of the Applicants' lenders, including Orion and RCF, committed to make available an additional amount of up to \$18.56

million to fund Lydian Armenia through to December 20, 2019 ("**Term Facility B**"). As of the Filing Date, approximately \$12 million has been drawn under Term Facility B.

40. The Applicants and their counsel, in consultation with the Monitor, have negotiated an amendment to the Term Facility B (as amended, the "**DIP Agreement**") pursuant to which the Applicants will obtain access to an additional amount [REDACTED] (the "**DIP Facility**") to be provided as additional draws under the Term Facility B. A copy of the unredacted DIP Agreement is attached hereto as **Confidential Exhibit "K"**.

41. Given the current structure of Term Facility B and the Cash Management System as previously described in the Initial Affidavit, funds made available through Lydian Armenia facilities are available to be transferred to and used by the Applicants. Funding for the proposed extension of the Stay Period includes a continuation of the Applicants' practice, as outlined in the Initial Affidavit, of transferring funds from Lydian Armenia (a Non-Applicant Stay Party) to Lydian International (an Applicant) pursuant to the Cash Management System, on an as-needed basis, and may include transfers from other members of the Lydian Group. In accordance with original loan structure in Term Facility B, the Applicants are not borrowers under the DIP Facility, but participate as guarantors of the DIP Facility.

42. The material terms of the DIP Agreement are set out below:

**Borrower:** Lydian Armenia;

**Lenders:** Orion, RCF and Osisko;

**Guarantors:** the Applicants, Lydian Holdings, Lydian Resources, Lydian US Corporation, Kavkaz Zoloto CJSC, Lydian Resources Georgia Limited, Lydian Resources Kosovo Limited, Georgian Resource Company LLC;

**Facility Amount:** a non-revolving credit facility up to a maximum amount of

[REDACTED]  
[REDACTED]  
[REDACTED];