

- (i) On or prior to the date that is 75 days following delivery of a Standstill Notice, the Collateral Agent may deliver a notice (an “**Extended Standstill Notice**”) to the Equipment Financier Agent of its request to extend the applicable Initial Standstill Period until the Extended Standstill Termination Date, provided that such Initial Standstill Period has not been otherwise terminated as of the date of delivery of such Extended Standstill Notice. Following receipt of such Extended Standstill Notice, the Equipment Financier Agent shall advise the Collateral Agent of any amount required to be remitted to the DSRA on account of the Extended Standstill Amount. The Collateral Agent shall, on or prior to the last day of the Initial Standstill Period, deposit the Extended Standstill Amount by wire transfer to the CAT DSRA. Upon the receipt of (i) the Extended Standstill Amount in the CAT DSRA and (ii) the Extended Standstill Notice by the Equipment Financier Agent, the applicable Standstill Period shall be deemed to be extended until the Extended Standstill Termination Date.
- (j) Except as expressly provided herein, nothing contained in this Agreement, including any provision in this Section 2.7, shall be construed as (i) restricting the right of the Equipment Financier to (x) deal with its Transaction Documents in a manner that does not constitute an Enforcement Action, or (y) take any Unrestricted Enforcement Action, or (ii) preventing the Equipment Financier Agent from drawing funds from the CAT DSRA in accordance with Section 2.7(h), purchasing insurance in respect of the Equipment Financier Collateral or making other payments to protect the Equipment Financier Collateral in accordance with the terms of the Equipment Finance Documents, even if, in any of the foregoing cases, a Standstill Notice is in effect. After the Standstill Termination Date, the Equipment Financier Agent and the Equipment Financiers may take Enforcement Action against the Equipment Financier Collateral in accordance with this Agreement.
- (k) At all times during a Standstill Period, the Collateral Agent or its Receiver shall have such rights as are accorded to it under its applicable security documents to use the Equipment Financier Collateral, provided that Lydian Armenia’s obligations under the Equipment Finance Agreement relating to the operation, maintenance, insurance and usage of the Equipment during such Standstill Period are performed in all material respects (whether by the Collateral Agent or otherwise).
- (l) Upon reasonable notice to Lydian Armenia and/or the Collateral Agent, as the case may be, the Equipment Financier Agent and/or its Receiver, as the case may be, shall have access to and, to the extent necessary or desirable (including for the purposes of appraising, evaluating or showing the Equipment to potential purchasers for the purchase of the Equipment after the expiry of the Standstill Period), Lydian Armenia and/or the Collateral Agent, as the case may be, hereby consents to and agrees to provide (to the extent applicable) and facilitate access to the Equipment at all times, whether or not a Standstill Period is in effect. Access to the Project and associated facilities by the Equipment Financier Agent and/or its Receiver, or any person representing the same, shall be subject to the following: (i) any such access shall be at the sole risk and, subject to the terms of

the Equipment Finance Agreement, expense of such person and its representatives; (ii) any such access shall not unreasonably interfere with Lydian Armenia's and/or the Other Lydian Creditors' activities and operations; (iii) such person shall comply, and request that its representatives comply, with the policies and procedures that Lydian Armenia and/or the Other Lydian Creditors apply to their own representatives; and (iv) such person shall give Lydian Armenia and the Collateral Agent prompt notice of any injuries, property damage or environmental harm that may occur during such access.

- (m) Nothing in this Section 2.7 shall relieve Lydian Armenia and Lydian from the obligations owed to the Equipment Financier under the Equipment Finance Agreement and the other Equipment Finance Documents. If Lydian Armenia or Lydian fails to honor any such obligations during a Standstill Period, nothing in this Section 2.7 shall prevent the Equipment Financier Agent from taking action it reasonably deems necessary to maintain, protect and insure the Equipment Financier Collateral, provided the Equipment Financier Collateral shall not be removed from the Project to conduct any such maintenance, protection or insurance, unless the Equipment Financier Agent reasonably deems same to be necessary to preserve the Equipment and the Collateral Agent consents thereto, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

## **2.8 Debt Service Reserve Account**

- (a) For greater certainty, the provisions of this Agreement (including Section 2.7) do not restrict the Equipment Financier Agent or the Equipment Financiers from having recourse to the funds in the CAT DSRA (up to the then applicable Maximum CAT DSRA Amount) in accordance with the Equipment Finance Documents (i) prior to the exercise of any Enforcement Action by the Equipment Financiers, solely for the purpose of servicing regularly scheduled interest and principal payments, as and when due, under the Equipment Finance Documents in accordance with Section 2.7(h), and (ii) thereafter, pursuant to the exercise of Enforcement Action by the Equipment Financiers in accordance with the Agreement.
- (b) In the event that the Equipment Financier Agent draws funds from the CAT DSRA during an Event of Default, no additional funds shall be deposited into the CAT DSRA until such Event of Default is cured or waived, except for (x) an Extended Standstill Amount deposited pursuant to Section 2.7(i) and (y) any funds that are required to be deposited in order to remedy the resulting shortfall in the funds on deposit in the CAT DSRA. In the event that any additional funds are deposited into the CAT DSRA in contravention of this Section 2.8(b), the Equipment Financier Agent and the Equipment Financiers shall have no Lien or other right or entitlement in, on or to such funds, and such funds shall not form part of the Equipment Financier Collateral but shall form part of the Collateral Agent Priority Collateral.



- (c) In the event and to the extent that, on the last day of each Fiscal Quarter (as defined in the Equipment Finance Agreement), or at any time during an Enforcement Period, the amount on deposit in the CAT DSRA exceeds the Maximum CAT DSRA Amount by an amount greater than \$50,000, Lydian Armenia shall provide the Equipment Financier Agent with prompt notice of such excess funds. Within 10 Business Days of receipt of such notice from Lydian Armenia, Lydian Armenia and the Equipment Financier Agent shall promptly instruct and authorize The Bank of Nova Scotia to transfer such excess funds from the CAT DSRA to the Lydian Armenia account specified in such instruction (which account Lydian Armenia shall ensure is subject to a blocked account agreement in favour of the Collateral Agent)
- (d) If funds are drawn from the CAT DSRA and applied to debt service obligations under the Equipment Finance Agreement during a Standstill Period which subsequently terminates without the exercise of remedies against the Collateral by the Equipment Financier Agent or the Collateral Agent, it shall be a condition of the curing of any related Event of Default under the Equipment Finance Agreement and of the Collateral Agent's ability to invoke any future Standstill Period that the CAT DSRA be topped up to an amount equal to the then applicable Debt Service Reserve Amount.

## **2.9 Enforcement Notice; Enforcement Actions**

Subject to Sections 2.7 and 2.8, each of the Equipment Financier Agent and the Collateral Agent agree not to commence any Enforcement Action (other than an Unrestricted Enforcement Action) until (i) in the case of Enforcement Action by the Equipment Financier Agent or the Equipment Financiers, at least five (5) Business Days have elapsed following the delivery of an Enforcement Notice by the Equipment Financier Agent, and (ii) in the case of Enforcement Action by the Collateral Agent, an Enforcement Notice has been given by the Collateral Agent to the Equipment Financier Agent. During an Enforcement Period, the Equipment Financier Agent and the Collateral Agent agree that:

- (a) The Collateral Agent and its Receiver, if any, may, at the Collateral Agent's option, take any action to foreclose or realize upon or enforce any of the Collateral Agent's rights and remedies with respect to the Collateral Agent Priority Collateral without the need for any consent from the Equipment Financier Agent or the Equipment Financiers and shall have the sole and exclusive right to take Enforcement Actions with respect to the Collateral Agent Priority Collateral.
- (b) Subject to Section 2.7, the Equipment Financier Agent and its Receiver, if any, may, at the Equipment Financier Agent's option, take any action to foreclose or realize upon or otherwise enforce any of the Equipment Financier Agent's rights with respect to the Equipment Financier Collateral without the need for consent from the Collateral Agent or the Other Lydian Creditors. The Equipment Financier Agent and its Receiver, if any, shall have the sole and exclusive right to take Enforcement Actions with respect to the Equipment Financier Collateral until the Equipment Finance Discharge Date, and at all times thereafter, the Collateral

Agent and its Receivers, if any, shall have the right to take Enforcement Actions with respect to the Equipment Financier Collateral.

**2.10 Purchase Rights**

The Collateral Agent or any Other Lydian Creditor may, upon notice to Lydian Armenia and to the other Other Lydian Creditors, purchase all but not less than all of the Equipment Financier Obligations upon payment to the Equipment Financier Agent of all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, the Equipment Financier Obligations, provided that such a right may only be exercised during an Equipment Financier Default Period or a Standstill Period.

**2.11 Nature of and Changes to Obligations; Amendments to Transaction Documents**

- (a) The Equipment Financier Agent acknowledges that the terms of the Other Lydian Creditor Documents may be modified, extended, amended or supplemented from time to time in accordance with the Other Lydian Creditor Documents without notice to or consent by the Equipment Financier Agent or any Equipment Financier, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (b) Subject in all cases to clause (c) below, the Collateral Agent acknowledges that the terms of the Equipment Finance Documents may be modified, extended, amended or supplemented from time to time in accordance with the Equipment Finance Documents without notice to or consent by the Collateral Agent or any Other Lydian Creditor, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (c) Lydian Armenia and Lydian agree that without the prior written consent of the Collateral Agent, no Equipment Finance Document will be modified, extended, amended or supplemented in such a manner so as to: (i) increase the principal amount of the obligations owing thereunder to an amount greater than \$65,000,000; (ii) result in the granting of any Liens in favour of the Equipment Financier Agent or the Equipment Financiers on any property of any Lydian Entity other than Equipment Financier Collateral; (iii) require or provide for the CAT DSRA to be funded in an amount in excess of the Maximum CAT DSRA Amount; (iv) accelerate the amortization of the Equipment Finance Obligations beyond the amount specified in the Equipment Finance Agreement (as it exists on the date hereof); or (v) provide for any form of financing to Lydian Armenia other than as currently contemplated by the Equipment Finance Agreement (as such agreement exists on the date hereof).
- (d) Lydian Armenia shall deliver to the Collateral Agent, forthwith upon their execution, the agreements listed in Schedule B and any material amendment, supplement or other modification to any Equipment Finance Document or any new Equipment Finance Document, provided that a failure by Lydian Armenia to provide such documents to the Collateral Agent shall not affect any of the provisions hereof or the priorities and other rights set forth herein.

- (e) Lydian Armenia shall deliver to the Equipment Financier, forthwith upon their execution, any material amendment, supplement or other modification to any Other Lydian Creditor Document or any new Other Lydian Creditor Document, provided that a failure by Lydian Armenia to provide such documents to the Equipment Financier shall not affect any of the provisions hereof or the priorities and other rights set forth herein.

**2.12 Insurance**

As between the Equipment Financier Agent and the Collateral Agent, each agrees as follows:

- (a) The Equipment Financier Agent shall have the sole and exclusive right in accordance with the terms of the Equipment Finance Documents, to adjust settlement of the relevant Equipment Financier Collateral Insurance Policy as it applies to any loss with respect to any Equipment Financier Collateral and the portion of the proceeds of each Equipment Financier Collateral Insurance Policy that relates to such Equipment Financier Collateral shall (to the extent required by the Equipment Finance Documents) be paid to the Equipment Financier Agent in accordance with the Equipment Finance Documents until the Equipment Financier Obligations have been irrevocably paid in full. Thereafter, any remaining proceeds shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (b) The Collateral Agent shall have the sole and exclusive right, in accordance with the terms of the Other Lydian Creditor Documents, to adjust settlement of the relevant Collateral Agent Priority Collateral Insurance Policy in the event of any loss with respect to any Collateral Agent Priority Collateral and the portion of the proceeds of each Collateral Agent Priority Collateral Insurance Policy that relates to such Collateral Agent Priority Collateral shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (c) For greater certainty, any payment received in respect of the proceeds of insurance relating to all or any part of the Project, including business interruption, if any (except for the proceeds described in clause (a) above) held by Lydian Armenia shall (to the extent required by the Other Lydian Creditor Documents) be applied to the Other Lydian Creditor Obligations in accordance with the Other Lydian Creditor Documents.

**2.13            Accounting**

After the commencement of an Enforcement Action by the Equipment Financier Agent or the Equipment Financiers and on a continuing basis thereafter, the Equipment Financier Agent agrees to account to the Collateral Agent as to the nature and amount of the Equipment Financier Obligations and the proceeds of any Equipment Financier Collateral sold or otherwise disposed of and the manner and effect of the application of any proceeds against the Equipment Financier Obligations.

**2.14            Notice to and Reliance on Collateral Agent**

For purposes of this Agreement only, (i) the Equipment Financier Agent shall be entitled to send notices hereunder to and to rely upon any consent or agreement of the Collateral Agent, as agent for the Other Lydian Creditors, and such notice, consent and agreement shall be binding upon the Other Lydian Creditors, and (ii) the Collateral Agent shall be entitled to send notices hereunder to and to rely upon any consent or agreement of the Equipment Financier Agent, as agent for the Equipment Financiers, and such notice, consent and agreement shall be binding upon the Equipment Financiers.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES**

**3.1            Collateral Agent Representations**

The Collateral Agent represents and warrants to the Equipment Financier Agent that:

- (a) the Collateral Agent is incorporated and existing under the laws of Bermuda and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement; and
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; the Collateral Agent has duly executed and delivered this Agreement; the Collateral Agent is authorized to execute and deliver this Agreement for and on behalf of the Other Lydian Creditors, such that this Agreement is a legal, valid and binding obligation of the Collateral Agent and the Other Lydian Creditors, enforceable against each of them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law.

**3.2            Equipment Financier Agent Representations**

The Equipment Financier Agent represents and warrants to the Collateral Agent that:

- (a) the Equipment Financier Agent is incorporated and existing under the laws of the State of Delaware and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; the Equipment Financier Agent has duly executed and delivered this Agreement; the Equipment Financier Agent is authorized to execute and deliver this Agreement for and on behalf of the Equipment Financiers, such that this Agreement is a legal, valid and binding obligation of the Equipment Financier Agent and the Equipment Financiers, enforceable against each of them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law; and
- (c) the Equipment Financier Agent and the Equipment Financiers have no guarantees from any Lydian Entity, other than the Lydian Guarantee, and no Liens on or in respect of any property of any Lydian Entity other than the Equipment Financier Collateral.

### **3.3 Lydian Armenia and Lydian Representations**

Each of Lydian Armenia and Lydian represents and warrants to the Collateral Agent and the Equipment Financier Agent that:

- (a) this Agreement is a legal, valid and binding obligation of each of them, enforceable against each of them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law;
- (b) the Equipment Financier Agent and the Equipment Financiers have no guarantees from any Lydian Entity other than the Lydian Guarantee, and no Liens on or in respect of any property of any Lydian Entity other than the Equipment Financier Collateral;
- (c) no Event of Default exists under the Other Lydian Creditor Documents or the Equipment Finance Documents;
- (d) a true and complete copy of the Credit Agreement, the Stream Agreement and any Other Lydian Creditor Document which has amended, modified or replaced any provision of either the Credit Agreement or the Stream Agreement has been provided to the Equipment Financier Agent; and
- (e) a true and complete copy of the Equipment Finance Agreement and the Lydian Guarantee has been provided to the Collateral Agent.

## **ARTICLE 4 MISCELLANEOUS**

### **4.1 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of the Province of Ontario; provided that to the extent that the laws of any jurisdiction in which Collateral is located govern the priority, attachment, perfection, and enforcement of Liens in or upon such Collateral, the local laws of such jurisdiction shall continue to govern. The parties agree that the courts of the Province of Ontario have jurisdiction to settle any disputes in connection with this Agreement and accordingly submit to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties waive objection to the courts of the Province of Ontario on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement and agree that a judgment or order of a court of the Province of Ontario in connection with this Agreement is conclusive and binding on it (subject to any rights of appeal in respect thereof) and may be enforced against it in the courts of any other jurisdiction.

### **4.2 Notices**

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile, electronic mail, or mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or e-mail communication, or five Business Days after depositing it in the mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth on Schedule A, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

### **4.3 Amendments to this Agreement; Waivers**

No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of the Collateral Agent and the Equipment Financier Agent. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties in any other respect or at any other time. Neither Lydian Armenia nor Lydian shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent that their rights, duties or obligations are directly and adversely affected thereby.

### **4.4 No Additional Rights**

Nothing in this Agreement grants or shall be interpreted as granting any rights to or for the benefit of Lydian Armenia or Lydian. Without limiting the generality of the immediately preceding sentence, if the Collateral Agent or the Equipment Financier Agent enforces its rights or remedies in violation of the terms of this Agreement, neither Lydian Armenia nor Lydian shall be entitled to use such violation as a defence to any Enforcement Action. Each of Lydian Armenia and Lydian agrees that nothing in this Agreement shall relieve them of any of their obligations under any of the Transaction Documents.

#### **4.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations, undertakings, representations and understandings.

#### **4.6 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

#### **4.7 Further Assurances**

Each party hereto agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any Creditor may reasonably request to effect the terms of this Agreement. Upon any sale of the Equipment following an Enforcement Action by the Equipment Financier Agent in accordance with this Agreement, the Collateral Agent shall, at the request and expense of the Equipment Financier Agent, promptly execute and deliver to the Equipment Financier Agent such deeds or other instruments as are provided to the Collateral Agent by the Equipment Financier Agent and are reasonably required to release the Equipment from the Collateral Agent Liens. The Collateral Agent agrees to co-operate in all reasonable steps taken by the Equipment Financier Agent in the exercise of the Equipment Financier Liens in accordance with this Agreement.

#### **4.8 Other Lydian Creditor Intercreditor Agreement**

Nothing in this Agreement shall modify, waive, amend, supersede or terminate or be paramount to any of the provisions of any Other Lydian Creditor Intercreditor Agreement as between the parties hereto (other than the Equipment Financier Agent), and as between the parties hereto (other than the Equipment Financier Agent), such Other Lydian Creditor Intercreditor Agreement shall be paramount and continue to govern rights and obligations of, and the ranking of the Liens of, the Other Lydian Creditors.

#### **4.9 Binding on Successors and Assigns**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto (and in the case of the Collateral Agent and the Equipment Financier Agent, the Creditors for whom it is acting) and their respective successors and permitted assigns. Neither Lydian Armenia nor Lydian may assign any of their respective rights or obligations hereunder without the consent of the Collateral Agent and the Equipment Financier Agent. The rights and obligations of the Collateral Agent and the Equipment Financier Agent hereunder may be assigned by the Collateral Agent and the Equipment Financier Agent in whole or in part, in accordance with their respective Transaction Documents without the consent of the other parties

hereto, provided that, any assignee shall, as a condition of any such assignment, enter into an agreement to be bound by this Agreement.

#### **4.10 Headings**

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

#### **4.11 Counterparts**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile, pdf or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

#### **4.12 Circular Priorities**

If any Person, other than the Equipment Financier Agent or the Collateral Agent, is found by a court of competent jurisdiction to have the right to any part of the Collateral in priority to the secured party (for the purposes of this paragraph, the “**Senior Creditor**”) who would, by virtue of this Agreement, be given priority in respect of such Collateral over the other secured party (for the purposes of this paragraph, the “**Subordinate Creditor**”), but is not given priority by such court in respect of such Collateral over the Subordinate Creditor, then this Agreement will not apply so as to diminish the rights (as those rights would have been but for this Agreement) of the Subordinate Creditor with respect to such Collateral unless the Senior Creditor is diligently contesting such finding and has provided the Subordinate Creditor with a satisfactory indemnity.

#### **4.13 English Language**

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only.

#### **4.14 Information Exchange**

After the occurrence and during the continuance of an Event of Default, each of Lydian Armenia and Lydian (on behalf of itself and the Other Lydian Entities) hereby consents to the Equipment Financier Agent and the Collateral Agent providing each other with such information, financial or otherwise, regarding Lydian Armenia, Lydian and the Other Lydian Entities, their affairs and the respective Obligations as may be deemed advisable by the Equipment Financier Agent and the Collateral Agent.



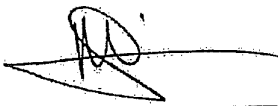
**4.15 Termination**

This Agreement shall terminate and be of no further force and effect as to all the parties hereto at such time as either: (i) all Other Lydian Creditor Obligations have been irrevocably paid in full and the commitments of the Other Lydian Creditors have been terminated; or (ii) the Equipment Financier Obligations have been irrevocably paid in full and the commitments of the Equipment Financiers have been terminated. This Agreement shall be reinstated in full if, at any time after the payment in full of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, any payment of any of such Obligations is rescinded or must otherwise be returned under applicable law by such Creditor upon the occurrence of any Creditor Proceeding with respect to Lydian Armenia or otherwise, all as though such payment had not been made.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

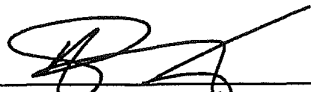
ORION CO IV (ED) LIMITED, as Collateral Agent

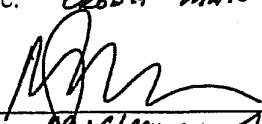
By:   
Name: MELANIE SIMONS  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name:  
Title:

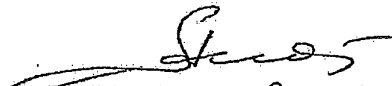
Signature Page to Intercreditor Agreement  
(Caterpillar)

**CATERPILLAR FINANCIAL SERVICES  
(UK) LIMITED, as Equipment Financier  
Agent**

By:   
Name: Ian Peck  
Title: Credit manager

By:   
Name: MICHAEL JAMES DONOHUE  
Title: CO. SEC.

**LYDIAN ARMENIA CJSC**

By:   
Name: Hayk Moryan  
Title: Managing Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LYDIAN INTERNATIONAL LIMITED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

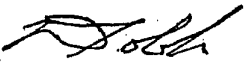
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LYDIAN ARMENIA CJSC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LYDIAN INTERNATIONAL LIMITED**

By:  \_\_\_\_\_  
Name: Douglas Tobler  
Title: CFO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE A  
NOTICES**

**Collateral Agent:**

Orion Co IV (ED) Limited  
c/o Appleby (Bermuda) Limited  
Canon's Court  
22 Victoria Street  
Hamilton HM 12  
Bermuda

Attention:    Michell James, Appleby Services (Bermuda) Ltd  
Facsimile:   (441) 298-3467

with a copy to (which shall not constitute notice):

Orion Resource Partners (USA) LP  
1211 Avenue of the Americas, Suite 3000  
New York, NY 10036

Attention:    General Counsel  
Facsimile:   (212) 596-3489  
Email:        notices@orionresourcepartners.com

**Equipment Financier:**

Caterpillar Financial Services (UK) Limited  
Friars Gate  
1011 Stratford Road  
Shirley, Solihull, West Midlands, UK B90 4BN

Attention:    Ian Preedy, Credit Manager  
Facsimile:   +44 (0) 1564 786409  
Email:        ian.preedy@cat.com

with a copy to (which shall not constitute notice):

Caterpillar Financial SARL  
Mühlebachstrasse 43  
8008 Zurich  
Switzerland

Attention:    Paola Rammal, Portfolio Manager  
Facsimile:   +1 615 341 8580  
Email:        paola.rammal@cat.com

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**Lydian Armenia or Lydian:**

c/o Lydian International Limited  
Suite 3  
5/6 Esplanade  
St. Helier, Jersey JE2 3QA  
Channel Islands

Attention: Douglas Tobler, Chief Financial Officer  
Facsimile: (303) 374-2623  
Email: [douglas.tobler@lydianinternational.co.uk](mailto:douglas.tobler@lydianinternational.co.uk)

**SCHEDULE B**  
**EQUIPMENT FINANCE SECURITY DOCUMENTS**

All capitalized terms in this Schedule B have the meanings attributed to such terms in the Equipment Financing Agreement, as it exists on the date hereof.

1. Security Agreement (Armenian);
2. Security Agreement (Ontario); and
3. Each account control agreement(s) relating to the CAT DSRA.



## FIRST AMENDMENT TO INTERCREDITOR AGREEMENT

THIS FIRST AMENDMENT TO INTERCREDITOR AGREEMENT dated as of October 16, 2018 between Orion Ob IV (EO) Limited, in its capacity as Collateral Agent for and on behalf of the Other Lydian Creditors (the "Collateral Agent"), Caterpillar Financial Services (UK) Limited, in its capacity as administrative agent and collateral agent for and on behalf of the Equipment Financiers (the "Equipment Financier Agent"), Lydian Armenia CJSC ("Lydian Armenia") and Lydian International Limited ("Lydian").

WHEREAS the Collateral Agent, the Equipment Financier Agent, Lydian Armenia and Lydian are parties to that certain Intercreditor agreement dated as of December 22, 2016 (the "Intercreditor Agreement");

AND WHEREAS, the Collateral Agent, the Equipment Financier Agent, Lydian Armenia and Lydian wish to amend the Intercreditor Agreement on the terms and conditions contained herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. Definitions: All capitalized terms not otherwise defined herein are used herein with the respective definitions given to them in the Intercreditor Agreement.

2. Amendments to the Intercreditor Agreement.

- (a) The definition of "Extended Standstill Amount" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

" "Extended Standstill Amount" means, as of the day that is 90 days (less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero) following the date of delivery of the applicable Standstill Notice, the Debt Service due and payable for the 30 day period immediately following such day."

- (b) The definition of "Extended Standstill Period" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

" "Extended Standstill Period" means the period of time from and including the date that is 90 days (less the number of days during which the Forbearance Period is or has been in effect; provided that such number may not be less than zero) after the date of delivery of the applicable Standstill Notice in accordance with the provisions hereof to and including the Extended Standstill Termination Date."

- (c) The definition of "Extended Standstill Termination Date" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

" "Extended Standstill Termination Date" means the date which is the earlier of (i) the date that is 120 days (less the number of days during which the Forbearance

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Period is or has been in effect, provided that such number may not be less than zero) after the date of delivery of the applicable Standstill Notice and (ii) any earlier or other date as the Collateral Agent and the Equipment Financier Agent may agree in writing."

- (d) The following definitions are hereby added to Section 1.1 (*Definitions*) of the Intercreditor Agreement after the definition of "Extended Standstill Termination Date":

"Forbearance Agreement" means the forbearance agreement to be entered into on or about the date hereof between Lydian Armenia, Lydian, the Equipment Financier Agent, the Other Lydian Creditors, ING Bank N.V., AB Svensk Exportkredit (publ) and Ameriabank Closed Joint-Stock Company.

"Forbearance Period" has the meaning given to it in the Forbearance Agreement.

- (e) The definition of "Initial Standstill Termination Date" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

"Initial Standstill Termination Date" means the date which is the earlier of (i) the date that is 90 days (less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero) after the date of delivery of the applicable Standstill Notice and (ii) any earlier or other date as the Collateral Agent and the Equipment Financier Agent may agree in writing."

- (f) Section 2.7(i) of the Intercreditor Agreement is hereby amended by inserting "(less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero)" after "75 days".

3. **References to the Intercreditor Agreement.** Each reference to the Intercreditor Agreement in any of the Transactions Documents (including without limitation the Equipment Finance Agreement, the Credit Agreement and the Stream Agreement) will be deemed to be a reference to the Intercreditor Agreement, as amended by this Amendment.

4. **Benefits.** This Amendment will be binding upon and will enure to the benefit of the parties and their respective successors and permitted assigns.

5. **Governing Law.** This Amendment and the rights and obligations of the parties hereunder will be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

6. **Effect.** Except as expressly herein amended, the terms and conditions of the Intercreditor Agreement and the Transaction Documents will remain in full force and effect and are hereby ratified by the parties in all respects.

7. **Counterparts and Electronic Execution.** This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and will be binding upon all parties, their successors and assigns. Delivery of an executed signature page to this

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Amendment by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Amendment by such party.

**[Signatures on Following Pages]**

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IN WITNESS WHEREOF, the parties have executed this Amendment.

LYDIAN ARMENIA CJSC

By: 

Name: João Carrêlo  
Title: Chief Executive Officer

By: \_\_\_\_\_

Name:  
Title:

LYDIAN INTERNATIONAL LIMITED

By: 

Name: Douglas Tobler  
Title: Chief Financial Officer

By: \_\_\_\_\_

Name:  
Title:

CATERPILLAR FINANCIAL SERVICES (UK)  
LIMITED, as Equipment Financier Agent

By: Clive Heath  
Name: CLIVE HENRY HEATH  
Title: MANAGING DIRECTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ORION CO IV (ED) LIMITED, as Collateral Agent

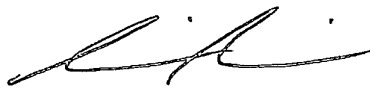
By: Sarah Pennerling  
Name: Sarah Pennerling  
Title: Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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# EXHIBIT “K”

*THIS IS EXHIBIT "K", referred to in the  
Affidavit of EDWARD A. SELLERS,  
sworn on December 22 2019.*



*Commissioner for Taking Affidavits*



## INTERCREDITOR AGREEMENT

This Intercreditor Agreement (this “**Agreement**”) is dated as of April 21, 2017

### BETWEEN:

**ORION CO IV (ED) LIMITED**, in its capacity as Collateral Agent for and on behalf of the Other Lydian Creditors (the “**Collateral Agent**”)

– and –

**AB SVENSK EXPORTKREDIT** and each other lender from time to time party to the Equipment Finance Agreement, in their capacities as secured parties under the Equipment Finance Agreement (collectively, the “**Equipment Financiers**”, and each an “**Equipment Financier**”)

– and –

**LYDIAN ARMENIA CJSC** (formerly Geoteam CJSC) (“**Lydian Armenia**”)

– and –

**LYDIAN INTERNATIONAL LIMITED** (“**Lydian**”)

### RECITALS

- (A) Lydian Armenia, Lydian, the Administrative Agent and the Lenders have entered into the Credit Agreement pursuant to which the Lenders have made available to Lydian Armenia the Facilities (as defined in the Credit Agreement) for the purpose of financing, in part, the development, construction, and working capital requirements of the Project.
- (B) Lydian Armenia, Lydian, the Purchasers and the Purchasers’ Agent have entered into the Stream Agreement pursuant to which the Purchasers have agreed to pay the Deposit (as defined in the Stream Agreement) and Lydian Armenia has committed to make specified deliveries of Refined Gold (as defined in the Stream Agreement) and Refined Silver (as defined in the Stream Agreement) to the Purchasers.
- (C) The Other Lydian Creditor Obligations are secured by the Collateral Agent Liens. The Collateral Agent holds the Collateral Agent Liens on behalf of the Other Lydian Creditors.
- (D) Lydian Armenia, Lydian, ING Bank N.V., acting as agent and security agent (in such capacity, the “**Equipment Finance Agent**”) and the Equipment Financiers are parties to a facilities agreement dated as of February 8, 2017 (the “**Equipment Finance**”)

**Agreement**") pursuant to which the Equipment Financiers have made available to Lydian Armenia an equipment loan facility in the original principal amount of up to US\$50,000,000, which loan will be used by Lydian Armenia to purchase certain equipment for the Project.

- (E) The Equipment Financier Obligations are or will be secured by the Equipment Financier Liens.
- (F) The parties hereto have agreed to enter into this Agreement to set out the relative priority of the Equipment Financier Liens and the Collateral Agent Liens and certain other rights, priorities and interests.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby irrevocably acknowledged by each party hereto, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

For the purposes of this Agreement (including the recitals), unless the context otherwise requires, each of the following terms shall have the following meanings:

**"Administrative Agent"** means Orion Co IV (ED) Limited, in its capacity as administrative agent for and on behalf of the Lenders under the Credit Agreement.

**"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday in any one of Hamilton, Bermuda, New York City, New York, Amsterdam (The Netherlands), Stockholm (Sweden) or Yerevan, Armenia, or a day on which banks are generally closed in any one of those cities.

**"Collateral"** means the Equipment Financier Collateral and the Collateral Agent Collateral, as the context requires.

**"Collateral Agent"** has the meaning given to it on the first page of this Agreement.

**"Collateral Agent Collateral"** means all of the present and after-acquired real and personal property of the Lydian Entities, and all proceeds thereof.

**"Collateral Agent Liens"** means any Liens securing the payment and performance of the Other Lydian Creditor Obligations.

**"Collateral Agent Priority Collateral"** means the Collateral Agent Collateral (other than the Equipment Financier Collateral).

**"Credit Agreement"** means the credit agreement dated November 30, 2015 between Lydian Armenia, as borrower, Lydian, as a guarantor, the Lenders and the Administrative Agent.

**“Creditor Proceeding”** means:

- (a) any dissolution, winding up, partial or total liquidation, appointment of a provisional liquidator, adjustment or readjustment of debt, reorganization, compromise, restructuring, arrangement with creditors, plan of arrangement, scheme of arrangement or compromise, proposal or similar proceedings under Insolvency Laws of or with respect to any Lydian Entity or its property or liabilities, in each case under Insolvency Laws;
- (b) any dissolution, winding up, partial or total liquidation, appointment of a provisional liquidator, adjustment or readjustment of debt, reorganization, compromise, arrangement or reconstruction with creditors, plan of arrangement, scheme of arrangement or compromise or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations owing to any or all creditors) of or with respect to any Lydian Entity or its property or liabilities;
- (c) any bankruptcy, receivership, restructuring, application or assignment in bankruptcy, or assignment for the benefit of creditors under any Insolvency Laws of or with respect to any Lydian Entity;
- (d) any marshalling of assets and liabilities of any Lydian Entity under any Insolvency Laws; or
- (e) any proceedings in relation to any of the foregoing,

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the applicable Lydian Entity.

**“Creditors”** means, collectively, the Other Lydian Creditors and the Equipment Financiers, and **“Creditor”** means any one of them.

**“Enforcement Actions”** means the exercise, by a Creditor or any agent, trustee, Receiver or other Person acting on behalf of a Creditor, of any rights or remedies against any Collateral, including any right of set-off or recoupment and any enforcement, collection, execution, levy, power of sale or foreclosure action or proceeding taken against all or any portion of the Collateral and the commencement of an involuntary Creditor Proceeding or any other legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the foregoing actions but shall not include any Unrestricted Enforcement Action.

**“Enforcement Notice”** means a written notice given by either the Collateral Agent to the Equipment Finance Agent or by the Equipment Finance Agent to the Collateral Agent, following acceleration of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, stating that it intends to initiate one or more Enforcement Actions and specifying the relevant Event of Default and the current balance of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable.

**"Enforcement Period"** means the period of time following the date of receipt by the Collateral Agent or the Equipment Finance Agent of an Enforcement Notice until either (i) the final payment or satisfaction in full of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, or (ii) the Collateral Agent and the Equipment Financiers agree in writing to terminate the Enforcement Period.

**"Equipment"** means the items of equipment specified or to be specified in the Equipment Finance Documents, together with all parts and accessories specifically therefor and replacements thereof and all additions, in each case, the acquisition of which has been financed by the Equipment Financiers.

**"Equipment Finance Agent"** has the meaning given to it in Recital (D).

**"Equipment Finance Agreement"** has the meaning given to it in Recital (D).

**"Equipment Finance Documents"** means (i) the Equipment Finance Agreement, (ii) the Lydian Guarantee and (iii) the Equipment Finance Security Documents.

**"Equipment Finance Security Documents"** means, collectively, the agreements listed in Schedule B and any other agreements, instruments or documents executed by Lydian Armenia in favour of the Equipment Financiers pursuant to which Lydian Armenia has granted one or more Liens over the Equipment Financier Collateral to secure the Equipment Financier Obligations.

**"Equipment Financier"** has the meaning given to it on the first page of this Agreement.

**"Equipment Financier Collateral"** means (i) all Equipment, whether title thereto is held by the Equipment Financiers, the Equipment Finance Agent or Lydian Armenia, (ii) all maintenance and repair contracts and service agreements in respect of the Equipment, if any, and (iii) all proceeds of the foregoing.

**"Equipment Financier Default Notice"** has the meaning given to it in Section 2.7(a).

**"Equipment Financier Default Period"** has the meaning given to it in Section 2.7(a).

**"Equipment Financier Liens"** means any Liens securing the payment and performance of the Equipment Financier Obligations.

**"Equipment Financier Obligations"** means all obligations, liabilities and indebtedness of Lydian Armenia and Lydian to the Equipment Financiers and the Equipment Finance Agent under the Equipment Finance Agreement and the other Equipment Finance Documents.

**"Event of Default"** means (i) an "Event of Default" as such term is defined in the Equipment Finance Agreement, or (ii) an "Event of Default" as such term is defined in the Other Lydian Creditor Intercreditor Agreement.

**"Governmental Authority"** means any domestic or foreign federal, provincial, regional, state, municipal or other government, governmental department, agency, authority or

body (whether administrative, legislative, executive or otherwise), court, tribunal, commission or commissioner, bureau, minister or ministry, board or agency, or other regulatory authority, including any securities regulatory authorities or stock exchange.

**"Insolvency Laws"** means the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy (Déastre) (Jersey) Law 1990*, the *Companies (Jersey) Law 1991*, the *Insolvency Act, 2003* (British Virgin Islands), the *Law of the Republic of Armenia "On Bankruptcy"*, and any similar statute or law or any corporate law in any jurisdiction dealing with bankruptcy, insolvency, liquidation, the restructuring, compromise or arrangement of debts, or analogous concepts, and including any statute or law pursuant to which proceedings may be commenced seeking to impose a stay of proceedings against creditors, seeking to approve or impose a proposal or plan of compromise or arrangement of claims of creditors, or imposing other limitations or restrictions on creditors' rights.

**"Lenders"** means Orion Co IV (ED) Limited, Resource Capital Fund VI L.P., and each other lender from time to time party to the Credit Agreement from time to time.

**"Liens"** means any security by way of an assignment, mortgage, charge, pledge of any kind, lien, encumbrance, title retention agreement (including a capital lease) or other security interest whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, perfected or not.

**"Lydian"** has the meaning given to it on the first page of this Agreement.

**"Lydian Armenia"** has the meaning given to it on the first page of this Agreement.

**"Lydian Entities"** means Lydian Armenia, Lydian and the Other Lydian Entities.

**"Lydian Guarantee"** means the guarantee included in the Equipment Finance Agreement pursuant to which Lydian guaranteed, on an unsecured basis, Lydian Armenia's obligations under the Equipment Finance Agreement.

**"Other Lydian Creditors"** means the Collateral Agent, the Administrative Agent, the Purchasers' Agent, the Lenders and the Purchasers, all represented by the Collateral Agent for the purposes hereof.

**"Other Lydian Creditor Documents"** means (i) the Credit Agreement, (ii) the Stream Agreement, (iii) the Other Lydian Creditor Intercreditor Agreement, (iv) the guarantees provided by Lydian and the Other Lydian Entities, (v) the Other Lydian Creditor Security Documents and (vi) each of the other instruments, documents, guarantees and agreements executed by or on behalf of any Lydian Entity and delivered at any time to or for the Other Lydian Creditors in connection with the Credit Agreement or the Stream Agreement.

**"Other Lydian Creditor Intercreditor Agreement"** means the intercreditor agreement dated as of December 3, 2015 among the Administrative Agent, the Purchasers' Agent, the Collateral Agent and the Lydian Entities from time to time party thereto in respect of the Other Lydian Creditor Obligations.

**"Other Lydian Creditor Obligations"** means all obligations, liabilities and indebtedness of the Lydian Entities to the Other Lydian Creditors under the Other Lydian Creditor Documents.

**"Other Lydian Creditor Security Documents"** means, collectively, any agreements, instruments or documents executed by the Lydian Entities in favour of the Collateral Agent pursuant to which the Lydian Entities have granted one or more Liens over the Collateral Agent Collateral to secure the Other Lydian Creditor Obligations.

**"Other Lydian Entities"** means all subsidiaries of Lydian from time to time party to the Other Lydian Creditor Documents (other than Lydian Armenia).

**"Person"** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**"Project"** means the Amulsar gold project located in south-central Armenia approximately 170 kilometres southeast of the capital of Yerevan and including the exploration, construction, development, mining, production, processing, recovery, sale, transportation, storage and delivery operations in respect thereof.

**"Purchasers"** means Orion Co IV (SO) Limited, Resource Capital Fund VI L.P. and each of the other purchasers from time to time party thereto, in their capacity as purchasers under the Stream Agreement.

**"Purchasers' Agent"** means Orion Co IV (SO) Limited, in its capacity as agent for and on behalf of the Purchasers under the Stream Agreement.

**"Receiver"** means any receiver, manager, receiver-manager, receiver and manager or other person exercising similar powers appointed by or at the request of a Creditor, as the context requires.

**"Standstill Event"** means any event (after giving effect to any applicable grace period) which entitles the Collateral Agent (or any Receiver appointed by it), pursuant to an Other Lydian Creditor Document, to take or maintain any Enforcement Actions.

**"Standstill Notice"** means a written notice from or on behalf of the Collateral Agent to the Equipment Finance Agent stating that the notice is a "Standstill Notice" and that either (i) it has received an Enforcement Notice from the Equipment Finance Agent, or (ii) a Standstill Event has occurred and is continuing (in which case, such notice shall include reasonable particulars of such Standstill Event).

**"Standstill Period"** means the period of time from and including the date on which a Standstill Notice was issued in accordance with the provisions hereof to and including the Standstill Termination Date.

**“Standstill Termination Date”** means the earlier of (i) the date which is 120 days after the date of delivery of the Standstill Notice, (ii) the date on which any regularly scheduled interest, principal or fee payment under the Equipment Finance Documents (excluding, for greater certainty, default interest or any interest, principal or fee amounts that may have become due and payable as a result of the acceleration of amounts due under the Equipment Finance Agreement) is not made, whether by Lydian Armenia or the Collateral Agent or (iii) such earlier or other date as the Collateral Agent and the Equipment Financiers may agree in writing.

**“Stream Agreement”** means the purchase and sale agreement (gold and silver) dated November 30, 2015 between Lydian, as a guarantor, Lydian Armenia, as seller, the Purchasers and the Purchasers’ Agent.

**“Transaction Documents”** means, collectively, the Equipment Finance Documents and the Other Lydian Creditor Documents.

**“Unrestricted Enforcement Action”** means any of: (i) the provision of any notice of an Event of Default under the Equipment Finance Agreement; (ii) the refusal to make any advance or comply with any commitment obligation under the Equipment Finance Agreement; (iii) the acceleration of any Equipment Financier Obligations (provided that, during any applicable Standstill Period, no other Enforcement Action is taken); (iv) the making of a demand with respect to any Equipment Financier Obligations (including any guarantee thereof) (provided that, during any applicable Standstill Period, no other Enforcement Action is taken); (v) the filing of a proof of claim or similar instrument with respect to any Equipment Financier Obligations; (vi) the voting of a claim with respect to any Equipment Financier Obligations in a manner not inconsistent with the terms of this Agreement; (vii) the institution of a default rate of interest; (viii) the taking of any action required to preserve the validity or (subject to the other provisions of this Agreement) priority of the Equipment Financier Obligations or any Lien in respect thereof, including the commencement or initiation of any action required to comply with statutory limitation periods (provided that such proceeding is then stayed); (ix) the filing of any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Equipment Financiers, including any claims secured by the Equipment Financier Collateral, in each case in accordance with the terms of this Agreement; and (x) sending a foreclosure notice to Lydian Armenia as required under applicable rules of Armenian law to be able to foreclose on Equipment Financier Collateral under Armenia laws provided that, during any applicable Equipment Financier Default Period or Standstill Period, no other Enforcement Action is taken.

## 1.2 Terms Generally

The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise:

- (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified, renewed or extended;
- (b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns;
- (c) the words "herein", "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- (d) any reference to "U.S. Dollars" or "US\$" or "\$" shall be construed to refer to the lawful money of the United States of America;
- (e) all references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Agreement; and
- (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## **ARTICLE 2 INTERCREDITOR AGREEMENTS**

### **2.1 Consents and Acknowledgements of Lenders**

- (a) Each Equipment Financier hereby acknowledges (a) the incurring by Lydian Armenia of the Other Lydian Creditor Obligations pursuant to the Other Lydian Creditor Documents and (b) the existence of the Other Lydian Creditor Security Documents, as granted by the Lydian Entities. Each Equipment Financier hereby confirms that such indebtedness and security is not prohibited by the Equipment Finance Documents.
- (b) The Collateral Agent hereby acknowledges and consents to (a) the incurring by Lydian Armenia and Lydian of the Equipment Financier Obligations pursuant to the Equipment Finance Documents and (b) the granting by Lydian Armenia to the Equipment Financiers of the Equipment Finance Security Documents. The Collateral Agent hereby confirms that the incurring of such indebtedness and the granting of such security are not prohibited by the Other Lydian Creditor Documents.

### **2.2 Prohibition on Contesting Liens**

Each of the Creditors agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Creditor Proceeding), the priority, validity, perfection or enforceability of any Lien in the Collateral held by the other Creditor (provided that such Lien shall have been granted to such Creditor in compliance with this Agreement), or the provisions of this Agreement; provided that nothing in



this Agreement shall be construed to prevent or impair the rights of any Creditor to enforce this Agreement.

**2.3 Limitation on Other Guarantees and Other Collateral**

- (a) The Equipment Financiers agree that they shall not directly, or through the Equipment Finance Agent, acquire or hold any guarantee of the Equipment Financier Obligations from Lydian or any of its affiliates, other than the Lydian Guarantee. Each of Lydian Armenia and Lydian agrees, for and on behalf themselves and the Other Lydian Entities, not to provide any guarantee of the Equipment Financier Obligations other than the Lydian Guarantee. If the Equipment Financiers shall (nonetheless and in breach hereof) directly, or through the Equipment Finance Agent, acquire any guarantee of the Equipment Financier Obligations other than the Lydian Guarantee, then the Equipment Financiers shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Equipment Finance Documents, release such guarantee.
- (b) The Equipment Financiers agree that they shall not directly, or through the Equipment Finance Agent, acquire or hold any Liens securing any Equipment Financier Obligations in or on any property of Lydian or any of its affiliates, other than the Equipment Financier Collateral. Each of Lydian Armenia and Lydian agrees, for and on behalf themselves and the Other Lydian Entities, not to grant any Lien securing any Equipment Financier Obligations in or on any property in favour of the Equipment Financiers or the Equipment Finance Agent other than the Equipment Financier Collateral. If the Equipment Financiers shall (nonetheless and in breach hereof) directly, or through the Equipment Finance Agent, acquire any Lien in or on any property securing any Equipment Financier Obligations other than the Equipment Financier Collateral, then the Equipment Financiers shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Equipment Finance Documents (i) hold and be deemed to have held such Lien for the benefit of the Collateral Agent and the Other Lydian Creditors as security for the Other Lydian Creditor Obligations, or (ii) release such Lien.

**2.4 Lien Priorities**

- (a) As between the Equipment Financiers and the Collateral Agent, the Liens of the Equipment Financiers and the Collateral Agent in the Collateral shall have the following relative priorities:
  - (i) the Equipment Financiers shall have a first ranking and senior Lien in or on all Equipment Financier Collateral (and no Lien on any other Collateral); and
  - (ii) the Collateral Agent shall have a first ranking and senior Lien in or on all Collateral Agent Priority Collateral and a second ranking Lien in or on all

Equipment Financier Collateral, subordinate to the Lien in favour of Equipment Financiers on the Equipment Financier Collateral.

- (b) The priorities provided for in this Agreement shall apply notwithstanding:
- (i) the priorities otherwise accorded to the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral under applicable law;
  - (ii) the time of creation, granting, execution, delivery, attachment, registration, perfection or enforcement of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral;
  - (iii) that any of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral shall be defective, unperfected or unenforceable for any reason whatsoever;
  - (iv) the time of crystallization of any floating charge in or on the Equipment Financier Collateral and the Collateral Agent Collateral;
  - (v) the provisions of the Equipment Finance Documents or the Other Lydian Creditor Documents;
  - (vi) any forbearance whatsoever, whether as to time, performance, or otherwise or any release, discharge, loss or alteration in or dealing with all or any part of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral or any part thereof;
  - (vii) any failure or delay in giving any notice required under this Agreement;
  - (viii) any invalidity or unenforceability of, or any limitation on, the liability of Lydian Armenia or Lydian;
  - (ix) any defence, compensation, set-off or counterclaim which Lydian Armenia or Lydian may have or assert;
  - (x) any Creditor Proceedings;
  - (xi) the date of incurrence of the Equipment Financier Obligations or the Other Lydian Creditor Obligations or any portion thereof;
  - (xii) any priority granted by any principle of law or any statute; or
  - (xiii) any other matter whatsoever.

## **2.5 Distribution of Proceeds of Collateral**

As between the Equipment Financiers and the Collateral Agent:

- (a) All proceeds of Equipment Financier Collateral shall be paid to the Equipment Finance Agent for application to the Equipment Financier Obligations and after

the indefeasible payment in full of the Equipment Financier Obligations and the termination of any Equipment Financiers commitments, any residual proceeds of the Equipment Financier Collateral shall be paid to the Collateral Agent for application to the Other Lydian Creditor Obligations, if any. Thereafter, any residual proceeds shall be paid to Lydian Armenia or as required by applicable law.

- (b) All proceeds of Collateral Agent Priority Collateral shall be paid pursuant to the Other Lydian Creditor Intercreditor Agreement for application to the Other Lydian Creditor Obligations and after the indefeasible payment in full of the Other Lydian Creditor Obligations, any residual proceeds of the Collateral Agent Priority Collateral shall be paid to Lydian Armenia or as required by applicable law. Subject to Section 2.7(f), the Equipment Financiers and the Equipment Finance Agent shall have no claim to the proceeds of the Collateral Agent Priority Collateral.

## **2.6 Payments Over in Violation of Agreement**

If any Equipment Financier (or the Equipment Finance Agent on their behalf) or any Other Lydian Creditor accepts or receives proceeds of Collateral in contravention of this Agreement (to the extent in excess of its entitlements hereunder), it shall receive the same in trust and as agent for the party entitled thereto. Such proceeds shall be segregated and forthwith paid over to the party entitled thereto in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be distributed in accordance with Section 2.5.

## **2.7 Option to Cure and Standstill**

- (a) The Equipment Financiers hereby irrevocably grant to the Collateral Agent and the Other Lydian Creditors (for such purposes, acting jointly and not individually) the option (which may be exercised only once per calendar year) to cure any Event of Default under the Equipment Finance Agreement or any other Equipment Finance Document which is capable of being cured. Simultaneously with the delivery of a copy of a written notice of the occurrence of such Event of Default from the Equipment Finance Agent to Lydian Armenia, the Equipment Financiers will cause a copy of such notice to be provided to the Collateral Agent (an "**Equipment Financier Default Notice**"). The Equipment Financiers agree that the Collateral Agent and the Other Lydian Creditors (acting together) shall have the right (which may be exercised only once per calendar year), but not the obligation, to cure the applicable Event of Default (including, in respect of any Event of Default that is triggered by cross-default with any default under any Other Lydian Creditor Documents, by way of cure by the Borrower or waiver of that default by the Collateral Agent or Other Lydian Creditors) within a period of thirty (30) days following its receipt of the Equipment Financier Default Notice to the extent such Event of Default is capable of being cured (the "**Equipment Financier Default Period**") so long as during such Equipment Financier Default Period, all amounts then due and owing to the Equipment Financiers pursuant to the Equipment Finance Agreement on account of regularly scheduled interest,

principal and fee payments (but, for greater certainty, excluding any amounts owing on account of default interest or as a result of any acceleration thereunder) are paid (whether by the Collateral Agent or otherwise). Lydian Armenia and the Collateral Agent agree with each other that the Collateral Agent or any Other Lydian Creditor may take steps to cure such an Event of Default immediately upon receipt of the Equipment Financier Default Notice, and that any monies which the Collateral Agent expends to cure such Event of Default shall be fully reimbursed by Lydian Armenia pursuant to the Other Lydian Creditor Interc Creditor Agreement, and shall form part of the obligations secured under the Collateral Agent Liens. The cure of such Event of Default under the Equipment Finance Agreement or the applicable Equipment Finance Document by the Collateral Agent or an Other Lydian Creditor shall be deemed to be a cure of such Event of Default by Lydian Armenia pursuant to the terms of the Equipment Finance Agreement or applicable Equipment Finance Document. No termination of the Equipment Finance Documents during an Equipment Financier Default Period shall be effective, and the Equipment Finance Agent shall not be entitled to issue an Enforcement Notice unless the Equipment Finance Agent shall have provided to the Collateral Agent the Equipment Financier Default Notice and the Collateral Agent or the Other Lydian Creditors, as the case may be, shall have failed to exercise the right under this Section 2.7(a) to cure the relevant Event of Default within the applicable Equipment Financier Default Period. Notwithstanding the preceding sentence, the Equipment Finance Agent shall be entitled to issue an Enforcement Notice five (5) Business Days prior to the end of the Equipment Financier Default Period (which such period shall constitute the five (5) Business Day notice period provided for in Section 2.7(b) and Section 2.8), but shall not be entitled to commence any Enforcement Action prior to the expiry of the Equipment Financier Default Period. For the avoidance of doubt, the Equipment Financiers shall be entitled to take any Unrestricted Enforcement Action (other than an action referred to in clause (iii) or (iv) of such definition) during an Equipment Financier Default Period. The limitation contained in this Section 2.7(a) on the exercise of the cure right only once per calendar year shall not be applicable in the case of an Event of Default triggered by cross-default with any default under any Other Lydian Credit Document.

- (b) The Collateral Agent may send a Standstill Notice to the Equipment Finance Agent (i) within the five (5) Business Day notice period after delivery of an Enforcement Notice by the Equipment Finance Agent and prior to an Enforcement Action by or on behalf of the Equipment Financiers, as provided for in Section 2.8, or (ii) at any time after the occurrence of a Standstill Event. If the Collateral Agent does not deliver a Standstill Notice to the Equipment Finance Agent within five (5) Business Days of the delivery by the Equipment Finance Agent of an Enforcement Notice, then the Collateral Agent shall no longer be entitled to issue a Standstill Notice unless the Equipment Financiers do not pursue or decide to abandon the Enforcement Action which was the subject of such Enforcement Notice.
- (c) From and after the date of receipt by the Equipment Finance Agent of any Standstill Notice from the Collateral Agent in accordance with (b) above and until

the Standstill Termination Date, the Equipment Financiers will not commence directly or indirectly, any Enforcement Action (except for any Unrestricted Enforcement Action) in relation to the Equipment Financier Collateral; provided that this Section 2.7(c) shall not prevent the Equipment Financiers from purchasing insurance in respect of the Equipment Financier Collateral or making other payments to protect the Equipment Financier Collateral in accordance with the terms of the Equipment Finance Agreement or the other Equipment Finance Documents or take any Unrestricted Enforcement Action, even if a Standstill Notice is in effect. After the Standstill Termination Date (or if no Standstill Period is initiated by the Collateral Agent following delivery of an Enforcement Notice from the Equipment Finance Agent in accordance with Section 2.7(b)), the Equipment Financiers may take Enforcement Action against the Equipment Financier Collateral in accordance with this Agreement.

- (d) At all times during a Standstill Period, the Collateral Agent or its Receiver shall have such rights as are accorded to it under its security documents and applicable law to use the Equipment Financier Collateral, provided that it shall be a condition of such use that Lydian Armenia's obligations under the Equipment Finance Agreement relating to the operation, maintenance, insurance and usage of the Equipment during such Standstill Period are performed (whether by the Collateral Agent or otherwise).
- (e) At all times, upon reasonable notice to Lydian Armenia and/or the Collateral Agent, as the case may be, the Equipment Financiers, the Equipment Finance Agent and/or their Receiver, as the case may be, shall have access to and, to the extent necessary or desirable (including for the purposes of appraising, evaluating or showing the Equipment to potential purchasers for the purchase of the Equipment after the expiry of the Standstill Period, if applicable), Lydian Armenia and/or the Collateral Agent, as the case may be, hereby consents to and agrees to provide (to the extent applicable) and facilitate access to the Equipment at all times, whether or not a Standstill Period is in effect. Access to the Project and associated facilities by the Equipment Financiers and/or their Receiver, or any person representing the same, shall be subject to the following: (i) any such access shall be at the sole risk and, subject to the terms of the Equipment Finance Agreement, expense of such person and its representatives; (ii) any such access shall not unreasonably interfere with Lydian Armenia's and/or the Other Lydian Creditors' activities and operations; (iii) such person shall comply, and request that its representatives comply, in all material respects with the policies and procedures that Lydian Armenia and/or the Other Lydian Creditors apply to their own representatives provided that a written copy of such policies and procedures have been provided to the Equipment Financiers prior to such access; and (iv) such person shall give Lydian Armenia and the Collateral Agent prompt notice of any injuries, property damage or environmental harm that may occur during such access.
- (f) Nothing in this Section 2.7 shall relieve Lydian Armenia and Lydian from the obligations owed to the Equipment Financiers and the Equipment Finance Agent under the Equipment Finance Agreement and the other Equipment Finance

Documents (including, for greater certainty, all of its payment obligations under the Equipment Finance Documents). If Lydian Armenia or Lydian fails to honor any such obligations during a Standstill Period, nothing in this Section 2.7 shall prevent the Equipment Financiers and the Equipment Finance Agent from taking action they reasonably deem necessary to maintain, protect and insure the Equipment Financier Collateral, provided the Equipment Financier Collateral shall not be removed from the Project to conduct any such maintenance, protection or insurance. In addition, no provision in this Agreement shall affect any claim that the Equipment Financiers and the Equipment Finance Agent may have against Lydian or Lydian Armenia (including, following payment in full of all Other Lydian Creditor Obligations, to any remaining proceeds of any Collateral Agent Priority Collateral) for any unsatisfied Equipment Financier Obligations.

## **2.8 Enforcement Notice; Enforcement Actions**

Subject to Section 2.7, the Equipment Financiers and the Collateral Agent agree not to commence (and in the case of the Equipment Financiers, shall not permit or instruct the Equipment Finance Agent to commence) any Enforcement Action until (i) in the case of Enforcement Action by or on behalf of the Equipment Financiers, (A) prior to the expiry of the Standstill Period hereunder, at least five (5) Business Days have elapsed following the delivery of an Enforcement Notice by the Equipment Finance Agent to the Collateral Agent, or (B) following expiry of the Standstill Period hereunder, an Enforcement Notice has been delivered by the Equipment Finance Agent to the Collateral Agent, and (ii) in the case of Enforcement Action by the Collateral Agent, an Enforcement Notice has been delivered by the Collateral Agent to the Equipment Finance Agent. During an Enforcement Period, the Equipment Financiers and the Collateral Agent agree that:

- (a) the Collateral Agent and its Receiver, if any, may, at the Collateral Agent's option, take any action to foreclose or realize upon or enforce any of the Collateral Agent's rights and remedies with respect to the Collateral Agent Priority Collateral without the need for any consent from the Equipment Financiers and shall have the sole and exclusive right to take Enforcement Actions with respect to the Collateral Agent Priority Collateral; and
- (b) subject to Section 2.7, the Equipment Financiers, the Equipment Finance Agent and their Receiver, if any, may, at the Equipment Financiers' option, take any action to foreclose or realize upon or otherwise enforce any of the Equipment Financiers' rights with respect to the Equipment Financier Collateral without the need for consent from the Collateral Agent or the Other Lydian Creditors. The Equipment Financiers, the Equipment Finance Agent and their Receiver, if any, shall have the sole and exclusive right to take Enforcement Actions with respect to the Equipment Financier Collateral until the Equipment Financier Obligations are paid in full and any Equipment Financiers commitments have been terminated and at all times thereafter, the Collateral Agent and its Receivers, if any, shall have the right to take Enforcement Actions with respect to the Equipment Financier Collateral.

## **2.9 Purchase Rights**

The Collateral Agent or any Other Lydian Creditor may, upon notice to Lydian Armenia and to the other Lydian Creditors, purchase all but not less than all of the Equipment Financier Obligations upon payment to the Equipment Finance Agent (on behalf of the Equipment Financiers) of all principal of, and all accrued and unpaid interest, fees, expenses and other amounts due and owing under the Equipment Finance Documents in respect of the Equipment Financier Obligations, provided that such a right may only be exercised during an Equipment Financier Default Period or a Standstill Period.

## **2.10 Insurance**

As between the Equipment Financiers and the Collateral Agent, each agrees as follows:

- (a) The Equipment Financiers shall have the sole and exclusive right in accordance with the terms of the Equipment Finance Documents, to adjust settlement of the relevant insurance policy in the event of any loss with respect to any Equipment Financier Collateral and the proceeds of each insurance policy covering any Equipment Financier Collateral shall (to the extent required by the Equipment Finance Documents) be paid to the Equipment Financiers in accordance with the Equipment Finance Documents until the Equipment Financier Obligations have been irrevocably paid in full and the Equipment Financiers commitments have been terminated in full. Thereafter, any remaining proceeds shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (b) The Collateral Agent shall have the sole and exclusive right, in accordance with the terms of the Other Lydian Creditor Documents, to adjust settlement of the relevant insurance policy in the event of any loss with respect to any Collateral Agent Priority Collateral and the proceeds of each insurance policy covering any Collateral Agent Priority Collateral shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (c) For greater certainty, any payment received in respect of the proceeds of insurance relating to all or any part of the Project, including business interruption, if any (except for the proceeds described in clause (a) above) held by Lydian Armenia shall (to the extent required by the Other Lydian Creditor Documents) be applied to the Other Lydian Creditor Obligations in accordance with the Other Lydian Creditor Documents.
- (d) None of the foregoing (or any other provision in this Agreement) shall affect any claim that the Equipment Financiers may have against Lydian or Lydian Armenia (including, following payment in full of all Other Lydian Creditor Obligations, to any remaining proceeds of any insurance policy covering Collateral Agent Priority Collateral) for any unsatisfied Equipment Financier Obligations.

## **2.11 Accounting**

After the commencement of an Enforcement Action by or on behalf of the Equipment Financiers and on a continuing basis thereafter until such Enforcement Action is completed or abandoned, the Equipment Financiers agree to account to the Collateral Agent as to the nature and amount of the Equipment Financier Obligations and the proceeds of any Equipment Financier Collateral sold or otherwise disposed of and the manner and effect of the application of any proceeds against the Equipment Financier Obligations.

## **2.12 Notice to and Reliance on Agents**

- (a) For purposes of this Agreement only, the Equipment Financiers shall be entitled to send notices hereunder to and to rely upon any consent or agreement of the Collateral Agent, as agent for the Other Lydian Creditors, and such notice, consent and agreement shall be binding upon the Other Lydian Creditors.
- (b) Each of the Collateral Agent, Lydian Armenia and Lydian acknowledges and agrees that the Equipment Finance Agent (or any affiliate thereof) may from time to time act as the agent for the Equipment Financiers in relation to this Agreement for the purposes of, amongst others: (i) providing and (where the other parties hereto have been so directed) receiving any notice or other communication, (ii) exercising any rights of the Equipment Financiers under this Agreement and/or (iii) performing any obligations of the Equipment Financiers under this Agreement, but without in any manner releasing the Equipment Financiers from any of their obligations hereunder. Any Equipment Finance Agent which may act as agent for the Equipment Financiers in relation to this Agreement shall sign an agreement, substantially in the form attached hereto as Schedule C, agreeing to be bound by the provisions applicable to an Equipment Finance Agent in this Agreement.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

### **3.1 Collateral Agent Representations**

The Collateral Agent represents and warrants to the Equipment Financiers that:

- (a) the Collateral Agent is incorporated and existing under the laws of Bermuda and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement; and
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; it has duly executed and delivered this Agreement; the Collateral Agent is authorized to execute and deliver this Agreement for and on behalf of all the Other Lydian Creditors and to bind each Other Lydian Creditor pursuant to the provisions of this Agreement, such that this Agreement is a legal, valid and binding obligation of the Collateral Agent and the Other Lydian Creditors, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization,



moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law; and

- (c) the Collateral Agent holds the Collateral Agent Liens on behalf of all Other Lydian Creditors.

### **3.2 Equipment Financier Representations**

Each Equipment Financier represents and warrants to the Collateral Agent that:

- (a) such Equipment Financier is formed and existing under the laws of jurisdiction of formation and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; it has duly executed and delivered this Agreement, and this Agreement is a legal, valid and binding obligation of such Equipment Financier, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law; and
- (c) such Equipment Financier has no guarantees from any Lydian Entity, other than the Lydian Guarantee, and no Liens on or in respect of any property of any Lydian Entity other than Equipment Financier Collateral.

### **3.3 Lydian Armenia and Lydian Representations**

Each of Lydian Armenia and Lydian represents and warrants to the Collateral Agent and the Equipment Financiers that:

- (a) this Agreement is a legal, valid and binding obligation of each of them, enforceable against each of them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law; and
- (b) no Equipment Financier has any guarantees from any Lydian Entity other than the Lydian Guarantee, and no Liens on or in respect of any property of any Lydian Entity other than Equipment Financier Collateral; and
- (c) a true and complete copy of (i) each Other Lydian Creditor Document entered into as of the date hereof has been provided to the Equipment Financiers and (ii) each Equipment Finance Document entered into as of the date hereof has been provided to the Collateral Agent.

## **ARTICLE 4 MISCELLANEOUS**

### **4.1 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein; provided that to the extent that the laws of any jurisdiction in which Collateral is located govern the priority, attachment, perfection, and enforcement of Liens in or upon such Collateral, the local laws of such jurisdiction shall continue to govern. The parties agree that the courts of the Province of Ontario have jurisdiction to settle any disputes in connection with this Agreement and accordingly submit to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties waive objection to the courts of the Province of Ontario on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement and agree that a judgment or order of a court of the Province of Ontario in connection with this Agreement is conclusive and binding on it (subject to any rights of appeal in respect thereof) and may be enforced against it in the courts of any other jurisdiction.

### **4.2 Notices**

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile, electronic mail, or mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or e-mail communication, or five Business Days after depositing it in the mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto (and the Equipment Finance Agent) shall be as set forth on Schedule A, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

### **4.3 Nature of and Changes to Obligations; Amendments to Transaction Documents**

- (a) Each Equipment Financier acknowledges that the terms of the Other Lydian Creditor Documents may be modified, extended, amended or supplemented from time to time in accordance with the Other Lydian Creditor Documents without prior written notice to or consent by the Equipment Financiers, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (b) Subject to Section 4.3(e), the Collateral Agent, for and on behalf of the Other Lydian Creditors, acknowledges that the terms of the Equipment Finance Documents may be modified, extended, amended or supplemented from time to time in accordance with the Equipment Finance Documents then in effect without prior written notice to or consent by the Collateral Agent or any Other Lydian Creditor, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (c) Lydian Armenia shall deliver to the Collateral Agent, forthwith upon their execution, any material amendment, supplement or other modification to any Equipment Finance Document or any new Equipment Finance Document,

provided that a failure by Lydian Armenia to provide such documents to the Collateral Agent shall not affect any of the provisions hereof or the priorities and other rights set forth herein.

- (d) Lydian Armenia shall deliver to the Equipment Finance Agent, forthwith upon their execution, any material amendment, supplement or other modification to any Other Lydian Creditor Document or any new Other Lydian Creditor Document, provided that a failure by Lydian Armenia to provide such documents to the Equipment Finance Agent shall not affect any of the provisions hereof or the priorities and other rights set forth herein.
- (e) Lydian and Lydian Armenia agree that, without the prior written consent of the Collateral Agent, no Equipment Finance Document will be modified, extended, amended or supplemented in such a manner so as to: (i) increase the principal amount of the obligations owing thereunder to an amount greater than \$50,000,000; (ii) result in the granting of any Liens in favour of the Equipment Financiers or the Equipment Finance Agent on any property of any Lydian Entity other than Equipment Financier Collateral; (iii) accelerate the amortization of the Equipment Finance Obligations beyond the amount specified in the Equipment Finance Agreement as it exists on the date hereof; or (iv) provide for any form of financing to Lydian Armenia other than as currently contemplated by the Equipment Finance Agreement (as such agreement exists on the date hereof).

#### **4.4 Amendments to this Agreement; Waivers**

No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of the Collateral Agent and the Equipment Financiers. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties in any other respect or at any other time. Neither Lydian Armenia nor Lydian shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent that their rights, duties or obligations are directly and adversely affected thereby.

#### **4.5 No Additional Rights**

Nothing in this Agreement grants or shall be interpreted as granting any rights to or for the benefit of Lydian Armenia or Lydian. Without limiting the generality of the immediately preceding sentence, if the Collateral Agent or the Equipment Financiers enforce their rights or remedies in violation of the terms of this Agreement, neither Lydian Armenia nor Lydian shall be entitled to use such violation as a defence to any Enforcement Action. Each of Lydian Armenia and Lydian agrees that nothing in this Agreement shall relieve them of any of their obligations under any of the Transaction Documents.

#### **4.6 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations, undertakings, representations and understandings.

#### **4.7 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

#### **4.8 Further Assurances**

Each party hereto agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any Creditor may reasonably request to effect the terms of this Agreement.

#### **4.9 Other Lydian Creditor Intercreditor Agreement**

Nothing in this Agreement shall modify, waive, amend, supersede or terminate or be paramount to any of the provisions of any Other Lydian Creditor Intercreditor Agreement as between the parties hereto (other than the Equipment Financiers), and as between the parties hereto (other than the Equipment Financiers), such Other Lydian Creditor Intercreditor Agreement shall be paramount and continue to govern rights and obligations of, and the ranking of the Liens of, the Other Lydian Creditors.

#### **4.10 Binding on Successors and Assigns**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto (and (i) in the case of the Collateral Agent, the Creditors for whom it is acting and (ii) in the case of the Equipment Financiers, the Equipment Finance Agent) and their respective successors and permitted assigns. Neither Lydian Armenia nor Lydian may assign any of their respective rights or obligations hereunder without the consent of the Collateral Agent and the Equipment Financiers. The rights and obligations of the Collateral Agent and the Equipment Financiers hereunder may be assigned by the Collateral Agent and the Equipment Financiers, as the case may be, in whole or in part, in accordance with their respective Transaction Documents without the consent of the other parties hereto, provided that, any assignee shall, as a condition of any such assignment, enter into an agreement to be bound by this Agreement.

#### **4.11 Headings**

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

#### **4.12 Counterparts**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile, pdf or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

#### **4.13 Circular Priorities**

If any Person, other than the Equipment Financiers (or the Equipment Finance Agent on their behalf) or the Collateral Agent, is found by a court of competent jurisdiction to have the right to any part of the Collateral in priority to the secured party (for the purposes of this paragraph, the “**Senior Creditor**”) who would, by virtue of this Agreement, be given priority in respect of such Collateral over the other secured party (for the purposes of this paragraph, the “**Subordinate Creditor**”), but is not given priority by such court in respect of such Collateral over the Subordinate Creditor, then this Agreement will not apply so as to diminish the rights (as those rights would have been but for this Agreement) of the Subordinate Creditor with respect to such Collateral unless the Senior Creditor is diligently contesting such finding and has provided the Subordinate Creditor with a satisfactory indemnity.

#### **4.14 English Language**

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only.

#### **4.15 Information Exchange**

After the occurrence and during the continuance of an Event of Default, each of Lydian Armenia and Lydian (on behalf of itself and on behalf of the Other Lydian Entities) hereby consents to the Equipment Financiers (and the Equipment Finance Agent on their behalf) and the Collateral Agent providing each other with such information, financial or otherwise, regarding Lydian Armenia, Lydian and the Other Lydian Entities, their affairs and the respective Obligations as may be deemed advisable by the Equipment Financiers and the Collateral Agent.

#### **4.16 Termination**

This Agreement shall terminate and be of no further force and effect as to all the parties hereto at such time as either: (i) all Other Lydian Creditor Obligations have been irrevocably paid in full and the Other Lydian Creditor commitments have been terminated; or

(ii) the Equipment Financier Obligations have been irrevocably paid in full and the Equipment Financiers commitments have been terminated. This Agreement shall be reinstated in full if, at any time after the payment in full of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, any payment of any of such Obligations is rescinded or must otherwise be returned under applicable law by such Creditor upon the occurrence of any Creditor Proceeding with respect to Lydian Armenia or otherwise, all as though such payment had not been made.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ORION CO IV (ED) LIMITED, as Collateral Agent



By: \_\_\_\_\_

Name: MELANIE SIMONS

Title: Authorized Signatory

By: \_\_\_\_\_

Name:

Title:

AB SVENSK EXPORTKREDIT, as  
Equipment Financier

By: Klas Linköping  
Name: Klas Linköping  
Title: Director

By: Eva Ohlsson  
Name: Eva Ohlsson  
Title: Director

*Signature Page to SEK Intercreditor Agreement*



LYDIAN ARMENIA CJSC

By: Armen Martirosyan  
Name:  
Title: *Finance Manager*

By: \_\_\_\_\_  
Name:  
Title:

LYDIAN INTERNATIONAL LIMITED

By: D. Tobler  
Name: *Douglas L. Tobler*  
Title: *CEO*

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A  
NOTICES**

**Collateral Agent:**

Orion Co IV (ED) Limited  
c/o Appleby (Bermuda) Limited  
Canon's Court  
22 Victoria Street  
Hamilton HM 12  
Bermuda

Attention: Michell James, Appleby Services (Bermuda) Ltd  
Facsimile: (441) 298-3467

with a copy to (which shall not constitute notice):

Orion Resource Partners (USA) LP  
1211 Avenue of the Americas, Suite 3000  
New York, NY 10036

Attention: General Counsel  
Facsimile: (212) 596-3489  
Email: [notices@orionresourcepartners.com](mailto:notices@orionresourcepartners.com)

**Equipment Financiers:**

AB Svensk Exportkredit  
Klarabergsviadukten 61-63  
Stockholm, Sweden  
101-23

Attention: Mr. Per Edlund  
Facsimile: +46 8 20 38 94  
Email: [Per.Edlund@sek.se](mailto:Per.Edlund@sek.se)

**Equipment Finance Agent:**

ING Bank N.V.  
Bijlmerplein 888, 1102 MG Amsterdam  
P.O. Box 1800, 1000 BV Amsterdam  
Location code AMP E.04.042

Attention: Eugène Kock, Director, Lending Services / Structured Export Finance  
Facsimile: +31 20 565 8209  
Email: [eugene.kock@ingbank.com](mailto:eugene.kock@ingbank.com)

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**Lydian Armenia or Lydian:**

c/o Lydian International Limited  
Suite 3  
5/6 Esplanade  
St. Helier, Jersey JE2 3QA  
Channel Islands

Attention: Douglas Tobler, Chief Financial Officer  
Facsimile: (303) 374-2623  
Email: [douglas.tobler@lydianinternational.co.uk](mailto:douglas.tobler@lydianinternational.co.uk)

**SCHEDULE B**  
**EQUIPMENT FINANCE SECURITY DOCUMENTS**

1. Pledge over equipment.

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**SCHEDULE C**  
**FORM OF AGREEMENT TO BE BOUND**

**AGREEMENT TO BE BOUND**

The undersigned may from time to time act as agent for the Equipment Financiers (as defined in the Intercreditor Agreement (as defined below)) for purposes of the Intercreditor Agreement dated as of April \_\_\_\_, 2017 (as amended, restated, supplement or otherwise modified from time to time, the “**Intercreditor Agreement**” (terms used without definition herein have the meanings assigned to such terms by the Intercreditor Agreement)) among, *inter alia*, Orion Co IV (ED) Limited, as Collateral Agent, AB Svensk Exportkredit and each other person from time to time party to the Equipment Finance Agreement, as Equipment Financiers, Lydian Armenia cjsc and Lydian International Limited.

In consideration of the foregoing, the undersigned hereby:

- (i) represents that it is authorized to sign this Agreement to be Bound and to act as the Equipment Finance Agent for the Equipment Financiers under the Intercreditor Agreement from time to time;
- (ii) acknowledges that it has received a copy of the Intercreditor Agreement; and
- (iii) accepts and acknowledges the terms of the Intercreditor Agreement applicable to it and the Equipment Financiers and irrevocably agrees on its own behalf (x) to be bound by the terms of the Intercreditor Agreement as fully as if it had been a party to the Intercreditor Agreement on the effective date thereof, and (ii) to take (or not to take) such actions and do (or not do) such things as are delegated to the Equipment Finance Agent by the terms of the Intercreditor Agreement.

Any notice to the Equipment Finance Agent under the Intercreditor Agreement shall be given as follows:

[Name of Equipment Finance Agent]

[Address]

Attention:

Facsimile:

Email:

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be Bound to be duly executed by its authorized officer as of [■].

[■], as Equipment Finance Agent

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged by:

ORION CO (IV) ED LIMITED,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

37225-2019 23282267.4

## FIRST AMENDMENT TO INTERCREDITOR AGREEMENT

**THIS FIRST AMENDMENT TO INTERCREDITOR AGREEMENT** dated as of October 31, 2018 between Orion Co IV (ED) Limited, in its capacity as Collateral Agent for and on behalf of the Other Lydian Creditors (the "**Collateral Agent**"), AB Svensk Exportkredit (publ) ("**SEK**"), Lydian Armenia CJSC ("**Lydian Armenia**") and Lydian International Limited ("**Lydian**").

**WHEREAS** the Collateral Agent, SEK, Lydian Armenia and Lydian are parties to that certain intercreditor agreement dated as of April 21, 2017 (the "**Intercreditor Agreement**");

**AND WHEREAS**, the Collateral Agent, SEK, Lydian Armenia and Lydian wish to amend the Intercreditor Agreement on the terms and conditions contained herein;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein are used herein with the respective definitions given to them in the Intercreditor Agreement.

2. **Amendments to the Intercreditor Agreement.**

(a) The following definitions are hereby added to Section 1.1 (*Definitions*) of the Intercreditor Agreement after the definition of "Event of Default":

"**Forbearance Agreement**" means the forbearance agreement to be entered into on or about the date hereof between Lydian Armenia, Lydian, the Other Lydian Creditors, ING Bank N.V., SEK, Caterpillar Financial Services (UK) Limited and Ameriabank Closed Joint-Stock Company.

"**Forbearance Period**" has the meaning given to it in the Forbearance Agreement.

(b) The definition of "Standstill Termination Date" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

"**Standstill Termination Date**" means the earlier of (i) the date which is 90 days (less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero) after the date of delivery of the Standstill Notice; provided that if, on or prior to the date that is 75 (less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero) days following delivery of the Standstill Notice, the Collateral Agent shall deliver a notice to the Equipment Finance Agent and Caterpillar Financial Services (UK) Limited requesting that each of their initial 90-day standstill period be extended for an additional 30 days, the Standstill Termination Date shall be the date which is 120 days (less the number of days during which the Forbearance Period is or has been in effect, provided that such number may not be less than zero) after the date of delivery of the Standstill Notice, (ii) the date on which any regularly scheduled interest, principal or fee payment under the Equipment Finance Documents (excluding, for greater certainty, default interest or any interest, principal or fee amounts that may have become due

and payable as a result of the acceleration of amounts due under the Equipment Finance Agreement) is not made, whether by Lydian Armenia or the Collateral Agent or (iii) such earlier or other date as the Collateral Agent and the Equipment Financiers may agree in writing."

- (c) The Intercreditor Agreement is hereby amended by inserting the following as paragraph (g) at the end of Section 2.7 (*Options to Cure and Standstill*) of the Intercreditor Agreement:

"(g) Each of the Collateral Agent, the Other Lydian Creditors and Lydian Armenia agree that:

(i) the Specified Events of Default (as defined in the Forbearance Agreement) described under the section entitled SEK Agreement in Exhibit "A" of the Forbearance Agreement (the "**SEK Specified Events of Default**") are not capable of being cured as contemplated in Section 2.7(a) of this Intercreditor Agreement (and, for greater certainty, in the case of SEK Specified Events of Default, the Equipment Financier Default Period shall be deemed to be zero and the applicability of the Equipment Financier Default Notice and the Equipment Financier Default Period shall be waived in all respects);

(ii) the Equipment Finance Agent shall be deemed to have issued an Enforcement Notice five (5) Business Days prior to the expiry of the Forbearance Period (in the event that the Forbearance Period terminates pursuant to clause (i) of such definition), unless the Equipment Financiers and the Equipment Finance Agent agree in writing that such Enforcement Notice shall not have been deemed to have been issued, and the Collateral Agent may send a Standstill Notice to the Equipment Finance Agent during such period; and

(iii) in the event that the Forbearance Period terminates pursuant to clause (iv) of such definition, the five (5) Business Day period contemplated in Section 2.7(b) of the Intercreditor Agreement shall be reduced by the number of Business Days included in the 3-day notice period provided for in clause (iv) of the definition of Forbearance Period."

3. **References to the Intercreditor Agreement.** Each reference to the Intercreditor Agreement in any of the Transactions Documents (including without limitation the Equipment Finance Agreement, the Credit Agreement and the Stream Agreement) will be deemed to be a reference to the Intercreditor Agreement, as amended by this Amendment.

4. **Benefits.** This Amendment will be binding upon and will enure to the benefit of the parties and their respective successors and permitted assigns.

5. **Governing Law.** This Amendment and the rights and obligations of the parties hereunder will be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.



6. **Effect.** Except as expressly herein amended, the terms and conditions of the Intercreditor Agreement and the Transaction Documents will remain in full force and effect and are hereby ratified by the parties in all respects.

7. **Counterparts and Electronic Execution.** This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and will be binding upon all parties, their successors and assigns. Delivery of an executed signature page to this Amendment by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Amendment by such party.

**[Signatures on Following Pages]**

IN WITNESS WHEREOF, the parties have executed this Amendment.

**LYDIAN ARMENIA CJSC**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LYDIAN INTERNATIONAL LIMITED**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_


Amendment to SEK Intercreditor Agreement

AB SVENSK EXPORTKREDIT (publ), as  
Equipment Financier

By:

Name:

Title:

  
JENS HEDARE HEAD OF LARGE  
CORPORATE

By:

Name:

Title:

  
Per Edlundh  
Director

ORION CO IV (ED) LIMITED, as Collateral Agent

By:

Name:

Title:

Sarah Demerling  
Director

Amendment to SEK Intercreditor Agreement

Acknowledged and agreed to by:

ING BANK N.V., as Equipment Financier Agent

By: \_\_\_\_\_


Name:

Title:



Eugène Kock

Director  
Structured Export Finance  
ING Bank N.V.



Julia Claassen  
Director GCR

## SECOND AMENDMENT TO INTERCREDITOR AGREEMENT

**THIS SECOND AMENDMENT TO INTERCREDITOR AGREEMENT** dated as of December 21, 2018 between Orion Co IV (ED) Limited, in its capacity as Collateral Agent for and on behalf of the Other Lydian Creditors (the "**Collateral Agent**"), AB Svensk Exportkredit (publ) ("**SEK**"), Lydian Armenia CJSC ("**Lydian Armenia**") and Lydian International Limited ("**Lydian**").

**WHEREAS** the Collateral Agent, SEK, Lydian Armenia and Lydian are parties to that certain intercreditor agreement dated as of April 21, 2017 (as amended, the "**Intercreditor Agreement**");

**AND WHEREAS** the Collateral Agent, SEK, Lydian Armenia and Lydian entered into a First Amendment to Intercreditor Agreement, dated as of October 31, 2018;

**AND WHEREAS** the Collateral Agent, SEK, Lydian Armenia and Lydian wish to amend the Intercreditor Agreement on the terms and conditions contained herein;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein are used herein with the respective definitions given to them in the Intercreditor Agreement.
2. **Amendments to the Intercreditor Agreement.**
  - (a) The definition of "**Equipment Financier Collateral**" in Section 1.1 (*Definitions*) of the Intercreditor Agreement is hereby deleted in its entirety and replaced with the following:

**"Equipment Financier Collateral"** means (i) all Equipment, (ii) all rights against the seller of the Equipment under the Project Documents (as defined in the Equipment Finance Agreement), (iii) all maintenance and repair contracts and service agreements in respect of the Equipment, if any, (iv) all insurance policies covering the Equipment (to the extent of such coverage only), and (v) all proceeds of the foregoing.
  - (b) Section 2.4 (*Lien Priorities*) of the Intercreditor Agreement is hereby amended by inserting the following at the end of that Section:

"The Collateral Agent shall not hinder or impede the ability of the Equipment Financier to register first (in time creation) its Pledge (Collateral) (*Prior tempore potior jure*) in respect of Equipment Financier Collateral (but, for greater certainty, without any need for the Collateral Agent to discharge or amend its existing registrations)."
  - (c) Section 2.7 (*Option to Cure and Standstill*) of the Intercreditor Agreement is hereby amended by adding the following as paragraph (h):

"Notwithstanding any other paragraph of this Section 2.7 and any other provision in this Agreement to the contrary, with respect to any Event of Default under any Equipment Finance Document that is not of a curable nature (including, but not

limited to, any Event of Default under Clause 23.5, Clause 23.6, Clause 23.7, Clause 23.12 or Clause 23.17 of the Equipment Finance Agreement as in effect at the date hereof), the Equipment Finance Agent may, at any time following the delivery of an Equipment Financier Default Notice regarding such non-curable Event of Default to the Collateral Agent, terminate such Equipment Finance Document, issue an Enforcement Notice or both in accordance with the provisions of the applicable Equipment Finance Document."

- (d) The second sentence of Section 2.7(a) (*Option to Cure and Standstill*) of the Intercreditor Agreement is hereby deleted and replaced with the following:

"As soon as reasonably practicable following the delivery of a copy of a written notice of the occurrence of an Event of Default under the Equipment Finance Agreement or any other Equipment Finance Document from the Equipment Finance Agent to Lydian Armenia, the Equipment Finance Agent will provide a copy of such notice to the Collateral Agent (the "**Equipment Financier Default Notice**")."

- (e) Section 2.8 (*Enforcement Notice; Enforcement Actions*) of the Intercreditor Agreement is hereby amended by inserting the following two paragraphs as paragraphs (c) and (d) of that Section:

"(c) Once Enforcement Actions and an enforcement process commence in accordance with this Agreement, the Equipment Financier and its Receiver, if any, may, without any limitation, restriction or obstacle, proceed with the seizure, foreclosure and sale (by public auction or direct sale to the third party) of the Equipment Financier Collateral. The validity of any Enforcement Actions and any enforcement process in Armenia in regards to Equipment Financier Collateral located in Armenia shall be governed exclusively by Armenian law and by this Agreement.

(d) No judicial decision in Armenia or in any other jurisdiction is required for any sale (by public auction or direct sale to a third party) of the Equipment Financier Collateral. The Equipment Financier Collateral can be sold or otherwise disposed by any out-of-court procedure undertaken by the Equipment Financier pursuant to Armenian Civil Code Article 249."

- (f) Section 4.1 (*Governing Law and Jurisdiction*) of the Intercreditor Agreement is hereby amended by inserting the following at the end of that Section:

"Notwithstanding the foregoing, the validity of Enforcement Actions and any enforcement process in Armenia in regards to Equipment Financier Collateral located in Armenia (as contemplated by Sections 2.8(c) and 2.8(d)) shall be governed exclusively by Armenian law and by this Agreement and subject to the exclusive jurisdiction of the Armenian courts."

- (g) Section 4.8 (*Further Assurances*) of the Intercreditor Agreement shall be amended by inserting the following after the first sentence of Section 4.8 of the Intercreditor Agreement:

"Upon any sale of the Equipment following an Enforcement Action by the Equipment Finance Agent in accordance with this Agreement, the Collateral Agent shall, at the

request and expense of the Equipment Finance Agent, promptly execute and deliver to the Equipment Finance Agent such deeds or other instruments as are provided to the Collateral Agent by the Equipment Finance Agent and are reasonably required to release the Equipment from the Collateral Agent Liens. The Collateral Agent agrees to co-operate in all reasonable steps taken by the Equipment Finance Agent in the exercise of the Equipment Financier Liens in accordance with this Agreement."

- (h) Section 4.14 (*English*) of the Intercreditor Agreement is hereby amended by inserting the following at the end of that Section:

" , provided that any document or notice which is delivered or provided on the basis of or in reliance on Armenian law or is governed by Armenian law may also be in the Armenian language."

3. **References to the Intercreditor Agreement.** Each reference to the Intercreditor Agreement in any of the Transactions Documents (including without limitation the Equipment Finance Agreement) will be deemed to be a reference to the Intercreditor Agreement, as amended by this Amendment.

4. **Benefits.** This Amendment will be binding upon and will enure to the benefit of the parties and their respective successors and permitted assigns.

5. **Governing Law.** This Amendment and the rights and obligations of the parties hereunder will be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

6. **Effect.** Except as expressly herein amended, the terms and conditions of the Intercreditor Agreement and the Transaction Documents will remain in full force and effect and are hereby ratified by the parties in all respects.

7. **Counterparts and Electronic Execution.** This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and will be binding upon all parties, their successors and assigns. Delivery of an executed signature page to this Amendment by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Amendment by such party.

**[Signatures on Following Pages]**



IN WITNESS WHEREOF, the parties have executed this Amendment.

**LYDIAN ARMENIA CJSC**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LYDIAN INTERNATIONAL LIMITED**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

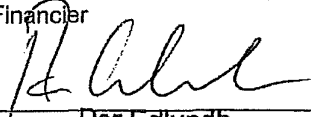
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Second Amendment to SEK Intercreditor Agreement

AB SVENSK EXPORTKREDIT (publ), as  
Equipment Financier

By:

  
Name: Per Edlundh  
Title: Director

By:

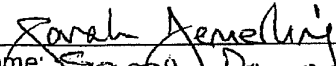
  
Name:  
Title:

Jens Hedar  
Executive Director  
Head of Large Corporates

Second Amendment to SEK Intercreditor Agreement

ORION CO IV (ED) LIMITED, as Collateral Agent

By:

  
Name: Sarah Demerling  
Title: Director

Second Amendment to SEK Intercreditor Agreement

Acknowledged and agreed to by:

ING BANK N.V., as Equipment Financier Agent

By: 

Name:

Title:

**Eugène Kock**

Director

Structured Export Finance

ING Bank N.V.

  
**ING Bank N.V.**

J.C. van Strien

Director

Bijlmerdreef 24, 1102 CT, Amsterdam

Second Amendment to SEK Intercreditor Agreement

# EXHIBIT “L”

*THIS IS EXHIBIT "L", referred to in the  
Affidavit of EDWARD A. SELLERS,  
sworn on December 22, 2019.*



*Commissioner for Taking Affidavits*

**INTERCREDITOR AGREEMENT**

2016

This Intercreditor Agreement (this "Agreement") is dated as of November 17,

**BETWEEN:**

**ORION CO IV (ED) LIMITED**, in its capacity as Collateral Agent for and on behalf of the Other Lydian Creditors (the "Collateral Agent")

– and –

**AMERIABANK CJSC** (the "Equipment Financier")

– and –

**LYDIAN ARMENIA CJSC** (formerly Geoteam CJSC, ("Lydian Armenia"))

– and –

**LYDIAN INTERNATIONAL LIMITED** ("Lydian")

**RECITALS**

- (A) Lydian Armenia, Lydian, the Administrative Agent and the Lenders have entered into the Credit Agreement pursuant to which the Lenders have made available to Lydian Armenia the Facilities (as defined in the Credit Agreement) for the purpose of financing, in part, the development, construction, and working capital requirements of the Project.
- (B) Lydian Armenia, Lydian, the Purchasers and the Purchasers' Agent have entered into the Stream Agreement pursuant to which the Purchasers have agreed to pay the Deposit (as defined in the Stream Agreement) and Lydian Armenia has committed to make specified deliveries of Refined Gold (as defined in the Stream Agreement) and Refined Silver (as defined in the Stream Agreement) to the Purchasers.
- (C) The Other Lydian Creditor Obligations are secured by the Collateral Agent Liens.
- (D) Lydian Armenia, Lydian and the Equipment Financier are parties to a principal agreement dated as of the date hereof (the "Equipment Finance Agreement") pursuant to which the Equipment Financier has made available to Lydian Armenia an equipment loan facility in the original principal amount of up to US\$24,000,000 (Twenty four million), which loan will be used by Lydian Armenia to purchase certain equipment for the Project.

- (E) The Equipment Financier Obligations are or will be secured by the Equipment Financier Liens.
- (F) The parties hereto have agreed to enter into this Agreement to set out the relative priority of the Equipment Financier Liens and the Collateral Agent Liens and certain other rights, priorities and interests.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby irrevocably acknowledged by each party hereto, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

For the purposes of this Agreement (including the recitals), unless the context otherwise requires, each of the following terms shall have the following meanings:

**"Administrative Agent"** means Orion Co IV (ED) Limited, in its capacity as administrative agent for and on behalf of the Lenders under the Credit Agreement.

**"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday in any one of Hamilton, Bermuda, New York City, New York or Yerevan, Armenia, or a day on which banks are generally closed in any one of those cities.

**"Collateral"** means the Equipment Financier Collateral and the Collateral Agent Collateral, as the context requires.

**"Collateral Agent"** has the meaning given to it on the first page of this Agreement.

**"Collateral Agent Collateral"** means all of the present and after-acquired real and personal property of the Lydian Entities, and all proceeds thereof.

**"Collateral Agent Liens"** means any Liens securing the payment and performance of the Other Lydian Creditor Obligations.

**"Collateral Agent Priority Collateral"** means all of the present and after-acquired real and personal property of the Lydian Entities (other than the Equipment Financier Collateral), and all proceeds thereof.

**"Credit Agreement"** means the credit agreement dated November 30, 2015 between Lydian Armenia, as borrower, Lydian, as a guarantor, the Lenders and the Administrative Agent.

**"Creditor Proceeding"** means:

- (a) any dissolution, winding up, partial or total liquidation, appointment of a provisional liquidator, adjustment or readjustment of debt, reorganization,



compromise, restructuring, arrangement with creditors, plan of arrangement, scheme of arrangement or compromise, proposal or similar proceedings under Insolvency Laws of or with respect to any Lydian Entity or its property or liabilities, in each case under Insolvency Laws;

- (b) any dissolution, winding up, partial or total liquidation, appointment of a provisional liquidator, adjustment or readjustment of debt, reorganization, compromise, arrangement or reconstruction with creditors, plan of arrangement, scheme of arrangement or compromise or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations owing to any or all creditors) of or with respect to any Lydian Entity or its property or liabilities;
- (c) any bankruptcy, receivership, restructuring, application or assignment in bankruptcy, or assignment for the benefit of creditors under any Insolvency Laws of or with respect to any Lydian Entity;
- (d) any marshalling of assets and liabilities of any Lydian Entity under any Insolvency Laws; or
- (e) any proceedings in relation to any of the foregoing,

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the applicable Lydian Entity.

**"Creditors"** means, collectively, the Other Lydian Creditors (as a group) and the Equipment Financier, and **"Creditor"** means any one of them.

**"Enforcement Actions"** means the exercise, by a Creditor or any agent, trustee, Receiver or other Person acting on behalf of a Creditor, of any rights or remedies against any Collateral, including any right of set-off or recoupment and any enforcement, collection, execution, levy, power of sale or foreclosure action or proceeding taken against all or any portion of the Collateral and the commencement of an involuntary Creditor Proceeding or any other legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the foregoing actions.

**"Enforcement Notice"** means a written notice given by either the Collateral Agent to the Equipment Financier or by the Equipment Financier to the Collateral Agent following acceleration of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, stating that it intends to initiate one or more Enforcement Actions and specifying the relevant Event of Default and the current balance of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable.

**"Enforcement Period"** means the period of time following the date of receipt by the Collateral Agent or the Equipment Financier of an Enforcement Notice until either (i) the final payment or satisfaction in full of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, or (ii) the Collateral Agent and the Equipment Financier agree in writing to terminate the Enforcement Period.

**"Equipment"** means the items of equipment specified or to be specified in the Equipment Finance Documents, together with all parts and accessories specifically therefor and replacements thereof and all additions, in each case, the acquisition of which has been financed by the Equipment Financier or which has been acquired by the Equipment Financier at the request of Lydian Armenia and leased to Lydian Armenia by the Equipment Financier.

**"Equipment Finance Agreement"** has the meaning given to it in Recital (D).

**"Equipment Finance Documents"** means (i) the Equipment Finance Agreement, (ii) the loan covenants to be entered into under the Equipment Finance Agreement, (iii) the Lydian Guarantee, and (iv) the Equipment Finance Security Documents.

**"Equipment Finance Security Documents"** means, collectively, the agreements listed in Schedule B and any other agreements, instruments or documents executed by Lydian Armenia in favour of the Equipment Financier pursuant to which Lydian Armenia has granted one or more Liens over the Equipment Financier Collateral to secure the Equipment Financier Obligations.

**"Equipment Financier"** has the meaning given to it on the first page of this Agreement.

**"Equipment Financier Collateral"** means (i) all Equipment, whether title thereto is held by the Equipment Financier or Lydian Armenia, (ii) all maintenance and repair contracts and service agreements in respect of the Equipment, if any, and (iii) all proceeds of the foregoing.

**"Equipment Financier Default Notice"** has the meaning given to it in Section 2.7(a).

**"Equipment Financier Default Period"** has the meaning given to it in Section 2.7(a).

**"Equipment Financier Liens"** means any Liens securing the payment and performance of the Equipment Financier Obligations.

**"Equipment Financier Obligations"** means all obligations, liabilities and indebtedness of Lydian Armenia and Lydian to the Equipment Financier under the Equipment Finance Agreement and the other Equipment Finance Documents.

**"Event of Default"** (i) an event which, pursuant to the Equipment Finance Agreement, entitles the Equipment Financier to accelerate the repayment of the loan or to enforce its security interest in respect of the Equipment Financier Collateral (and in respect of which any applicable grace periods have expired), or (ii) an "Event of Default" as such term is defined in the Other Lydian Creditor Intercreditor Agreement.

**"Governmental Authority"** means any domestic or foreign federal, provincial, regional, state, municipal or other government, governmental department, agency, authority or body (whether administrative, legislative, executive or otherwise), court, tribunal, commission or commissioner, bureau, minister or ministry, board or agency, or other regulatory authority, including any securities regulatory authorities or stock exchange.

**"Insolvency Laws"** means the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy (Désastre) (Jersey) Law 1990*, the *Companies (Jersey) Law 1991*, the *Insolvency Act, 2003* (British Virgin Islands), the *Law of the Republic of Armenia "On Bankruptcy"*, and any similar statute or law or any corporate law in any jurisdiction dealing with bankruptcy, insolvency, liquidation, the restructuring, compromise or arrangement of debts, or analogous concepts, and including any statute or law pursuant to which proceedings may be commenced seeking to impose a stay of proceedings against creditors, seeking to approve or impose a proposal or plan of compromise or arrangement of claims of creditors, or imposing other limitations or restrictions on creditors' rights.

**"Lenders"** means Orion Co IV (ED) Limited, Resource Capital Fund VI L.P., and each other lender from time to time party to the Credit Agreement from time to time.

**"Liens"** means any security by way of an assignment, mortgage, charge, pledge of any kind, lien, encumbrance, title retention agreement (including a capital lease) or other security interest whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, perfected or not.

**"Lydian"** has the meaning given to it on the first page of this Agreement.

**"Lydian Armenia"** has the meaning given to it on the first page of this Agreement.

**"Lydian Entities"** means Lydian Armenia, Lydian and the Other Lydian Entities.

**"Lydian Guarantee"** means the unsecured guarantee pursuant to which Lydian guaranteed, on an unsecured basis, Lydian Armenia's obligations under the Equipment Finance Agreement.

**"Other Lydian Creditors"** means the Collateral Agent, the Administrative Agent, the Purchasers' Agent, the Lenders and the Purchasers, all represented by the Collateral Agent for the purposes hereof.

**"Other Lydian Creditor Documents"** means (i) the Credit Agreement, (ii) the Stream Agreement, (iii) the Other Lydian Creditor Intercreditor Agreement, (iv) the guarantees provided by Lydian and the Other Lydian Entities, (v) the Other Lydian Creditor Security Documents and (vi) each of the other instruments, documents, guarantees and agreements executed by or on behalf of any Lydian Entity and delivered at any time to or for the Other Lydian Creditors in connection with the Credit Agreement or the Stream Agreement.

**"Other Lydian Creditor Intercreditor Agreement"** means the intercreditor agreement dated as of December 3, 2015 among the Administrative Agent, the Purchasers' Agent, the Collateral Agent and the Lydian Entities from time to time party thereto in respect of the Other Lydian Creditor Obligations.

**"Other Lydian Creditor Obligations"** means all obligations, liabilities and indebtedness of the Lydian Entities to the Other Lydian Creditors under the Other Lydian Creditor Documents.

**"Other Lydian Creditor Security Documents"** means, collectively, any agreements, instruments or documents executed by the Lydian Entities in favour of the Collateral Agent pursuant to which the Lydian Entities have granted one or more Liens over the Collateral Agent Collateral to secure the Other Lydian Creditor Obligations.

**"Other Lydian Entities"** means all subsidiaries of Lydian from time to time party to the Other Lydian Creditor Documents (other than Lydian Armenia).

**"Person"** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**"Project"** means the Amulsar gold project located in south-central Armenia approximately 170 kilometres southeast of the capital of Yerevan and including the exploration, construction, development, mining, production, processing, recovery, sale, transportation, storage and delivery operations in respect thereof.

**"Purchasers"** means Orion Co IV (SO) Limited, Resource Capital Fund VI L.P. and each of the other purchasers from time to time party thereto, in their capacity as purchasers under the Stream Agreement.

**"Purchasers' Agent"** means Orion Co IV (SO) Limited, in its capacity as agent for and on behalf of the Purchasers under the Stream Agreement.

**"Receiver"** means any receiver, manager, receiver-manager, receiver and manager or other person exercising similar powers appointed by or at the request of a Creditor, as the context requires.

**"Standstill Event"** means any event (after accounting for grace periods, if any) which would entitle the Collateral Agent (or any Receiver appointed by it), pursuant to an Other Lydian Creditor Document, to take or maintain any Enforcement Actions.

**"Standstill Notice"** means a written notice from or on behalf of the Collateral Agent to the Equipment Financier stating that the notice is a "Standstill Notice" and that a Standstill Event has occurred and is continuing, such notice to include reasonable particulars of any such Standstill Event.

**"Standstill Period"** means the period of time from and including the date on which a Standstill Notice was issued in accordance with the provisions hereof to and including the Standstill Termination Date.

**"Standstill Termination Date"** means the date which is 120 days after the date of delivery of the applicable Standstill Notice.

**"Stream Agreement"** means the purchase and sale agreement (gold and silver) dated November 30, 2015 between Lydian, as a guarantor, Lydian Armenia, as seller, the Purchasers and the Purchasers' Agent.

**"Transaction Documents"** means, collectively, the Equipment Finance Documents and the Other Lydian Creditor Documents.

## **1.2 Terms Generally**

The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise:

- (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified, renewed or extended;
- (b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns;
- (c) the words "herein", "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- (d) any reference to "U.S. Dollars" or "US\$" or "\$" shall be construed to refer to the lawful money of the United States of America;
- (e) all references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Agreement; and
- (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## **ARTICLE 2 INTERCREDITOR AGREEMENTS**

### **2.1 Consents and Acknowledgements of Lenders**

- (a) The Equipment Financier hereby acknowledges (a) the incurring by Lydian Armenia of the Other Lydian Creditor Obligations and (b) the existence of the Other Lydian Creditor Security Documents, as granted by the Lydian Entities. The Equipment Financier hereby confirms that (subject to the priorities in respect of the Equipment Financier Collateral provided by this Agreement) such indebtedness and security is not prohibited by the Equipment Finance Documents.
- (b) The Collateral Agent hereby acknowledges and consents to (a) the incurring by Lydian Armenia and Lydian of the Equipment Financier Obligations and (b) the granting by Lydian Armenia to the Equipment Financier of the Equipment

Finance Security Documents. The Collateral Agent hereby confirms that the incurring of such indebtedness and the granting of such security is not prohibited by the Other Lydian Creditor Documents.

## **2.2 Prohibition on Contesting Liens**

Each of the Creditors agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Creditor Proceeding), the priority, validity, perfection or enforceability of any Lien in the Collateral held by the other Creditor (provided that such Lien shall have been granted to such Creditor in compliance with this Agreement), or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Creditor to enforce this Agreement.

## **2.3 Limitation on Other Guarantees and Other Collateral**

- (a) The Equipment Financier agrees that it shall not acquire or hold any guarantee of the Equipment Financier Obligations from Lydian or any of its affiliates, other than the Lydian Guarantee. Each of Lydian Armenia and Lydian agrees, for and on behalf themselves and the Other Lydian Entities, not to provide any guarantee of the Equipment Financier Obligations other than the Lydian Guarantee. If the Equipment Financier shall (nonetheless and in breach hereof) acquire any guarantee of the Equipment Financier Obligations other than the Lydian Guarantee, then the Equipment Financier shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Equipment Finance Documents, release such guarantee.
- (b) Without any prejudice to the existence and validity of the Lydian Guarantee, the Equipment Financier agrees that it shall not acquire or hold any Liens securing any Equipment Financier Obligations in or on any property of Lydian or any of its affiliates, other than the Equipment Financier Collateral. Each of Lydian Armenia and Lydian agrees, for and on behalf themselves and the Other Lydian Entities, not to grant any Lien securing any Equipment Financier Obligations in or on any property in favour of the Equipment Financier other than the Equipment Financier Collateral. If the Equipment Financier shall (nonetheless and in breach hereof) acquire any Lien in or on any property securing any Equipment Financier Obligations other than the Equipment Financier Collateral, then the Equipment Financier shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Equipment Finance Documents (i) hold and be deemed to have held such Lien for the benefit of the Collateral Agent and the Other Lydian Creditors as security for the Other Lydian Creditor Obligations, or (ii) release such Lien.
- (c) All Parties acknowledge the Equipment Financier is required to comply with the requirements of Armenian legislation if judicial decisions, tax authorities and other state authorities adopt decisions that are legally binding on the Equipment Financier and require it to arrest or seize accounts of Lydian Armenia or any other accounts held at Ameriabank CJSC; provided that any proceeds of such arrest will

(to the extent not required to be remitted to the applicable authority) be subject to the priorities provided for by this Agreement.

## 2.4 Lien Priorities

- (a) As between the Equipment Financier and the Collateral Agent, the Liens of Equipment Financier and the Collateral Agent in the Collateral shall have the following priorities:
  - (i) the Equipment Financier shall have a first ranking and senior Lien in or on all Equipment Financier Collateral (and no Lien on any other Collateral); and
  - (ii) the Collateral Agent shall have a first ranking and senior Lien in or on all Collateral Agent Priority Collateral and a second ranking Lien in or on all Equipment Financier Collateral, subordinate to the Lien in favour of Equipment Financier on the Equipment Financier Collateral.
- (b) The priorities provided for in this Agreement shall apply notwithstanding:
  - (i) the priorities otherwise accorded to the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral under applicable law;
  - (ii) the time of creation, granting, execution, delivery, attachment, registration, perfection or enforcement of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral;
  - (iii) that any of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral shall be defective, unperfected or unenforceable for any reason whatsoever;
  - (iv) the time of crystallization of any floating charge in or on the Equipment Financier Collateral and the Collateral Agent Collateral;
  - (v) the provisions of the Equipment Finance Documents or the Other Lydian Creditor Documents;
  - (vi) any forbearance whatsoever, whether as to time, performance, or otherwise or any release, discharge, loss or alteration in or dealing with all or any part of the Liens on the Equipment Financier Collateral and the Collateral Agent Collateral or any part thereof;
  - (vii) any failure or delay in giving any notice required under this Agreement;
  - (viii) any invalidity or unenforceability of, or any limitation on, the liability of Lydian Armenia or Lydian;
  - (ix) any defence, compensation, set-off or counterclaim which Lydian Armenia or Lydian may have or assert;

- (x) any Creditor Proceedings;
- (xi) the date of incurrence of the Equipment Financier Obligations or the Other Lydian Creditor Obligations or any portion thereof;
- (xii) any priority granted by any principle of law or any statute; or
- (xiii) any other matter whatsoever.

The Collateral Agent shall not hinder or impede the ability of the Equipment Financier to register first (in time creation) its Pledge (Collateral) (*Prior tempore potior jure*) in respect of Equipment Financier Collateral (but, for greater certainty, without any need for the Collateral Agent to discharge or amend its existing registrations).

## **2.5 Distribution of Proceeds of Collateral**

As between the Equipment Financier and the Collateral Agent:

- (a) All proceeds of Equipment Financier Collateral shall be paid to the Equipment Financier for application to the Equipment Financier Obligations and after the indefeasible payment in full of the Equipment Financier Obligations and the termination of any Equipment Financier commitments. Any residual proceeds of Equipment Financier Collateral shall be paid to the Collateral Agent for application to the Other Lydian Creditor Obligations, if any. Thereafter, any residual proceeds shall be paid to Lydian Armenia or as required by applicable law. It is acknowledged that if the Equipment Financier is not fully paid as consequence of sale of the Equipment Financier Collateral, then Equipment Financier shall be entitled to present additional unsecured claims against Lydian Armenia (based on Loan Agreement) and Lydian (based on Lydian Guarantee).
- (b) All proceeds of Collateral Agent Priority Collateral shall be paid pursuant to the Other Lydian Creditor Intercreditor Agreement. The Equipment Financier shall have no claim to the proceeds of Collateral Agent Priority Collateral.
- (c) Provided that no Event of Default has occurred and is continuing, the Equipment Financier shall be entitled unilaterally without any prior notification or consent of Lydian Armenia to apply funds available in any account of Lydian Armenia held at Ameriabank, by way of set off or otherwise, to payment of regular scheduled payments of principal and interest on the Loans of Lydian Armenia, if Lydian Armenia does not make regular due payment(s) under Loan Agreement, in order to avoid default.

## **2.6 Payments Over in Violation of Agreement**

If the Equipment Financier or any Other Lydian Creditor accepts or receives proceeds of Collateral in contravention of this Agreement (to the extent in excess of its entitlements hereunder), it shall receive the same in trust and as agent for the party entitled thereto. Such proceeds shall be segregated and forthwith paid over to the party entitled thereto in



the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be distributed in accordance with Section 2.5.

## 2.7 Option to Cure and Standstill

- (a) The Equipment Financier hereby irrevocably grants to the Collateral Agent and the Other Lydian Creditors the option to cure any Event of Default under the Equipment Finance Agreement or any other Equipment Finance Document. Simultaneously with the delivery of a copy of a written notice of the occurrence of an Event of Default under the Equipment Finance Agreement or any other Equipment Finance Document from the Equipment Financier to Lydian Armenia, the Equipment Financier will provide a copy of such notice to the Collateral Agent (an "**Equipment Financier Default Notice**"). The Equipment Financier agrees that the Collateral Agent and the Other Lydian Creditors shall have the right, but not the obligation, to cure the applicable Event of Default within a period of thirty (30) days following its receipt of the Equipment Financier Default Notice (the "**Equipment Financier Default Period**") so long as, within such Equipment Financier Default Period, the Collateral Agent pays in full all amounts then due and owing to the Equipment Financier pursuant to the Equipment Finance Agreement and all other Equipment Finance Documents, whether on account of principal, interest, fines, penalties, fees or otherwise (but excluding any amounts owing as a result of any acceleration thereunder). Lydian Armenia and the Collateral Agent agree with each other that the Collateral Agent or an Other Lydian Creditor (in the case of a cure) may take steps to cure such an Event of Default (or issue a Standstill Notice under Section 2.7(b)) immediately upon receipt of the Equipment Financier Default Notice, and that any monies which the Collateral Agent expends to cure such Event of Default shall be fully reimbursed by Lydian Armenia pursuant to the Other Lydian Creditor Intercreditor Agreement, and shall form part of the obligations secured under the Collateral Agent Liens. The cure of an Event of Default under the Equipment Finance Agreement or the applicable Equipment Finance Document by the Collateral Agent or an Other Lydian Creditor shall be deemed to be a cure of such Event of Default by Lydian Armenia pursuant to the terms of the Equipment Finance Agreement or applicable Equipment Finance Document. No termination of the Equipment Finance Documents prior to or during an Equipment Financier Default Period shall be effective and the Equipment Financier shall not be entitled to issue an Enforcement Notice, nor commence an Enforcement Action unless the Equipment Financier shall have provided to the Collateral Agent the Equipment Financier Default Notice and the Collateral Agent shall have failed to exercise its rights under this Section 2.7(a) or Section 2.7(b) within the Equipment Financier Default Period.
- (b) At any time after the occurrence of a Standstill Event (and within thirty (30) days thereafter if an Equipment Financier Default Notice has been issued), the Collateral Agent may send a Standstill Notice to the Equipment Financier provided that only one such notice may be sent in respect of any Standstill Event and any cross-default occasioned thereby.

- (c) From and after the date of its receipt of any Standstill Notice from the Collateral Agent and until the Standstill Termination Date, subject to the Equipment Financier's receipt of the amounts set forth at Section 2.7(d) below if the Equipment is being used, the Equipment Financier will not commence, directly or indirectly, any Enforcement Action in relation to the Equipment Financier Collateral; provided that this Section 2.7(c) shall not prevent the Equipment Financier from purchasing insurance in respect of the Equipment Financier Collateral or making other payments to protect the Equipment Financier Collateral in accordance with the terms of the Equipment Finance Agreement or the other Equipment Finance Documents, even if a Standstill Notice is in effect. Only one Standstill Notice shall bind the Equipment Financier in respect of the same Standstill Event and any cross-default occasioned thereby. After the Standstill Termination Date, the Equipment Financier may, subject to Section 2.8 hereof, take Enforcement Action against the Equipment Financier Collateral in accordance with this Agreement.
- (d) At all times during a Standstill Period, and at all times during an Equipment Financier Default Period, in each case, provided all amounts then due and owing to the Equipment Financier under the Equipment Finance Agreement (but excluding any amounts owing as a result of any acceleration thereunder) have been paid and are current (whether by the Collateral Agent or otherwise), the Collateral Agent or its Receiver shall have such rights as are accorded to it under its applicable security documents to use the Equipment Financier Collateral, provided that the Collateral Agent or its Receiver, as the case may be, performs Lydian Armenia's customary obligations under the Equipment Finance Agreement and the other Equipment Finance Documents during such Standstill Period or Equipment Financier Default Period.
- (e) Upon reasonable notice to Lydian Armenia and/or the Collateral Agent, as the case may be, the Equipment Financier and/or its Receiver, as the case may be, shall have access to and, to the extent necessary or desirable (including for the purposes of appraising, evaluating or showing the Equipment to potential purchasers for the purchase of the Equipment after the expiry of the Standstill Period and for purposes of monitoring the condition of the Equipment Financier Collateral (including making a list of existing Equipment) and taking any steps reasonably required to preserve the Equipment Financier Collateral), Lydian Armenia and/or the Collateral Agent, as the case may be, hereby consents to and agrees to provide (to the extent applicable) and facilitate access to the Equipment at all times, whether or not a Standstill Period is in effect. Access to the Project and associated facilities by the Equipment Financier and/or its Receiver, or any person representing the same, shall be subject to the following: (i) any such access shall be at the sole risk and, subject to the terms of the Equipment Finance Agreement, expense of such person and its representatives; (ii) any such access shall not unreasonably interfere with Lydian Armenia's and/or the Other Lydian Creditors' activities and operations; (iii) such person shall comply, and request that its representatives comply, with the policies and procedures that Lydian Armenia and/or the Other Lydian Creditors apply to their own representatives; and (iv) such person shall give Lydian Armenia and the Collateral Agent prompt

notice of any injuries, property damage or environmental harm that may occur during such access.

- (f) Nothing in this Section 2.7 shall relieve Lydian Armenia and Lydian from the obligations owed to the Equipment Financier under the Equipment Finance Agreement and the other Equipment Finance Documents. If Lydian Armenia or Lydian fails to honor any such obligations during a Standstill Period, nothing in this Section 2.7 shall prevent the Equipment Financier from taking action it reasonably deems necessary to maintain, protect and insure the Equipment Financier Collateral, provided the Equipment Financier Collateral shall not be removed from the Project to conduct any such maintenance, protection or insurance.
- (g) During a Standstill Period, the Collateral Agent and the Equipment Financier agree where reasonably practicable (and without any binding obligation or liability in respect thereof) to consult each other as to their respective current intentions in respect of any Enforcement Action it is considering at such time.

## **2.8 Enforcement Notice; Enforcement Actions**

Subject to Section 2.7, the Equipment Financier and the Collateral Agent agree not to commence any Enforcement Action until an Enforcement Notice has been given. During an Enforcement Period, the Equipment Financier and the Collateral Agent agree that:

- (a) The Collateral Agent and its Receiver, if any, may, at the Collateral Agent's option, take any action to foreclose or realize upon or enforce any of the Collateral Agent's rights and remedies with respect to the Collateral Agent Priority Collateral without the need for any consent from the Equipment Financier and shall have the sole and exclusive right to take Enforcement Actions with respect to the Collateral Agent Priority Collateral.
- (b) Subject to Section 2.7, the Equipment Financier and its Receiver, if any, may, at the Equipment Financier's option, take any action to foreclose or realize upon or otherwise enforce any of the Equipment Financier's rights with respect to the Equipment Financier Collateral without the need for consent from the Collateral Agent or the Other Lydian Creditors. The Equipment Financier and its Receiver, if any, shall have the sole and exclusive right to take Enforcement Actions with respect to the Equipment Financier Collateral until the Equipment Financier Obligations are paid in full and any Equipment Financier commitments have been terminated and at all times thereafter, the Collateral Agent and its Receivers, if any, shall have the right to take Enforcement Actions with respect to the Equipment Financier Collateral.
- (c) Once Enforcement Actions and an enforcement process commences in accordance with this Agreement, the Equipment Financier and its Receiver, if any, may, without any limitation, restriction or obstacle, proceed with the seizure, foreclosure and sale (by public auction or direct sale to the third party) of the Equipment Financier Collateral. The validity of any Enforcement Actions and any

enforcement process in Armenia in regards to Equipment Financier Collateral located in Armenia shall be governed exclusively by Armenian law and by this Agreement.

- (d) No judicial decision in Armenia or in any other jurisdiction is required for sale (by public auction or direct sale to the third party) of the Equipment Financier Collateral. The Equipment Financier Collateral can be sold or otherwise disposed by out-of-Court procedure undertaken by Equipment Financier pursuant to Armenian Civil Code Article 249.

## **2.9 Purchase Rights**

The Collateral Agent or any Other Lydian Creditor may, upon notice to Lydian Armenia and to the other Lydian Creditors, purchase all but not less than all of the Equipment Financier Obligations upon payment to the Equipment Financier of all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, the Equipment Financier Obligations, provided that such a right may only be exercised during an Equipment Financier Default Period or a Standstill Period.

## **2.10 Insurance**

As between the Equipment Financier and the Collateral Agent, each agrees as follows:

- (a) The Equipment Financier shall have the sole and exclusive right in accordance with the terms of the Equipment Finance Documents, to adjust settlement of the relevant insurance policy in the event of any loss with respect to any Equipment Financier Collateral and the proceeds of each insurance policy covering any Equipment Financier Collateral shall (to the extent required by the Equipment Finance Documents) be paid to the Equipment Financier until the Equipment Financier Obligations have been irrevocably paid in full. Thereafter, any remaining proceeds shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (b) The Collateral Agent shall have the sole and exclusive right, in accordance with the terms of the Other Lydian Creditor Documents, to adjust settlement of the relevant insurance policy in the event of any loss with respect to any Collateral Agent Priority Collateral and the proceeds of each insurance policy covering any Collateral Agent Priority Collateral shall (to the extent required by the Other Lydian Creditor Documents) be paid to the Collateral Agent in accordance with the Other Lydian Creditor Documents.
- (c) For greater certainty, any payment received in respect of the proceeds of insurance relating to all or any part of the Project, including business interruption, if any (except for the proceeds described in clause (a) above) held by Lydian Armenia shall (to the extent required by the Other Lydian Creditor Documents) be

applied to the Other Lydian Creditor Obligations in accordance with the Other Lydian Creditor Documents.

**2.11 Accounting**

After the commencement of an Enforcement Action by the Equipment Financier and on a continuing basis thereafter, the Equipment Financier agrees to account to the Collateral Agent as to the nature and amount of the Equipment Financier Obligations and the proceeds of any Equipment Financier Collateral sold or otherwise disposed of and the manner and effect of the application of any proceeds against the Equipment Financier Obligations.

**2.12 Notice to and Reliance on Collateral Agent**

For purposes of this Agreement only, the Equipment Financier shall be entitled to send notices hereunder to and to rely upon any consent or agreement of the Collateral Agent, as agent for the Other Lydian Creditors, and such notice, consent and agreement shall be binding upon the Other Lydian Creditors.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES**

**3.1 Collateral Agent Representations**

The Collateral Agent represents and warrants to the Equipment Financier that:

- (a) the Collateral Agent is incorporated and existing under the laws of Bermuda and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement; and
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; it has duly executed and delivered this Agreement, and this Agreement is a legal, valid and binding obligation of the Collateral Agent and the Other Lydian Creditors, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law.

**3.2 Equipment Financier Representations**

The Equipment Financier represents and warrants to the Collateral Agent that:

- (a) the Equipment Financier is incorporated under the resolution of the CBA and existing under the laws of the Republic of Armenia and has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by it; it has duly executed

and delivered this Agreement, and this Agreement is a legal, valid and binding obligation of the Equipment Financier, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law;

- (c) a true and complete copy of each Equipment Finance Document has been provided to the Collateral Agent; and
- (d) the Equipment Financier has no guarantees from any Lydian Entity, other than Lydian, and no Liens on or in respect of any property of any Lydian Entity other than Equipment Financier Collateral.

### **3.3 Lydian Armenia and Lydian Representations**

Each of Lydian Armenia and Lydian represents and warrants to the Collateral Agent and the Equipment Financier that:

- (a) this Agreement is a legal, valid and binding obligation of the Equipment Financier, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in proceedings in equity or at law; and
- (b) the Equipment Financier has no guarantees from any Lydian Entity other than Lydian, and no Liens on or in respect of any property of any Lydian Entity other than Equipment Financier Collateral.

## **ARTICLE 4 MISCELLANEOUS**

### **4.1 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of the Province of Ontario; provided that to the extent that the laws of any jurisdiction in which Collateral is located govern the priority, attachment, perfection, and enforcement of Liens in or upon such Collateral, the local laws of such jurisdiction shall continue to govern. The parties agree that the courts of the Province of Ontario have jurisdiction to settle any disputes in connection with this Agreement and accordingly submit to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties waive objection to the courts of the Province of Ontario on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement and agree that a judgment or order of a court of the Province of Ontario in connection with this Agreement is conclusive and binding on it (subject to any rights of appeal in respect thereof) and may be enforced against it in the courts of any other jurisdiction. Notwithstanding the foregoing, the validity of Enforcement Actions and any enforcement process in Armenia in regards to Equipment Financier Collateral located in Armenia (as contemplated by Sections 2.8.(c) and 2.8.(d)) shall be governed exclusively by Armenian law and by this Agreement and subject to the exclusive jurisdiction of the Armenian courts.

#### **4.2 Notices**

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile, electronic mail, or mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or e-mail communication, or five Business Days after depositing it in the mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth on Schedule A, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

#### **4.3 Nature of and Changes to Obligations; Amendments to Transaction Documents**

- (a) The Equipment Financier acknowledges that the terms of the Other Lydian Creditor Documents may be modified, extended, amended or supplemented from time to time in accordance with the Other Lydian Creditor Documents then in effect without notice to or consent by the Equipment Financier, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (b) Subject in all cases to clause (c) below, the Collateral Agent, for and on behalf of the Other Lydian Creditors, acknowledges that the terms of the Equipment Finance Documents may be modified, extended, amended or supplemented from time to time in accordance with the Equipment Finance Documents then in effect without notice to or consent by the Collateral Agent or any Other Lydian Creditor, all without affecting the priorities set forth in Sections 2.4 and 2.5.
- (c) Without the prior written consent of the Collateral Agent, Lydian Armenia, Lydian and the Equipment Financier agree that no Equipment Finance Document to which any of them is a party will be modified, extended, amended or supplemented in such a manner so as to: (i) increase the principal amount of the obligations owing thereunder to an amount greater than US\$24,000,000 twenty four million; (ii) result in the granting of any Liens in favour of the Equipment Financier on any property of any Lydian Entity other than Equipment Financier Collateral; or (iii) provide for any form of financing to Lydian Armenia other than as currently contemplated by the Equipment Finance Agreement (as such agreement exists on the date hereof).
- (d) Lydian Armenia shall deliver to the Collateral Agent, forthwith upon their execution, any material amendment, supplement or other modification to any Equipment Finance Document or any new Equipment Finance Document, provided that a failure by Lydian Armenia to provide such documents to the Collateral Agent shall not affect any of the provisions hereof or the priorities and other rights set forth herein and shall not, in itself, constitute an Event of Default.

#### **4.4 Amendments to this Agreement; Waivers**

No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be effected in accordance with Section 4.3 and shall be in writing signed on behalf of the Collateral Agent and the Equipment Financier. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties in any other respect or at any other time. Neither Lydian Armenia nor Lydian shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent that their rights, duties or obligations are directly and adversely affected thereby.

#### **4.5 No Additional Rights**

Nothing in this Agreement grants or shall be interpreted as granting any rights to or for the benefit of Lydian Armenia or Lydian. Without limiting the generality of the immediately preceding sentence, if the Collateral Agent or the Equipment Financier enforces its rights or remedies in violation of the terms of this Agreement, neither Lydian Armenia nor Lydian shall be entitled to use such violation as a defence to any Enforcement Action. Each of Lydian Armenia and Lydian agrees that nothing in this Agreement shall relieve them of any of their obligations under any of the Transaction Documents.

#### **4.6 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations, undertakings, representations and understandings.

#### **4.7 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

#### **4.8 Further Assurances**

Each party hereto agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any Creditor or the Collateral Agent may reasonably request to effect the terms of this Agreement.

#### **4.9 Other Lydian Creditor Intercreditor Agreement**

Nothing in this Agreement shall modify, waive, amend, supersede or terminate or be paramount to any of the provisions of any Other Lydian Creditor Intercreditor Agreement as between the parties hereto (other than the Equipment Financier), and as between the parties



hereto (other than the Equipment Financier), such Other Lydian Creditor Interc Creditor Agreement shall be paramount and continue to govern rights and obligations of, and the ranking of the Liens of, the Other Lydian Creditors.

#### **4.10 Binding on Successors and Assigns**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto (and in the case of the Collateral Agent, the Creditors for whom it is acting) and their respective successors and permitted assigns. Neither Lydian Armenia nor Lydian may assign any of their respective rights or obligations hereunder without the consent of the Collateral Agent and the Equipment Financier. The rights and obligations of the Collateral Agent and the Equipment Financier hereunder may be assigned by the Collateral Agent and the Equipment Financier in whole or in part, in accordance with their respective Transaction Documents without the consent of the other parties hereto, provided that, any assignee shall, as a condition of any such assignment, enter into an agreement to be bound by this Agreement.

#### **4.11 Headings**

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

#### **4.12 Counterparts**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile, pdf or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

#### **4.13 Circular Priorities**

If any Person, other than the Equipment Financier or the Collateral Agent, is found by a court of competent jurisdiction to have the right to any part of the Collateral in priority to the secured party (for the purposes of this paragraph, the "Senior Creditor") who would, by virtue of this Agreement, be given priority in respect of such Collateral over the other secured party (for the purposes of this paragraph, the "Subordinate Creditor"), but is not given priority by such court in respect of such Collateral over the Subordinate Creditor, then this Agreement will not apply so as to diminish the rights (as those rights would have been but for this Agreement) of the Subordinate Creditor with respect to such Collateral unless the Senior Creditor is diligently contesting such finding and has provided the Subordinate Creditor with a satisfactory indemnity.

#### **4.14 English Language**

The parties hereto confirm that it is their wish that this Agreement be drawn up in the English language only and that all other documents contemplated hereunder or relating hereto, including notices, may also be drawn up in the English language only. For greater

certainty, the Equipment Finance Documents may be drawn up in both the Armenian and English languages.

#### **4.15 Information Exchange**

After the occurrence and during the continuance of an Event of Default, each of Lydian Armenia and Lydian hereby consents to the Equipment Financier and the Collateral Agent providing each other with such information, financial or otherwise, regarding Lydian Armenia and Lydian, their affairs and the respective Obligations as may be deemed advisable by the Equipment Financier and the Collateral Agent.

#### **4.16 Termination**

This Agreement shall terminate and be of no further force and effect as to all the parties hereto at such time as either: (i) all Other Lydian Creditor Obligations have been irrevocably paid in full and the Other Lydian Creditor commitments have been terminated; or (ii) the Equipment Financier Obligations have been irrevocably paid in full and the Equipment Financier commitments have been terminated. This Agreement shall be reinstated in full if, at any time after the payment in full of the Other Lydian Creditor Obligations or the Equipment Financier Obligations, as applicable, any payment of any of such Obligations is rescinded or must otherwise be returned under applicable law by such Creditor upon the occurrence of any Creditor Proceeding with respect to Lydian Armenia or otherwise, all as though such payment had not been made.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ORION CO IV (ED) LIMITED, as Collateral Agent

By: 

Name: MELANIE SIMONS  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name:  
Title:

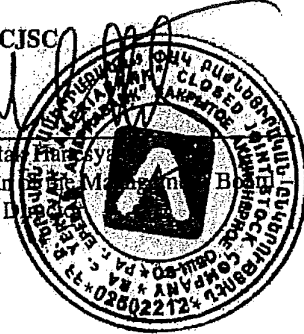
AMERIABANK CJSC

By:

Name: Mr. Artur Hachaturyan

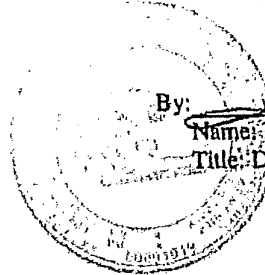
Title: Chairman of the Board

General Director



1

**LYDIAN ARMENIA CJSC**



By: \_\_\_\_\_

Name: Hayk Aloyan  
Title: Director

**LYDIAN INTERNATIONAL LIMITED**

By: \_\_\_\_\_

Name: Douglas L. Tobler  
Title: Chief Financial Officer

**SCHEDULE A  
NOTICES**

**Collateral Agent:**

Orion Co IV (ED) Limited  
c/o Appleby (Bermuda) Limited  
Canon's Court  
22 Victoria Street  
Hamilton HM 12  
Bermuda

Attention: Michell James, Appleby Services (Bermuda) Ltd  
Facsimile: (441) 298-3467

with a copy to (which shall not constitute notice):

Orion Resource Partners (USA) LP  
1211 Avenue of the Americas, Suite 3000  
New York, NY 10036

Attention: General Counsel  
Facsimile: (212) 596-3489  
Email: notices@orionresourcepartners.com

**Equipment Financier:**

Ameriabank CJSC  
9 Grigor Lusavorich Street  
Yerevan, Armenia

Attention: Corporate Banking Director  
Facsimile: +374 10 513133  
Email: info@ameriabank.am

**Lydian Armenia or Lydian:**

c/o Lydian International Limited  
Suite 3  
5/6 Esplanade  
St. Helier, Jersey JE2 3QA  
Channel Islands

Attention: Douglas Tobler, Chief Financial Officer  
Facsimile: (303) 374-2623  
Email: douglas.tobler@lydianinternational.co.uk

37225-2019 21892832.6

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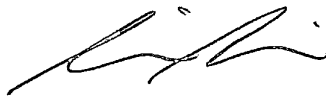
**SCHEDULE B**  
**EQUIPMENT FINANCE SECURITY DOCUMENTS**

1. security agreement No. ● dated ●, between Lydian Armenia and the Equipment Financier.
2. other security (collateral) agreements to be entered into between Lydian Armenia and the Equipment Financier within the scope of Equipment Finance Agreement.

# EXHIBIT “M”



*THIS IS EXHIBIT "M", referred to in the  
Affidavit of EDWARD A. SELLERS,  
sworn on December 22, 2019.*



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*Commissioner for Taking Affidavits*

Lydian International Ltd., et. al.

13 Week Cash Flow Forecast

Amounts in USD

Week Ending (Friday)	Notes	27-Dec-19	3-Jan-20	10-Jan-20	17-Jan-20	24-Jan-20	31-Jan-20	7-Feb-20	14-Feb-20	21-Feb-20	28-Feb-20	6-Mar-20	13-Mar-20	20-Mar-20	13 Week
Forecast Week		Wk-1	Wk-2	Wk-3	Wk-4	Wk-5	Wk-6	Wk-7	Wk-8	Wk-9	Wk-10	Wk-11	Wk-12	Wk-13	Total
Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-
DISBURSEMENTS															
Salaries & Benefits	1	-	-	-	-	-	(61,000)	-	-	-	(61,000)	-	-	-	(122,000)
Insurance	2	-	-	-	(4,847)	-	-	-	-	(4,846)	-	-	-	(4,845)	(14,538)
Board of Directors	3	-	-	-	-	-	-	(30,000)	(125)	-	-	(30,000)	(125)	-	(60,000)
Office, Communications & Bank		(1,600)	(260)	(260)	(260)	(260)	(1,860)	(125)	(125)	(125)	(1,925)	(125)	(125)	(125)	(4,375)
Travel	4	(7,500)	(6,000)	(6,000)	(6,000)	(6,000)	(6,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(107,500)
Miscellaneous		(625)	(500)	(500)	(500)	(500)	(500)	(625)	(625)	(625)	(625)	(625)	(625)	(625)	(7,500)
Professional Fees	5	(111,000)	(212,900)	(222,900)	(19,400)	(2,900)	(14,400)	(213,500)	(158,500)	(10,500)	(8,000)	(302,697)	(158,997)	(10,997)	(1,726,692)
Contingency		-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(6,250)	(6,250)	(6,250)	(6,250)	(6,250)	(6,250)	(6,250)	(68,750)
Net Cash Inflows / (Outflows)		(120,725)	(228,660)	(284,660)	(66,007)	(14,660)	(88,760)	(260,700)	(175,700)	(37,546)	(87,800)	(349,897)	(176,197)	(33,042)	(2,115,355)
CASH															
Available Cash (excludes DSR)															
Beginning Available Balance		1,060,198	739,473	514,813	230,153	164,147	149,487	60,727	(189,973)	(375,673)	(408,219)	(496,019)	(845,817)	(1,022,114)	1,060,198
Net Cash Inflows / (Outflows)		(120,725)	(228,660)	(284,660)	(66,007)	(14,660)	(88,760)	(260,700)	(175,700)	(37,546)	(87,800)	(349,897)	(176,197)	(33,042)	(2,115,355)
Financing Draws / (Repayments)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Available Balance		739,473	514,813	230,153	164,147	149,487	60,727	(189,973)	(375,673)	(408,219)	(496,019)	(845,817)	(1,022,114)	(1,055,156)	(1,055,156)

Notes:

Disclaimer:

In preparing this cash flow forecast ("Forecast") management has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The forecast includes assumptions discussed below with respect to the requirements and impact of a Ring under the Companies' Creditors Arrangement Act ("CCAA"). Since the forecast is based upon assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty, or other assurance that any of the estimates, forecasts or projections will be realized.

1. Includes payroll, taxes and benefits for certain senior management.
2. Amount is in respect of political violence insurance payable monthly.
3. Includes monthly fees for a member of the Companies' Board of Directors. The remaining Board members are paid quarterly and such payments do not fall within the forecast period.
4. Travel costs to and within Armenia to oversee activities related to the mine site owned by the Company's Armenian subsidiary.
5. Includes payments to the Companies' restructuring advisors, legal counsel, proposed CCAA Monitor, CCAA Monitor's legal counsel and other professionals.

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

Court File No.

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

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF EDWARD E. SELLERS  
(RETURNABLE DECEMBER 23, 2019)**

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

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[lpillon@stikeman.com](mailto:lpillon@stikeman.com)  
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Tel: (416) 869-5230

Sanja Sopic LSUC# 66487P  
[ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Tel: (416) 869-6825

Nick Avis LSUC# 76781Q  
[navis@stikeman.com](mailto:navis@stikeman.com)  
Tel: (416) 869-5504  
Fax: (416) 947-0866

Lawyers for the Applicants



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

)  
)  
)

MONDAY, THE 23<sup>rd</sup>  
DAY OF DECEMBER, 2019

**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

**INITIAL ORDER**

**THIS APPLICATION**, 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 December 22, 2019 (the "**Sellers Affidavit**") and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and counsel for the Monitor, no one appearing for any other party although duly served as appears from the affidavit of service of Sanja Sopic sworn December 23, 2019 and on reading the consent of Alvarez & Marsal Canada Inc. to act as the Monitor,

**SERVICE**

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

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the “**Non-Applicant Stay Parties**”) shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

## POSSESSION OF PROPERTY AND OPERATIONS

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

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



5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

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

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected

after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

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

#### **RESTRUCTURING**

9. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

#### **PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY**

10. **THIS COURT ORDERS** that until and including January 2, 2020, or such later date as this Court may subsequently order (the “**Stay Period**”), no proceeding or enforcement process in or out of any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.



11. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicants’ Property**”, and together with the Non-Applicants’ businesses, the “**Non-Applicants’ Property and Business**”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants’ Property and Business, as a result of a Non-Applicants’ Default Event, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.



### **NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants or the Non-Applicant Stay Parties (as a result of a Non-Applicants' Default Event) except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

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

### **NON-DEROGATION OF RIGHTS**

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

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any

of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

19. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 29 and 31 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

#### **APPOINTMENT OF MONITOR**

21. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order,



and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in its preparation of the Applicants' cash flow statements;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

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

24. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of any of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant

to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

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

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with their recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

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

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 29 and 31 hereof.

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

29. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$460,740);



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

30. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors’ Charge or the Administration 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.

31. **THIS COURT ORDERS** that each of the Directors’ Charge and the Administration 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.

32. **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 Directors’ Charge and the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors’ Charge and the Administration Charge, or further Order of this Court.

33. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

#### **SERVICE AND NOTICE**

34. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

35. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<http://www.alvarezandmarsal.com/Lydian>>.

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

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



## GENERAL

38. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

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

40. **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.

41. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

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

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

44. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 8:30 a.m. Eastern Standard/Daylight Time on the date of this Order.

  
C.B. HOROWITZ

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

DEC 24 2019

PER / PAR: AC



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

)  
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)

THURSDAY, THE 23<sup>rd</sup>  
DAY OF JANUARY, 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

AMENDED AND RESTATED INITIAL ORDER  
(Amending Initial Order dated December 23, 2019)



**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on December 23, 2019 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day at 130 Queen Street West, Toronto, Ontario.

**ON READING** the affidavit of Edward A. Sellers sworn December 22, 2019 (the "**Sellers Initial Affidavit**"), the affidavit of Edward A. Sellers sworn January 20, 2020 (the "**Sellers Comeback Affidavit**"), and on hearing the submissions of counsel for the Applicants, counsel for Alvarez & Marsal Canada Inc. (the "**Monitor**"), and counsel for Caterpillar Financial Services (UK) Limited, with counsel for Orion Capital Management, counsel for Resource Capital Fund VI LP, counsel for Osisko Bermuda Limited and counsel for ING Bank N.V. / ABS Svensk Exportkredit (publ) in attendance and not opposing, and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

## INITIAL ORDER AND INITIAL FILING DATE

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

## SERVICE

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

## APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the “**Non-Applicant Stay Parties**”) shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

## PLAN OF ARRANGEMENT

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

## POSSESSION OF PROPERTY AND OPERATIONS

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

6. **THIS COURT ORDERS** that the 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 described in the Sellers Initial Affidavit (the “Cash Management System”) and that any present or future bank providing the Cash Management System to the Applicants or the Non-Applicant Stay Parties shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date:

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

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of

insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances

upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (b) continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of their business (the “**Restructuring**”).

## **PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY**

12. **THIS COURT ORDERS** that until and including March 2, 2020, or such later date as this Court may subsequently order (the “**Stay Period**”), no proceeding or enforcement process in or out of any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

13. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicants’ Property**”, and together with the Non-Applicants’ businesses, the “**Non-Applicants’ Property and Business**”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

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

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants’ Property and Business are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

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

## **CONTINUATION OF SERVICES**

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other

data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

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

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants

after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **APPOINTMENT OF MONITOR**

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

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

- (a) monitor the Applicants' receipts and disbursements, including to the extent deemed appropriate by the Monitor as it relates to the Non-Applicant Stay Parties who utilize the Cash Management System with the Applicants, in order to review and



consider the cash requirements and reasonableness of the cash flow forecast prepared by the Applicants, and the continued use of the Cash Management System;

- (b) have full and complete access to the books, records, data, including data in electronic form, and other financial documents of the Non-Applicant Stay Parties to the extent that is necessary to adequately assess the Applicants' business and financial affairs and prospects for a restructuring or transaction of any kind, to report on cash flow forecasts prepared by the Applicants, or to perform its duties arising under this or any further Order of this Court and such Non-Applicant Stay Parties shall cause their respective employees, contractors, agents, advisors, directors and/or officers, as may be necessary, available to the Monitor for such purposes;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, including as it relates to the availability of cash to the Applicants under the Cash Management System by the Non-Applicant Stay Parties;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, wherever situate, in order to assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicants in connection with any arbitration proceedings with the Government of Republic of Armenia ("GOA") that may be commenced by any

Applicant or Non-Applicant Stay Party that involves or affects any of the Applicants' Business or Property (an "**Arbitration**");

- (i) perform such other duties as are required by this Order or by this Court from time to time; and
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

25. **THIS COURT ORDERS** that the Applicants shall make best reasonable efforts to the extent possible to cause the Non-Applicant Stay Parties (including their respective employees, contractors, agents, advisors, directors and/or officers) to cooperate fully with the Monitor in relation to its information requests and its powers and duties set forth herein, and for so long as the stay of proceedings in favour of the Non-Applicant Stay Parties shall remain in place.

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

27. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any environmental legislation, unless it is actually in possession.

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

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

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with the recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

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

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

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

33. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$460,740);

Second – Directors' Charge (to the maximum amount of \$263,280).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration 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.

35. **THIS COURT ORDERS** that each of the Directors' Charge and the Administration 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.

36. **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 Directors' Charge and the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

37. **THIS COURT ORDERS** that the Directors' Charge, and the Administration 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 *Bankruptcy and Insolvency Act* (Canada) (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.

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

#### **SERVICE AND NOTICE**

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

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

#### **GENERAL**

43. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

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

45. **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.

46. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

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

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

49. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 9:30 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JAN 31 2020

PER / PAR:

**SCHEDULE "A"**  
**(Letter of Request for the Royal Court of Jersey)**



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

---

LETTER OF REQUEST  
(COMITY APPLICATION)

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To: The Bailiff of the Royal Court of Jersey  
Royal Court Building, Royal Square  
St Helier, Jersey  
JE1 1JG

The Ontario Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

**WHEREAS:**

1. By an order dated the 23 December 2019 of the Ontario Court ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

---

<sup>1</sup> Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.

2. The Ontario Court was advised that the Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "Monitor"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

6. Pursuant to paragraph 42 of the CCAA Order, the Debtors and the Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."

NOW:

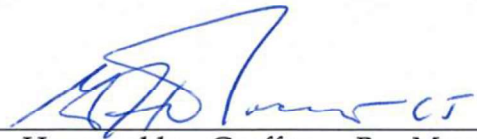
7. I, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the

bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.

Dated: 23 December 2019



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The Honourable Geoffrey B. Morawetz,  
Chief Justice of the Superior Court of Justice  
(Ontario)

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

**AMENDED AND RESTATED INITIAL  
ORDER**

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

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**Lawyers for the Applicants**

**IN THE ROYAL COURT OF JERSEY  
(SAMEDI DIVISION)**

**IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED**

**AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR  
COURT OF JUSTICE**

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**AFFIDAVIT OF ELIZABETH PILLON**

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I, Elizabeth Pillon, of the law firm, Stikeman Elliott LLP ("**Stikeman**"), of the City of Oakville, Ontario, Canada hereby make oath and say as follows:-

**Introduction**

1. I adopt for convenience the defined terms from the Affidavit of Edwards A. Sellers dated 30 January 2020.
2. I am partner at Stikeman and am Head of the Restructuring Group in the Toronto office. Stikeman has acted for the Lydian Group in relation to the insolvency proceedings.
3. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge.
4. The purpose of this affidavit is to explain the jurisdictional basis upon which we asked the Ontario Court to place Lydian International into CCAA proceedings in Canada.

**My background**

5. I have extensive experience as a commercial litigator and restructuring professional and over the course of my career, spanning over 25 years, I have specialised in commercial litigation with an emphasis on restructuring and insolvency matters. I also have experience of cross-border insolvency matters. I have represented debtor companies, Court Officers such as monitors and receivers, secured creditors and

purchasers of distressed assets. I frequently appear before the Ontario Court as well as courts throughout Canada.

### **Background to the CCAA Order**

6. The background to the CCAA Order is set out in the Affidavit of Edward Sellers' dated 30 January 2020 (**Mr Sellers' 30 January Affidavit**), and I refer in particular paragraphs 12 to 32 of that Affidavit. I also refer to the following relevant facts:
  - (a) As the Lydian Group dealt with a number of financial and operational challenges, it entered into a series of forbearance agreements with its lenders commencing in October 2018 through to 20 December 2019. Despite extensive negotiations, the lenders did not agree to extend the forbearance agreement. The expiration of the latest forbearance agreement on 20 December 2019 meant that the bringing of the CCAA application in Canada was urgent and, unfortunately, there was no time to seek a Letter of Request from the Jersey Court in advance of the CCAA Application being brought. The aforementioned details of the forbearance agreements are set out in paragraphs 80 to 84 of the Affidavit of Edward Sellers dated 22 December 2019 (which is exhibited to Mr Sellers' 30 January Affidavit); and
  - (b) Mourant Ozannes were engaged in December 2019 to provide advice as to the mechanics of determining how the CCAA Order would be placed before the Royal Court of Jersey for recognition pursuant to the principles of comity and reciprocity as soon as reasonably practicable;
  - (c) Mr Sellers' 30 January Affidavit explains the role of Lydian International in the Lydian Group at paragraphs 15 to 18.

### **Cross-border jurisdictional**

7. In seeking the Ontario Court's assistance and oversight with the Lydian Group, including the Ontario Court placing foreign companies within Canadian insolvency proceedings, we relied on a number of factors including the Ontario Commercial List's experience in dealing with cross border proceedings with a number of jurisdictions, and the flexibility and accessibility to the Ontario Courts to deal with matters on a time sensitive basis.

8. In determining whether to include a foreign debtor as an applicant in a CCAA proceeding, Canadian courts will consider objective factors ascertainable by third parties, including: (i) the location of the debtor's headquarters or head office functions, (ii) the location of those who manage the debtor's business, (iii) the location of primary assets and operations, and (iv) the location that the significant creditors recognize as being the "nerve centre" of the debtor. In some cases these factors could conflict and a Canadian court may need to put more or less weight on a given factor. Canadian courts have on previous occasions included a foreign debtor as an applicant in CCAA proceedings where the foreign debtor formed part of an integrated corporate group which was managed out of Canada.
9. In the Lydian CCAA proceedings, the Ontario Court was presented with the following evidence to consider in determining whether Lydian International was a proper CCAA applicant: (i) the Lydian Group's business and affairs are completely integrated, and are directed out of Canada, (ii) substantially all of the strategic business affairs and key decision making with respect to the Lydian Group are conducted out of Canada, (iii) of Lydian International six directors, three are resident Canadians, and the remaining three do not have a common resident nationality, (iv) Lydian International's Special Committee, created to direct the Lydian Group's restructuring efforts, is composed exclusively of resident Canadians, (v) each of Lydian International, Lydian Canada and Lydian UK have assets in Ontario, (vi) the Lydian Group's loan agreements are governed by Ontario law, (vii) Lydian International's shares traded on the Toronto Stock Exchange, and (viii) the Lydian Group's material professional advisory relationships are with professionals based out of Canada.

#### **Judgment of the Ontario Court**

10. The Ontario Court found that Lydian International had a strong nexus to Ontario and that, in the circumstances described, it was appropriate for the Ontario Court to issue a Letter of Request to the Royal Court of Jersey. A copy of Chief Justice Morawetz's endorsement is attached hereto and marked as Exhibit "A" to this my

affidavit and notes:

[41] With respect to whether Ontario is the appropriate venue for this proceeding, Lydian Canada's registered head office is located in Toronto and its registered and records offices are located in Vancouver. In my view, Ontario has jurisdiction over Lydian Canada. The registered head offices for Lydian International and Lydian UK are in Jersey and the UK respectively, however, both entities have assets in Ontario, those being funds on deposit with the Bank of Nova Scotia in Toronto. Further, it seems to me that both Lydian International and Lydian UK have a strong nexus to Ontario and accordingly I am satisfied that Ontario is the appropriate jurisdiction to hear this application.

[42] I am also satisfied that, in these circumstances, it is appropriate for this court to issue to the Royal Court of Jersey a letter of request as referenced in the application record.

**SIGNED** and **SWORN** by the said

**Elizabeth Pillon**

At Toronto, ON

This 18<sup>th</sup> day of February 2020

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)  
)  
)



BEFORE ME

Nicholas Avis

Nicholas Avis, Associate

Commissioner for Oaths/Practising Solicitor

Stikeman Elliott LLP

Barristers + Solicitors

5300 Commerce Court W

199 Bay St

Toronto ON M5L 1B9

Canada



IN THE ROYAL COURT OF JERSEY  
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL

AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR  
COURT OF JUSTICE

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EXHIBIT "EP1"

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This is the exhibit marked "EP1" referred to in the First Affidavit of Elizabeth Pillon.

BEFORE ME



Commissioner for Oaths/Practising Solicitor

**CITATION:** Lydian International Limited (Re), 2019 ONSC 7473  
**COURT FILE NO.:** CV-19-00633392-00CL  
**DATE:** 2019-12-24

**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 ARRANGMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES  
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

**Applicants**

**BEFORE:** Chief Justice Geoffrey B. Morawetz

**COUNSEL:** *Elizabeth Pillon, Sanja Sopic, and Nicholas Avis*, for the Applicants

*Pamela Huff*, for Resource Capital Fund VI L.P.

*Alan Merskey*, for OSISKO Bermuda Limited

*D.J. Miller*, for Alvarez & Marsal Canada Inc. proposed Monitor

*David Bish*, for ORION Capital Management

*Bruce Darlington*, for ING Bank N.V./ABS Svensk Exportkredit (publ)

**HEARD and DETERMINED:** December 23, 2019

**REASONS RELEASED:** December 24, 2019

**ENDORSEMENT**

**Introduction**

[1] Lydian International Limited ("Lydian International"), Lydian Canada Ventures Corporation ("Lydian Canada") and Lydian UK Corporation Limited ("Lydian UK", and collectively, the "Applicants") apply for creditor protection and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"). The Applicants seek an initial order, substantially in the form attached to the application record. No party attending on the motion opposed the requested relief.

[2] The Applicants are part of a gold exploration and development business in south central Armenia (the "Amulsar Project"). The Amulsar Project is directly owned and operated by Lydian Armenia CJSC ("Lydian Armenia"), a wholly-owned subsidiary of the Applicants.

[3] As set out in the affidavit of Edward A. Sellers sworn December 22, 2019 (the "Sellers Affidavit"), the Applicants have been experiencing and continue to experience liquidity issues due to blockades of the Amulsar Project and other external factors. The Sellers Affidavit details such activities and Mr. Sellers deposes that these activities have prevented Lydian Armenia and its employees, contractors and suppliers from accessing, constructing and ultimately operating the Amulsar Project.

[4] Mr. Sellers states that the lack of progress at the Amulsar Project has prevented the Lydian Group (as that term is defined below) from generating any positive cash flow and has also triggered defaults on certain of the Lydian Group's obligations to its lenders which, if enforced, the Lydian Group would be unable to satisfy.

[5] The Lydian Group has operated under forbearance agreements in respect of these defaults since October 2018, but the most recent forbearance agreement expired on December 20, 2019.

[6] The Applicants contend that they now require immediate protection under the CCAA for the breathing room they require to pursue remedial steps on a time sensitive basis.

[7] The Applicants intend to continue discussions with their lenders and other stakeholders, including the Government of Armenia ("GOA"). The Applicants also intend to continue evaluating potential financing and/or sale options, all with a view to achieving a viable path forward.

### **The Applicants**

[8] Lydian International is a corporation continued under the laws of the Bailiwick of Jersey, Channel Islands, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International was originally incorporated under the *Business Corporations Act*, R.S.A. 2000, c. B-9 (Alberta) on February 14, 2006 as "Dawson Creek Capital Corp.", and subsequently became Lydian International on December 12, 2007.

[9] Lydian International's registered office is located in Jersey. On June 12, 2019, Lydian International shareholders approved its continuance under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, but this continuance has yet to be implemented.

[10] Lydian International has two types of securities listed on the Toronto Stock exchange: (1) ordinary shares and (2) warrants that expired in 2017.

[11] Lydian Canada is a direct, wholly owned subsidiary of Lydian International. Lydian Canada is incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 (British Columbia) and has a registered head office in Toronto. Its registered and records office is located in British Columbia.

[12] Lydian UK is a corporation incorporated in the United Kingdom and is a direct, wholly-owned subsidiary of Lydian Canada with a head office located in the United Kingdom. Lydian UK has no material assets in the UK.

[13] Lydian International and Lydian UK have assets in Canada in the form of deposits with the Bank of Nova Scotia in Toronto.

[14] The Applicants are part of a corporate group (the "Lydian Group") with a number of other subsidiaries ultimately owned by Lydian International. Other than the Applicants, certain of the Lydian Group's subsidiaries are Lydian U.S. Corporation ("Lydian US"), Lydian International Holdings Limited ("Lydian Holdings"), Lydian Resources Armenia Limited ("Lydian Resources") and Lydian Armenia, a corporation incorporated under the laws of the Republic of Armenia. Together, Lydian U.S., Lydian Holdings, Lydian Resources and Lydian Armenia are the "Non-Applicant" parties.

[15] The Applicants submit that due to the complete integration of the business and operations of the Lydian Group, an extension of the stay of proceedings over the Non-Applicant parties is appropriate.

[16] The Applicants contend that the Lydian Group is highly integrated and its business and affairs are directed primarily out of Canada. Substantially all of its strategic business affairs, including key decision-making, are conducted in Toronto and Vancouver.

[17] Further, all the Applicants and Non-Applicant Parties are borrowers or guarantors of the Lydian Group's secured indebtedness. The Lydian Group's loan agreements are governed primarily by the laws of Ontario.

[18] Finally, the Lydian Group's forbearance and restructuring efforts have been directed out of Toronto.

[19] The Lydian Group is focused on constructing the Amulsar Project, its wholly-owned development stage gold mine in Armenia. The Amulsar Project was funded by a combination of equity and debt capital and stream financing. The debt and stream financing arrangements are secured over substantially all the assets of Lydian Armenia and Lydian International in the shares of various groups of the Lydian Group.

[20] The Applicants contend that time is of the essence given the Applicants' minimal cash position and negative cash flow.

### **Issues**

[21] The issues for consideration are whether:

- (a) the Applicants meet the criteria for protection under the CCAA;
- (b) the CCAA stay should be extended to the Non-Applicant Parties;

- (c) the proposed monitor, Alvarez & Marsal Canada Inc. ("A&M") should be appointed as monitor;
- (d) Ontario is the appropriate venue for this proceeding;
- (e) this court should issue a letter of request of the Royal Court of Jersey;
- (f) this Court should exercise its discretion to grant the Administration Charge and the D & O Charge (as defined below); and
- (g) it is appropriate to grant a stay extension immediately following the issuance of the Initial Order.

### **Law and Analysis**

[22] Pursuant to section 11.02(1) of the CCAA, a court may make an order staying all proceedings in respect of a debtor company for a period of not more than 10 days, provided that the court is satisfied that circumstances exist to make the order appropriate.

[23] Section 11.02(1) of the CCAA was recently amended and the maximum stay period permitted in an initial application was reduced from 30 days to 10 days. Section 11.001 which came into force at the same time as the amendment to s. 11.02(1), limits initial orders to "ordinary course" relief.

[24] Section 11.001 provides:

- 11.001            An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period:

[25] The News Release issued by Innovation, Science and Economic Development Canada specifically states that these amendments "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."

[26] In my view, the intent of s. 11.001 is clear. Absent exceptional circumstances, the relief to be granted in the initial hearing "shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period". The period being no more than 10 days, and whenever possible, the *status quo* should be maintained during that period.

[27] Following the granting of the initial order, a number of developments can occur, including:

- (a) notification to all stakeholders of the CCAA application;
- (b) stabilization of the operation of debtor companies;
- (c) ongoing negotiations with key stakeholders who were consulted prior to the CCAA filing;
- (d) commencement of negotiations with stakeholders who were not consulted prior to the CCAA filing;
- (e) negotiations of DIP facilities and DIP Charges;
- (f) negotiations of Administration Charges;
- (g) negotiation of Key Employee Incentives Programs;
- (h) negotiation of Key Employee Retention Programs;
- (i) consultation with regulators;
- (j) consultation with tax authorities;
- (k) consideration as to whether representative counsel is required; and
- (l) consultation and negotiation with key suppliers.

[28] This list is not intended to be exhaustive. It is merely illustrative of the many issues that can arise in a CCAA proceeding.

[29] Prior to the recent amendments, it was not uncommon for an initial order to include provisions that would affect some or all of the aforementioned issues and parties. The previous s. 11.02 provided that the initial stay period could be for a period of up to 30 days. After the initial stay, a “comeback” hearing was scheduled and, in theory, parties could request that certain provisions addressed in the initial order could be reconsidered.

[30] The practice of granting wide-sweeping relief at the initial hearing must be altered in light of the recent amendments. The intent of the amendments is to limit the relief granted on the first day. The ensuing 10-day period allows for a stabilization of operations and a negotiating window, followed by a comeback hearing where the request for expanded relief can be considered, on proper notice to all affected parties.

[31] In my view, this is consistent with the objectives of the amendments which include the requirement for “participants in an insolvency proceeding to act in good faith” and “improving participation of all players”. It may also result in more meaningful comeback hearings.

[32] It is against this backdrop that the requested relief at the initial hearing should be scrutinized so as to ensure that it is restricted to what is reasonably necessary for the continued operations of the debtor company during the initial stay period.

[33] For the reasons that follow, I conclude that it is appropriate to grant a s. 11.02 order in respect of the Applicants.

[34] I am satisfied that Lydian Canada meets the CCAA definition of “company” and is eligible for CCAA protection.

[35] I have also considered whether the foreign incorporated companies are “companies” pursuant to the CCAA. Such entities must satisfy the disjunctive test of being an “incorporated company” either “having assets or doing business in Canada”.

[36] In *Cinram International Inc., (Re)*, 2012 ONSC 3767, 91 C.B.R. (5th) 46, I stated that the threshold for having assets in Canada is low and that holding funds in a Canadian bank account brings a foreign corporation within the definition of “company” under the CCAA.

[37] In this case, both Lydian International and Lydian UK meet the definition of “company” because both corporations have assets in and do business in Canada.

[38] In my view the Applicants are each “debtor companies” under the CCAA. The Applicants are insolvent and have liabilities in excess of \$5 million. I am satisfied that the Applicants are eligible for CCAA protection.

[39] The Applicants seek to extend the stay to Lydian Armenia, Lydian Holdings, Lydian Resources Armenia Limited and Lydian US.. I am satisfied that, in the circumstances, it is appropriate to grant an order that extends the stay to the Non-Applicant Parties. The stay is intended to stabilize operations in the Lydian Group. This finding is consistent with CCAA jurisprudence: see e.g., *Sino-Forest Corporation (Re)*, 2012 ONSC 2063, at paras. 5, 18, and 31; *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.); and *Target Canada Co. (Re)*, 2015 ONSC 303, 22 C.B.R. (6th) 323, at paras. 49-50.

[40] I am also satisfied that it is appropriate to appoint A & M as monitor pursuant to the provisions of s. 11.7 of the CCAA.

[41] With respect to whether Ontario is the appropriate venue for this proceeding, Lydian Canada’s registered head office is located in Toronto and its registered and records offices are located in Vancouver. In my view, Ontario has jurisdiction over Lydian Canada. The registered head offices for Lydian International and Lydian UK are in Jersey and the UK respectively, however, both entities have assets in Ontario, those being funds on deposit with the Bank of Nova Scotia in Toronto. Further, it seems to me that both Lydian International and Lydian UK have a strong nexus to Ontario and accordingly I am satisfied that Ontario is the appropriate jurisdiction to hear this application.

[42] I am also satisfied that, in these circumstances, it is appropriate for this court to issue to the Royal Court of Jersey a letter of request as referenced in the application record.

#### **Administration Charge**

[43] The Applicants seek a charge on their assets in the maximum amount of US \$350,000 to secure the fees and disbursements incurred in connection with services rendered by counsel to

the Applicants, A & M and A & M's counsel, in respect of the CCAA proceedings (the "Administration Charge").

[44] Section 11.52 of the CCAA provides the ability for the court to grant the Administration Charge.

[45] The recently enacted s. 11.001 of the CCAA limits the requested relief on this motion, including the Administration Charge, to what is reasonably necessary for the continued operation of the Applicants during the Initial Stay Period. The Sellers Affidavit outlines the complex issues facing the Applicants.

[46] In *Canwest Publishing Inc.*, (Re), 2010 ONSC 222, 63 C.B.R.(5th) 115, Pepall J. (as she then was) identified six non-exhaustive factors that the court may consider in addition to s. 11.52 of the CCAA when determining whether to grant an administration charge. These factors include:

- (a) the size and complexity of business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

[47] It seems to me that the proposed restructuring will require extensive input from the professional advisors and there is an immediate need for such advice. The requested relief is supported by A & M.

[48] I am satisfied that the Administration Charge in the limited amount of US \$350,000 is appropriate in the circumstances and is reasonably necessary for the continued operation of the business at this time.

#### **D & O Charge**

[49] The Applicants also seek a charge over the property in favour of their former and current directors in the limited amount of \$200,000 (the "D & O Charge").

[50] The Applicants maintain Directors' and Officers' liability insurance (the "D & O Insurance") which provides a total of \$10 million in coverage.

[51] The D & O Insurance is set to expire on December 31, 2019.



[52] Section 11.51 of the CCAA provides the court with the express statutory jurisdiction to grant the D & O charge in an amount the court considers appropriate, provided notice is given to the secured creditors who are likely to be affected.

[53] In *Jaguar Mining Inc., (Re)*, 2014 ONSC 494, 12 C.B.R. (6th) 290, I set out a number of factors to be considered in determining whether to grant a directors' and officers' charge:

- (a) whether notice has been given to the secured creditors likely to be affected by the charge;
- (b) whether the amount is appropriate;
- (c) whether the Applicant could obtain adequate indemnification insurance for the director at a reasonable cost; and
- (d) whether the charge applies in respect of any obligation incurred by a director or officer as a result of the directors' or officers' gross negligence or willful misconduct.

[54] Having reviewed the Sellers Affidavit, it seems to me that the granting of the D & O charge is necessary in the circumstances. In arriving at this conclusion, I have also taken into account that the D & O Insurance will lapse shortly; having directors involved in the process is desirable; that the secured creditors likely to be affected do not object; and that A & M has advised that it is supportive of the D & O Charge. Further, the requested amount is one that I consider to be reasonably necessary for the continued operation of the Applicants.

#### **Extension of the Stay of Proceedings**

[55] The Applicants have requested that, if the initial order is granted, I should immediately entertain and grant an order extending the Stay Period until and including January 17, 2020 which will provide the Applicants and all stakeholders with enough time to adequately prepare for a comeback hearing.

[56] The Applicants submit that I am authorized to grant a stay extension immediately after granting the initial order because section 11.02(2) of the CCAA does not provide a minimum waiting time before an applicant can seek a stay extension. The Applicants reference recent decisions where courts have scheduled hearings within two or three days after the granting of an initial order. Reference is made to *Clover Leaf Holdings Company (Re)*, 2019 ONSC 6966 and *Re Wayland group Corp. et al.* (2 December 2019), Toronto CV-19-00632079-00CL. In *Clover Leaf*, the stay extension for 36 days and additional relief including authorization for DIP financing was granted three days after the initial order and in *Wayland*, the stay extension was granted two days after the initial order.

[57] I acknowledge that, in this case, it may be challenging for the Applicants to return to court at or near the end of the 10-day initial stay period due to the year-end holidays. I also acknowledge that the offices of many of the parties involved in these proceedings may not be open during the holidays.

[58] However, the statutory maximum 10-day stay as referenced in s. 11.02(1) expires on January 2, 2020 and the courts are open on that day.

[59] As noted above, absent exceptional circumstances, I do not believe that it is desirable to entertain motions for supplementary relief in the period immediately following the granting of an initial order.

[60] It could very well be that circumstances existed in both *Clover Leaf* and *Wayland* that justified the stay extension and the ancillary relief being granted shortly after the initial order.

[61] However, in this case, I have not been persuaded on the evidence that it is necessary for the stay extension to be addressed prior to January 2, 2020 and I decline to do so.

**Disposition**

[62] The initial order is granted with a Stay Period in effect until January 2, 2020. In view of the holiday schedules of many parties, the following procedures are put in place. The Applicants can file a motion returnable on January 2, 2020, requesting that the stay be extended to January 23, 2020. Any party that wishes to oppose the extension of the stay to January 23, 2020 is required to notify the Applicant, A & M and the Commercial List Office of their intention to do so no later than 2:00 p.m. on December 30, 2019. In the event that the requested stay extension is unopposed, there will be no need for counsel to attend on the return of the motion. I will consider the motion based on the materials filed.

[63] If any objections are received by 2:00 p.m. on December 30, 2019, the hearing on January 2, 2020 will address the opposed extension request. Any further relief will be considered at the Comeback Motion on January 23, 2020.



Chief Justice Geoffrey B. Morawetz

**Date:** December 24, 2019

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

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LETTER OF REQUEST  
(COMITY APPLICATION)

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To: The Bailiff of the Royal Court of Jersey  
Royal Court Building, Royal Square  
St Helier, Jersey  
JE1 1JG

The Ontario Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

**WHEREAS:**

1. By an order dated the 23 December 2019 of the Ontario Court ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

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<sup>1</sup> Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.

2. The Ontario Court was advised that the Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "Monitor"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

6. Pursuant to paragraph 42 of the CCAA Order, the Debtors and the Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."

NOW:

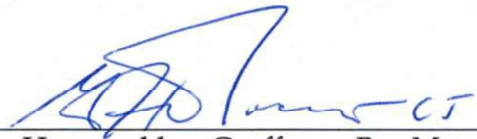
7. I, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the

bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.

Dated: 23 December 2019



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The Honourable Geoffrey B. Morawetz,  
Chief Justice of the Superior Court of Justice  
(Ontario)

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

**AMENDED AND RESTATED INITIAL  
ORDER**

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**Lawyers for the Applicants**

# *In the Royal Court of Jersey*

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Samedi Division

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2020/019

**In the year two thousand and twenty, the twenty-fifth day of February.**

Before Robert James MacRae, Esquire, Deputy Bailiff of Jersey, assisted by  
Jurats Rozanne Barbara Thomas and David Gareth Hughes.

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL  
LIMITED

AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO  
SUPERIOR COURT OF JUSTICE

Upon receipt of a letter of request to the Royal Court of Jersey from the Ontario Superior Court of Justice (the Ontario Court) dated the 23<sup>rd</sup> December, 2019, issued under an order of the Ontario Court dated the 23<sup>rd</sup> January, 2020.

And upon reading the representation of Lydian International Limited (Lydian International).

And upon hearing the Advocate for Lydian International, the Court, for reasons to be set out in a judgment to be delivered by the Deputy Bailiff at a later date, ordered that the directions and orders of the Ontario Court be recognised and be given effect to as follows, so that:-

1. Alvarez & Marsal Canada Inc. ("the Monitor") be appointed as the monitor of Lydian International with such appointment registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
2. Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property;
3. No proceeding or enforcement process in or out of any court or tribunal shall be commenced or continued against or in respect of Lydian International, or affecting its

business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and

4. Lydian International and any party affected by this Representation, including the creditors of Lydian International, shall have liberty to apply.



Greffier Substitute

MO (SJA)



**ROYAL COURT  
(Samedi Division)**

17<sup>th</sup> March 2020

**Before: R J MacRae Esq, Deputy Bailiff with Jurats  
Thomas and Hughes**

**Representation of Lydian International Limited**

**Advocate S J Alexander for the Representor**

**JUDGMENT**

**DEPUTY BAILIFF:**

1. On 25<sup>th</sup> February 2020 the Court made various orders in response to a letter of request dated 23<sup>rd</sup> December 2019 addressed to the Royal Court and transmitted to the Court under an order made by Chief Justice Morawetz of the Ontario Superior Court of Justice dated 23<sup>rd</sup> January 2020.
2. We now give reasons for our decision.
3. Lydian International Limited ("Lydian International") is a Jersey company. It is the ultimate holding company for the wider Lydian Group. It is not necessary to set out the identity of all the companies in the Lydian Group. But Lydian International holds 100% of the shares in Lydian Canada Ventures Corporation, a company registered in British Columbia. Lydian Canada Ventures Corporation in turn owns 100% of the shares in Lydian UK Corporation Limited, a United Kingdom company.
4. Ultimately, through two companies registered in the British Virgin Islands, the companies that we have described wholly own an Armenian company which holds the principal asset of the group, a gold mine in Armenia.

5. The three companies identified, Lydian International, Lydian Canada Ventures Corporation and Lydian UK Corporation Limited were the three companies within the Group which were the subject of an application made to the Ontario Supreme Court under the Companies' Creditors Arrangement Act ("the CCAA").
6. The CCAA is a Canadian federal statute allowing insolvent debtors to restructure their business and financial affairs. In particular, it allows a company to continue its business whilst it seeks to make arrangements with its creditors. This includes "debtor in possession" insolvency proceedings whereby the debtor (in this case the three companies referred to) remains in possession of their property and are able to carry on their business until conclusion of the proceedings. The proceedings are carried out under the supervision of the court with the assistance of an independent insolvency practitioner known as the "Monitor".
7. The financial difficulties which the Lydian group companies are currently encountering are a consequence of difficulties in completing the construction of the gold mine which are said to have been caused by arbitrary measures taken by the government of Armenia. It is not necessary to describe further the difficulties this has caused to the Lydian Group.

#### **The judgment of the Supreme Court of Justice, Ontario ("the Ontario Court")**

8. The judgment of the Ontario Court recognised that Lydian International is a Jersey company, initially incorporated in Alberta. The applicants to the Ontario Court submitted that the Lydian Group business was completely integrated and its business directed primarily out of Canada, with most of its strategic decision making being conducted in Toronto and Vancouver. The Lydian Group's loan agreements were governed primarily by the laws of Ontario. It was clear from the judgment of the Ontario Court that the restructuring arrangements for the Lydian Group are complex and that it may be appropriate for the insolvency regime of one jurisdiction to oversee the process.
9. The Ontario Court held that the Jersey and UK companies, although foreign incorporated were "companies" pursuant to the CCAA, as they either had assets or did business in Canada. They were also "debtor companies" for the purpose of the CCAA as they were insolvent and had liabilities in excess of C\$5m.
10. The Ontario Court held "*The registered offices for Lydian International and Lydian UK are in Jersey and the UK respectively, however, both entities have assets in Ontario, those being funds on deposit with the Bank of Nova Scotia in Toronto. Further, it seems to me that both Lydian International and Lydian UK have a strong nexus to Ontario and accordingly I am satisfied that*

*Ontario is the appropriate jurisdiction to hear this application. I am also satisfied that, in the circumstances, it is appropriate for this court to issue to the Royal Court of Jersey a letter of request as referenced in the application record."*

11. The Ontario Court has made interim orders which need to be renewed frequently and are under the supervision of the Monitor. These orders have, inter alia, the effect that the applicants remain in possession and control of their current and future assets; may continue to carry on business in a manner consistent with the preservation of their business; are entitled to pay various expenses; are directed not to make payments of principal or interest to any of their creditors and are protected from any proceedings or enforcements against them except with consent of the applicants and the Monitor, or leave of the Court. These protections extend to the directors and officers of the applicants. The Monitor has been ordered to monitor the receipts and disbursements of the three companies; report to the Court at such time and intervals as the Monitor may deem appropriate with respect to matters relating to the property of the companies; advise the companies in the preparation of their cash flow statements; have full and complete access to the affairs of the companies and, be at liberty to engage counsel or such other persons as the Monitor deems appropriate respecting the exercise of its powers and obligations.

#### **The letter of request**

12. The letter of request ordered to be sent to this Court is entitled "*Letter of Request (Comity Application)*". The letter requests the assistance of this Court and invites the Court to give various relief. Importantly, the Ontario Court confirms "*that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey)*".
13. The Ontario Court requests the assistance of the Royal Court to act in aid of the applicants and the Monitor in the conduct of the reorganisation of the applicants and in particular, in summary, by recognising the appointment of the Monitor; by recognising the rights and powers of the applicants and the Monitor in respect of the property of Lydian International; by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and by granting such further or other relief as the Royal Court shall think fit in aid of the applicants and the Monitor in the reorganisation of Lydian International.
14. The Court was concerned to satisfy itself firstly that it had jurisdiction to grant the orders made and secondly, if it had such jurisdiction, whether it would be appropriate to exercise it in favour of granting some or all of the orders sought in the letter or request.

## The Court's jurisdiction

15. There is no statutory basis to assist the Ontario Court.
16. Article 49 of the Bankruptcy (Désastre) (Jersey) Law 1990 provides that:

***“(1) The court may, to the extent it thinks fit, assist the courts of a relevant country or territory in all matters relating to the insolvency of a person, and when doing so may have regard to the extent it considers appropriate to the provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law.***

...

***(4) In this Article “relevant country or territory” means a country or territory prescribed by the Minister.”***

17. However, the provisions of the order made by the Minister under Article 49, as contained in the Bankruptcy (Désastre) Jersey Order 2006, list a number of countries and territories which do not include Canada.
18. We were assisted by various Jersey cases cited to us in the course of argument in which the Royal Court, in the exercise of its discretion and having regard to the principles of comity, decided to make orders having the effect of implementing orders made by foreign courts in respect of bankruptcies in those jurisdictions.
19. The authority of most assistance was the decision of the Royal Court in Tacon –v- Nautilus Trust Company Limited, John Grimshaw and Montrow International Limited [2007] JRC 107 and the decision of the Court of Appeal on appeal in Montrow International –v- Tacon [2007] JCA 144.
20. In that case the Royal Court was considering an application made by the respondents to stay an order previously made by the Royal Court whereby it had recognised the appointment by the High Court of the British Virgin Islands of a provisional liquidator and authorised him to exercise in Jersey various powers as provisional liquidator of companies, including Montrow International Limited. At paragraph 24 the Court said:

*“24. The second preliminary objection was that this Court does not have power to order a director to provide information etc at the instance of a provisional liquidator of an overseas company because Jersey does not have the concept of a provisional liquidator. Reliance was placed upon a dictum of Lord Hoffmann in Cambridge Gas Transport Cooperation v the Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] 3 WLR 689 where he said at para 22*

*“What are the limits of the assistance which the court can give? In cases in which there is statutory authority for providing assistance, the statute specifies what the court may do.....At common law, their Lordships think it doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which form no part of the domestic system. But the domestic court must at least be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency. The purpose of recognition is to enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum.”*

*25. However, that comment was made in the context of what powers the domestic court could exercise in aid of the foreign court. It was not concerned with the question of to whom such assistance could be given. In that respect Lord Hoffmann had at para 20 said the following:-*

*“Corporate insolvency is different in that, even in the case of movables, there is no question of recognising a vesting of the company’s assets in some other person. They remain the assets of the company. But the underlying principle of universality is of equal application and this is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England.”*

*26. The person entitled under BVI law to act on behalf of Montrow is Mr Tacon as provisional liquidator. The Court should therefore recognise him even though Jersey does not have the concept of a provisional liquidator. The same point would arise in respect of a duly appointed administrator of an English company. Jersey does not have the concept of placing a company in administration but, given that under English law, an administrator once appointed is the person empowered to act for the company, this Court would, in conformity with the remarks of Lord Hoffmann,*

***recognise the administrator of an English company as being the person entitled to act on behalf of that company.***

***27. No one suggested in argument that the liquidator of a Jersey company does not have a comparable power to obtain information from a director as is envisaged by Para 2(g) of the order and accordingly we reject the argument that this Court is unable to make the order in question merely because Jersey does not have the concept of a provisional liquidator.”***

21. The single judge of the Court of Appeal, Michael Beloff QC, refused leave to appeal.
22. It is true that the relief available under the CCAA including, for example, the appointment of the Monitor and certain other orders made by the Canadian Court, are not features of Jersey law. Accordingly, the Court would be going rather further than the Royal Court went in Tacon –v- Nautilus and others in granting the relief sought. In that case, although Jersey does not have the concept of a provisional liquidator, it was not suggested that a liquidator of a Jersey company did not have the power to obtain information envisaged by the order that was sought.
23. In this case, the Court is being invited to make orders ancillary to those made in the Ontario Court which could not be obtained in any Jersey bankruptcy or insolvency procedure, as there is no equivalent process in Jersey.
24. It was accepted by counsel for Lydian International that there were elements of the Canadian process which were not known to Jersey law, but it was said that there was nothing about the relief that was sought that was inconsistent with public policy or contrary to any fundamental principles of Jersey law. We accepted this argument.
25. Accordingly, the Court found that it did have jurisdiction to make the order sought in the letter of request.

#### **Exercise of our jurisdiction**

26. This is not a case (unlike, for example, the Montrow International case) where the foreign insolvency process was itself heavily contested. Nor is it a case where such process was undertaken in the absence of representation by or on behalf of the creditors.

27. We were shown a list of the principal creditors, of whom six are secured and ten are unsecured. Some of the secured creditors were represented by counsel at the hearing before the Chief Justice of the Ontario Court.
28. We note that there are no secured or unsecured creditors (with the exception of the applicant's Jersey lawyers) in Jersey so no Jersey creditors will be prejudiced by any order that this court may make. Further, in accordance with the orders made at the convening hearing in this matter, all creditors were notified of the hearing. There was a delay in notifying certain of the unsecured creditors, but they still had sufficient time (five days) to respond prior the deadline of 18<sup>th</sup> February 2020 and, in the event, none of the secured or unsecured creditors have expressed any opposition to the orders being sought.
29. The only creditor who can be described as an objector to the proceedings is Caterpillar Financial SARL which is one of the six secured creditors of the three companies that are applicants in the CCAA proceedings (but not the largest). Caterpillar has been in communication with counsel for Lydian International, and its concern relates to the fact that Lydian International is a guarantor of a loan granted by Caterpillar to another company in the Lydian Group which is not the subject of the CCAA proceedings; Caterpillar objects to the CCAA court attempting to apply the Canadian stay "extra judicially" to collateral in Armenia and protests that any order by a Jersey court would not be effective against either Lydian International or the Armenian collateral.
30. We were shown evidence showing that at the most recent hearing before the Ontario Court, Caterpillar elected to reserve its position in respect of any challenge to the Ontario Court orders. In any event, as set out below, we ordered that any affected creditor (including Caterpillar) may have liberty to apply in relation to the orders that we made.
31. As to Lydian International itself, we were told that it is Jersey tax resident; that its registered office is in Jersey; it has an employee in Jersey; board meetings have occurred here in the past and we note that one of the six directors of the Company is resident in the Channel Islands.
32. There has been correspondence between Lydian International's Jersey advocates and the office of the Viscount in order to see if she has any substantive views on the application made. She did not express any views that were hostile to this application.
33. Although there is no precedent in Jersey for a Canadian CCAA order or similar order being enforced or recognised in relation to a Jersey company, we had no doubt that we should assist the Canadian Court in this case. There were no reasons of Jersey public policy impeding the court making the

orders sought. To the contrary, it is consistent with Jersey's status as a responsible jurisdiction for the Royal Court to lend assistance in order to facilitate an international insolvency process in a friendly country that has a potential to benefit the creditors of the Lydian Group as a whole.

34. Further, whilst of course this court retains a discretion as whether or not to assist an overseas court and as to the nature and degree of assistance, the fact remains that it is the Ontario Court which is exercising the principal insolvency jurisdiction in this case, and this court should have regard to the decisions of that court particularly where, as in this case, we have been supplied with a substantial body of material explaining the background to this matter, together with a reasoned judgment of the Ontario Court, following a hearing to which the creditors were convened and certain of the creditors represented by counsel.
35. The Court gave substantial weight to the indication in the letter of request that the Canadian court would consider giving effect to equivalent orders made by the Royal Court in respect of the bankruptcy of an individual or company and ordered that:
  - (i) Alvarez & Marsal Canada Inc. ("the Monitor") be appointed as the Monitor of Lydian International with such appointment registered in the rolls of the Royal Court, and the appointment of the Monitor be notified to the Jersey Financial Services Commission;
  - (ii) Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property;
  - (iii) No proceeding or enforcement process in or out of any court or tribunal shall be commenced or continued against or in respect of Lydian International, or affecting its business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and
  - (iv) Lydian International and any party affected by this Representation, including the creditors of Lydian International, shall have liberty to apply.





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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

)  
)  
)

THURSDAY, THE 2nd  
DAY OF JANUARY, 2020

C.O.

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

(Extending 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 in writing this day at 130 Queen Street West, Toronto, Ontario.

ON READING the Notice of Motion, the Amended Notice of Motion, the Affidavit of Edward A. Sellers sworn December 22, 2019 (the "Sellers Affidavit") and the Exhibits thereto, and on receiving no opposition to the Applicants' request for an extension of the Stay Period from any party although duly served as appears from the affidavit of service of Alina Smirnova sworn December 30, 2019;

EXTENSION OF STAY PERIOD

1. THIS COURT ORDERS that the stay period as referred to in the Initial Order of the Honourable Chief Justice Morawetz dated December 23, 2019 is extended until January 23, 2020.

## GENERAL

2. **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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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**

**(Extending 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 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

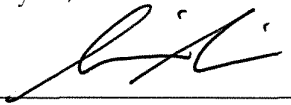
financing the Treaty Arbitration since the commencement of the CCAA Proceedings; and

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

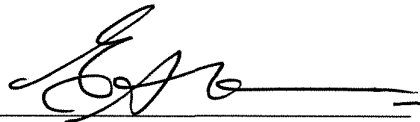
28. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the Applicants will have sufficient funds to continue operating through the proposed Stay Period. Funding for the proposed Stay Period includes a continuation 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.

  
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Commissioner for Taking Affidavits

*Sanja Sopic*

  
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Edward A. Sellers

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

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MONDAY, THE 2nd  
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 Extending 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 Notice of Motion and the Second Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated February 28, 2020, and on hearing the submissions of counsel for the Applicants and the Monitor, no one appearing for any other party although duly served as appears from the affidavits of service of Sanja Sopic and Rachel Bengino sworn February 28, 2020;

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 December 23, 2019 is extended until March 5, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

11

## GENERAL

2. **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.



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

MAR 02 2020

PER / PAR:



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,<sup>10</sup> 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

	<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p><b>COMMERCIAL LIST</b></p> <p>Proceeding commenced at Toronto</p> <p><b>ORDER</b></p> <p><b>(Extending Stay of Proceedings)</b></p> <p>Stikeman Elliott LLP Barristers &amp; Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9</p> <p>Elizabeth Pillon LSO#: 35638M Tel: (416) 869-5623 Email: <a href="mailto:epillon@stikeman.com">epillon@stikeman.com</a></p> <p>Maria Konyukhova LSO#: 52880V Tel: (416) 869-5230 Email: <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a></p> <p>Sanja Sopic LSO#: 66487P Tel: (416) 869-6825 Email: <a href="mailto:ssopic@stikeman.com">ssopic@stikeman.com</a></p> <p>Nicholas Avis LSO#: 76781Q Tel: (416) 869-5504 Email: <a href="mailto:navis@stikeman.com">navis@stikeman.com</a> Fax: (416) 947-0866</p> <p>Lawyers for the Applicants</p>
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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

CHIEF JUSTICE MORAWETZ

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WEDNESDAY, THE 11<sup>TH</sup>

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