

CLERK'S STAMP

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE ADMINISTRATION OF THE DOMINION RESIDUAL ASSET TRUST

DOCUMENT **AMENDED APPLICATION (DISTRIBUTION, DISCHARGE OF MONITOR)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855-2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76142-10

**NOTICE TO THE RESPONDENTS**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Friday, February 4, 2022  
Time: 1:30 p.m. Mountain Time  
Where: Calgary Courts Centre  
Before: The Honourable Madam Justice K.M. Eidsvik

Go to the end of this document to see what you can do and when you must do it.

**Remedy or Claim Sought**

1. FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond Marketing Corporation (collectively, the "**Applicants**"), in accordance with the initial order granted on April 22, 2020 (as amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**"), and in accordance with the Order (Expansion of Monitor's Powers) granted on January 27, 2021 (the "**EMP Order**") in the within proceedings (the "**CCAA Proceedings**"), seeks the following:
  - a. an Order substantially in the form attached hereto as **Schedule "A"**:
    - i. declaring service of this application and of the Seventeenth Report of the Monitor dated January 17, 2022 (the "**Seventeenth Report**") good and sufficient, and abridging the time for notice of this application to the time actually given, if necessary;
    - ii. authorizing and directing the Monitor, in its capacity as Trustee of the Creditors' Trust (as defined in the (as defined in the Reverse Vesting Order granted November 16, 2021 in this Action), to distribute the proceeds of the estate of the Applicants, in one or more separate distributions, net of all final costs of the estate, and in accordance with statutory priorities and court-ordered charges, to Wilmington Trust, National Association, as the notes collateral agent (the "**2L Trustee**") on behalf of the senior secured second lien noteholders (the "**Second Lien Lenders**"); and
    - iii. upon the making of such distribution, terminating the Creditors' Trust (as defined in this Court's November 16, 2021 reverse vesting order approving the RVO Transaction);
  - b. an Order substantially in the form attached hereto as **Schedule "B"**:
    - i. approving the Seventeenth Report and the activities of the Monitor as set out in the Seventeenth Report;
    - ii. approving the professional fees, disbursements and other charges of the Monitor and of its legal counsel as reported in the Seventeenth Report, including expected professional fees, disbursements and other charges to conclude this proceeding;
    - iii. approving the document protocol regarding Diavik royalty audits (the "**Audit Protocol**") attached to Schedule "B";
    - iv. discharging the Monitor in its capacity as Monitor of the Applicants, and in its capacity as Trustee of the Creditors' Trust, save and except for certain duties and obligations set out in the form of Order sought, with such

discharge to become effective upon the Monitor filing a certificate as contemplated in the form of Order attached hereto as Schedule "B";

- v. terminating these CCAA proceedings upon the Monitor filing the said certificate; and
  - vi. authorizing the Monitor to destroy the Applicants' books and records no earlier than 30 days after filing the said certificate, subject to preserving such records as required by statute; and
- c. such further and other relief as this Honourable Court deems appropriate.

## **Grounds for making this Application**

### ***Background***

2. On April 22, 2020, this Court granted the Initial Order commencing the CCAA Proceedings. The Initial Order appointed FTI Consulting Canada Inc. as Monitor and established a stay of proceedings in favour of the Applicants until May 2, 2020 (the "**Stay Period**"). On September 18, 2020, Dominion Diamond Marketing Corporation was added as an applicant in the CCAA Proceedings.
3. The Stay Period was subsequently extended by further Orders of the Court, and was most recently extended until March 4, 2022.
4. On November 4, 2020, this Court granted an Order (Approval of Monetization Process) approving a monetization process to govern the disposition of DDM's share of production from the Diavik Diamond Mine located in the North Slave Region of the Northwest Territories.

### ***The Sales and Marketing Processes and Efforts***

5. On June 19, 2020, this Court granted the SARIO that, among other things, approved a sale investment solicitation process ("**SISP**") to be implemented by the Applicants' financial advisor, Evercore Group LLC ("**Evercore**"), with the oversight of the Monitor.
6. The SISP had been preceded by three strategic review processes aimed at, among other things, soliciting the sale of the Applicants' assets to a third party. The first two of these strategic processes were undertaken by the Applicants with the assistance of a bank-owned financial advisor in each of 2015 and 2016 and did not result in a sale. The third strategic process was undertaken in 2017 and resulted in one formal offer to acquire the company, being the offer made by Washington Diamond Investments, LLC ("**Washington**"), which thereby became the equity owner of the Applicants.
7. The SISP, which represented the fourth strategic process aimed at the sale of the Applicants' assets, was implemented by Evercore, with the oversight of the Monitor, over a five month period, from the commencement of these CCAA proceedings on April 22, 2020 to the formal commencement of the SISP on June 19, 2020, through to the expiry of the Second Extended Phase 2 Deadline under the SISP on September 15, 2020.

8. The SISP did not result in a qualified bid, other than that of Washington as a stalking horse bidder.
9. On October 9, 2020, the Applicants announced that their court application scheduled for October 14, 2020 for approval of the transaction contemplated by the stalking horse bid would not be proceeding due to an impasse between Washington and Dominion's surety bond issuers regarding an agreement relating to a material closing condition with respect to the stalking horse bid.
10. The Applicants worked diligently with the assistance of its legal counsel and Evercore, and in consultation with the Monitor, to assess all available options. The Applicants' efforts in this regard involved discussions with numerous stakeholders, including Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent of the lenders (the "**First Lien Lenders**") under the Pre-Filing Credit Agreement (in such capacity, the "**1L Agent**"), the members of the senior secured second lien noteholders group (the "**Ad Hoc Group**"), the Government of the Northwest Territories ("**GNWT**"), Dominion's surety bond issuers, and others.
11. As a result of those efforts, on December 11, 2020, this Court granted an approval and vesting order which approved an asset purchase agreement dated as of December 6, 2020 (the "**Purchase Agreement**") in relation to a going-concern sale transaction (the "**Sale Transaction**") between certain of the Applicants, as vendors, and DDJ Capital Management, LLC and Brigade Capital Management, LP, being members of the Ad Hoc Group, as purchasers (collectively, the "**Bidders**"). The Sale Transaction between certain of the Applicants and Arctic Canadian Diamond Company Ltd., the entity designated by the Bidders in accordance with the Purchase Agreement ("**ACDC**"), closed on February 3, 2021.
12. Certain assets of the Applicants were not included in the Sale Transaction. In particular (and among other things), the Sale Transaction did not result in the sale of the right, title or interest of DDM in its 40% working interest in the Diavik Diamond Mine pursuant to the Joint Venture Agreement dated March 23, 1995 (the "**JVA**") originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and Diavik Diamond Mines (2012) Inc. ("**DDMI**"), or the Participating Interest (as defined in the JVA) held by DDM pursuant to the JVA (the "**Diavik Joint Venture Interest**").
13. On January 27, 2021, this Court granted the EMP Order, which authorized the Monitor to take any and all actions and steps in the name and on behalf of the Applicants to facilitate the administration of the Applicants' business, property, operations, affairs and estate.
14. Pursuant to the EMP Order, the Monitor was authorized to, among other things:
  - a. market the Applicants' Property (as defined in the Initial Order), with the consent of the 1L Agent;

- b. conduct, supervise and direct the sale, transfer or disposal of any remaining Property, whether or not outside the normal course of business, subject to approval of the Court as may be required pursuant to the Initial Order;
  - c. execute documents of whatever nature in respect of the Property; and
  - d. take any and all reasonable steps the Monitor considers necessary or desirable to administer the Property or the Business (as defined in the Initial Order), including the disposal of assets.
15. After the completion of the Sale Transaction, the Monitor engaged in discussions with stakeholders regarding strategies to maximize the value of the Applicants and the remaining assets that were not sold under the Sale Transaction.
  16. The Monitor, on behalf of the Applicants, entered into two further transactions:
    - a. an asset purchase agreement between DDM and DDMI, which contemplated the sale of, *inter alia*, the Diavik Joint Venture Interest held by DDM to DDMI (the "**AVO Transaction**"); and
    - b. a term sheet between Washington Diamond Investments Holdings II, LLC ("**Washington II**") and the Monitor in its capacity as Monitor of the Applicants, as amended, and pursuant to which Washington II would make a cash contribution to the Applicants' estate as part of a restructuring in which the Applicants retained certain corporate and tax attributes and were cleansed of their legacy obligations, with certain assets, obligations and liabilities of the Applicants to be transferred to a Creditor Trust to be administered by the Monitor for the benefit of the Applicants' creditors (the "**RVO Transaction**").
  17. On application by the Monitor, on November 16, 2021, this Court granted an approval and vesting order approving the AVO Transaction and a reverse vesting order approving the RVO Transaction.
  18. The AVO Transaction closed on November 17, 2021. The RVO Transaction closed on November 24, 2021.
  19. Upon completion of the RVO Transaction, the Applicants have been released from the purview of the CCAA Proceedings. The Monitor continues to administer the Creditor Trust for the benefit of creditors, as the Trustee thereof, subject to the Court's oversight in the CCAA Proceedings.

### **Distribution of Proceeds**

20. As all claims of DDMI and the First Lien Lenders have been satisfied pursuant to the closing of AVO Transaction, the 2L Trustee on behalf of the Second Lien Lenders is the most senior secured creditor with an outstanding secured claim as against the Applicants.

21. The Monitor has received a security opinion through its independent legal counsel confirming that the security of the Second Lien Lenders is valid and enforceable in accordance with its terms, subject to customary qualifications.
22. The Monitor seeks an Order permitting it to distribute the net proceeds of the estate of the Applicants, subject to payment in full of all court-ordered charges, to the 2L Trustee.

### **Approval of the Actions of the Monitor and the Approval of Fees**

23. The Seventeenth Report sets out the activities and conduct of the Monitor as described therein.
24. Pursuant to paragraph 31 of the Initial Order, as amended and restated, the Monitor and its legal counsel are required to pass their accounts from time to time. A summary of the Monitor's and its legal counsel's accounts and their estimated professional fees to conclude these proceedings is included in the Seventeenth Report.

### **Audit Protocol**

25. It is anticipated that, after the discharge of the Monitor and the termination of these proceedings, DDMI will be subject to ordinary course audits by GNWT of the diamond production from the Diavik mine, for time periods that include the pendency of these CCAA Proceedings. Some of the records that will be required for such audits are in the possession of ACDC, and are confidential and commercially sensitive to ACDC.
26. ACDC, DDMI and the Monitor have negotiated the Audit Protocol, under which: (i) ACDC will provide to GNWT certain records that are necessary for GNWT's audits of Diavik diamond production; and (ii) GNWT will be able to provide documents to representatives of DDMI, but in a manner that will maintain the confidentiality of those documents.
27. The Monitor is of the view that the Audit Protocol is reasonable in the circumstances.

### **Discharge of the Monitor and Termination of the CCAA Proceedings**

28. The proceeds of the Applicants' estate will be insufficient to fully repay the secured claim of the Second Lien Lenders. Accordingly, a plan of compromise and arrangement pursuant to the CCAA is not warranted or feasible and, upon the Monitor making the said distributions, there is no further purpose or benefit from the CCAA Proceedings with respect to the Applicants.
29. Upon the Monitor completing all steps required to complete the CCAA Proceedings (as evidenced by the Monitor filing a certificate certifying the same), it is appropriate that the Monitor be discharged and released from any claims, and that these CCAA Proceedings be terminated.

30. The Monitor seeks this Court's authorization to destroy the Applicants' books and records, subject to preserving such records as required by statute, no earlier than 30 days after filing the said certificate.

***Material or Evidence to be Relied on***

31. The Seventeenth Report of the Monitor, dated January 17, 2022, and the Supplemental Report to the Seventeenth Report of the Monitor, dated February 2, 2022, both filed; and
32. Such further and other evidence as counsel may advise and this Honourable Court may permit.

***Applicable Rules***

33. Such rules as counsel may advise and this Honourable Court may permit.

***Applicable Acts and Regulations***

34. The CCAA and this Court's equitable and statutory jurisdiction thereunder, including sections 11 and 36 of the CCAA;
35. *Judicature Act*, R.S.A. 2000, c. J-2; and
36. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

***Any irregularity complained of or objection relied on***

37. None.

***How the Application is proposed to be heard or considered***

38. Via Webex before the Honourable Madam Justice K. M. Eidsvik.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**  
**PROPOSED FORM OF**  
**DISTRIBUTION ORDER**



CLERK'S STAMP

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE  
ADMINISTRATION OF THE DOMINION  
RESIDUAL ASSET TRUST

DOCUMENT **DISTRIBUTION ORDER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855-2<sup>nd</sup> Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Chris Simard and Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76142.10

**DATE ON WHICH ORDER WAS  
PRONOUNCED:** **Friday, February 4, 2022**

**LOCATION OF HEARING OR TRIAL:** **Calgary Courts Centre**

**NAME OF MASTER/JUDGE  
WHO MADE THIS ORDER:** **The Honourable Justice K. M. Eidsvik**

UPON the application of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond

Marketing Corporation (collectively, the "**Applicants**"), for an Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended (the "**CCAA**"); AND UPON having read the application filed on January 24, 2023, the Seventeenth Report of the Monitor dated January 24, 2022, filed (the "**Seventeenth Report**") and the Supplemental Report to the Seventeenth Report of the Monitor, dated February 2, 2022 (the "**Supplemental Report**"); AND UPON hearing from counsel for the Monitor and from any other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

### **SERVICE**

1. The time for service of the notice of application for this Order and of the Monitor's Seventeenth Report and the Supplemental Report is hereby abridged and is deemed good and sufficient.

### **DISTRIBUTION**

2. The Monitor, in its capacity as Trustee of the Creditors' Trust (as defined in the (as defined in the Reverse Vesting Order granted November 16, 2021 in this Action) is hereby authorized and directed to distribute the proceeds of the estate of the Applicants, in one or more separate distributions, net of all final costs of the estate, to Wilmington Trust, National Association, as the notes collateral agent (the "**2L Trustee**") on behalf of the senior secured second lien noteholders (the "**Second Lien Lenders**").

3. The payments, distributions and disbursements contemplated in this Order are made free and clear of any claims, charges or encumbrances, and notwithstanding the pendency of these proceedings, the distributions contemplated in this Order shall not be void or voidable at the instance of creditors and claimants and shall not constitute nor shall be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

4. Upon the making of the distribution to the 2L Trustee contemplated in paragraph 2 of this order, the Creditors' Trust shall terminate.

**SERVICE OF ORDER**

5. The Monitor shall serve this Order on the persons listed on the service list in the CCAA Proceedings by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are required to be served with a copy of this Order.

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J.C.Q.B.A.

**SCHEDULE "B"**  
**PROPOSED FORM OF**  
**DISCHARGE AND CCAA TERMINATION ORDER**

CLERK'S STAMP

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE  
ADMINISTRATION OF THE DOMINION  
RESIDUAL ASSET TRUST

DOCUMENT **ORDER (CCAA TERMINATION ^,  
DISCHARGE OF MONITOR, ANCILLARY  
RELIEF)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855-2<sup>nd</sup> Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Chris Simard and Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76142.10

**DATE ON WHICH ORDER WAS  
PRONOUNCED:** **Friday, February 4, 2022**

**LOCATION OF HEARING OR TRIAL:** **Calgary Courts Centre**

**NAME OF MASTER/JUDGE  
WHO MADE THIS ORDER:** **The Honourable Justice K. M. Eidsvik**

UPON the application of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments,

LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond Marketing Corporation (collectively, the "**Applicants**"), for an Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended (the "**CCAA**"); AND UPON having read the application filed January 24, 2022, the Seventeenth Report of the Monitor dated January 24, 2022, ^ (the "**Seventeenth Report**"), and the Supplemental Report to the Seventeenth Report of the Monitor, dated February 2, 2022 (the "**Supplemental Report**"), both filed; AND UPON hearing from counsel for the Monitor and from any other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

### **SERVICE**

1. The time for service of the notice of application for this Order^, the Monitor's Seventeenth Report and the Supplemental Report is hereby abridged and is deemed good and sufficient.

### **APPROVAL OF ACTIVITIES**

2. The Seventeenth Report and the activities and conduct of the Monitor as described in the Seventeenth Report are hereby approved.

### **APPROVAL OF FEES AND DISBURSEMENTS**

3. The fees and disbursements of the Monitor for the period from April 22, 2020 to December 31, 2021 and the Monitor's estimated fees and disbursements to complete its remaining duties and the administration of these CCAA proceedings ("**CCAA Proceedings**"), as set out in the Seventeenth Report, are hereby approved.

4. The fees and disbursements of Bennett Jones LLP, in its capacity as counsel to the Monitor for the period from April 22, 2020 to December 31, 2021 and the estimated fees and disbursements of Bennett Jones LLP in connection with the completion by the Monitor of its remaining duties and the administration of the CCAA Proceedings, as set out in the Seventeenth Report, are hereby approved.

## DISCHARGE OF THE MONITOR AND TERMINATION OF CCAA PROCEEDINGS

5. Upon the Monitor filing with the Clerk of the Court a certificate in the form attached hereto as **Schedule "A"** (the "**Monitor's Termination Certificate**") evidencing that all steps required to complete these CCAA Proceedings have been completed (including but not limited to making the distribution to Wilmington Trust, National Association, as the notes collateral agent (the "**2L Trustee**") on behalf of the senior secured second lien noteholders (the "**Second Lien Lenders**") that was authorized by the Distribution Order granted herein on January 28, 2022):

- (a) the Monitor will have satisfied all of its duties and obligations pursuant to the CCAA and the Orders of the Court in respect of the CCAA Proceedings relating to the Applicants save and except as set out in paragraph 8 hereof;
- (b) FTI Consulting Canada Inc. shall be discharged as Monitor of the Applicants and as Trustee of the Creditor Trust (as defined in the Reverse Vesting Order granted November 16, 2021 in these CCAA Proceedings) and it shall have no further duties, obligations or responsibilities as Monitor or Trustee from and after such time, save and except as set out in paragraph 8 hereof;
- (c) these CCAA Proceedings will be deemed terminated without further Order of this Court;
- (d) the Monitor and its respective affiliates and officers, directors, partners, employees and agents (collectively the "**Released Parties**") shall be released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of, or in respect of the CCAA Proceedings, or with respect to its conduct in the CCAA Proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and further barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include

any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties; and

- (e) no action or other proceedings shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court on at least seven days' prior written notice to the Released Parties.

6. The Monitor shall deliver a filed copy of the Monitor's Termination Certificate to the service list maintained in the CCAA Proceedings.

7. Notwithstanding any provision of this Order and termination of the CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order or any other Order of this Court in the CCAA Proceedings.

8. Notwithstanding the discharge of FTI Consulting Canada Inc. as Monitor of the Applicants and the termination of the CCAA Proceedings upon the Monitor filing the Monitor's Termination Certificate, the Court shall remain seized of any matter arising from the CCAA Proceedings, and FTI Consulting Canada Inc. shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to the CCAA Proceedings, notwithstanding the termination thereof. FTI Consulting Canada Inc. is authorized to take such steps and actions as it deems necessary to address matters ancillary or incidental to its capacity as Monitor following the termination of the CCAA Proceedings, and in completing or addressing any such ancillary or incidental matters, FTI Consulting Canada Inc. shall continue to have the benefit of the provisions of the CCAA and provisions of all Orders made in the CCAA Proceedings in relation to its capacity as Monitor, including all approvals, protections and stays of proceedings in favour of FTI Consulting Canada Inc. in its capacity as Monitor.

9. The Monitor is hereby authorized to destroy the Applicants' books and records no earlier than 30 days after filing the Monitor's Termination Certificate, subject to preserving any records as required by statute.

## **AUDIT PROTOCOL**



10. The Audit Protocol (including the two forms of non-disclosure agreements) attached as Schedule "B" to this Order is hereby approved.

#### **AID AND RECOGNITION**

11. This Court hereby requests the aid and recognition of any Court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

#### **SERVICE OF ORDER**

12. The Monitor shall serve this Order on the persons listed on the service list in the CCAA Proceedings by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are required to be served with a copy of this Order.

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J.C.Q.B.A.

**SCHEDULE "A"**

CLERK'S STAMP:

COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANTS IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT, R.S.C.*  
1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE  
ADMINISTRATION OF THE DOMINION  
RESIDUAL ASSET TRUST

DOCUMENT **MONITOR'S TERMINATION**  
**CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: **BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7  
Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76142.10

**RECITALS**

- A. Dominion Diamond Mines ULC, Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond Marketing Corporation (collectively, the "**Applicants**") sought and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") pursuant to the Initial Order of the Honourable Madam Justice K. M. Eidsvik of the Court of Queen's Bench of Alberta (the "**Court**") dated April 22, 2020 (as amended and restated,

the "**Initial Order**"). The Initial Order also appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**") of the Applicants. The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

- B. Pursuant to paragraph 5 of the Order of the Honourable Justice K. M. Eidsvik made in these CCAA Proceedings on February 4, 2022 (the "**CCAA Termination Order**"), the Monitor shall be discharged and the CCAA Proceedings shall be terminated upon the Monitor filing this Monitor's Termination Certificate with the Court.

**THE MONITOR CERTIFIES** the following:

1. Pursuant to paragraph 5 of the CCAA Termination Order, and subject to paragraph 8 of the CCAA Termination Order, the Monitor hereby certifies that all steps required to complete the CCAA Proceedings have been completed.
2. This Monitor's Termination Certificate is dated \_\_\_\_\_.

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Applicants, and not in its personal capacity

Per:

\_\_\_\_\_  
Deryck Helkaa  
Senior Managing Director

## SCHEDULE "B"

### AUDIT PROTOCOL

1. Unless the context requires otherwise, capitalized terms used in this Protocol have the meaning ascribed to them in the Asset Purchase Agreement dated October 6, 2021 by and among Dominion Diamond Mines ULC (by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of Dominion Diamond Mines ULC and not in its personal capacity) and Diavik Diamond Mines (2012) Inc. (the "Diavik APA").
2. In this Protocol:
  - (a) "Adverse Audit Finding" means an adverse audit finding for the Applicable Period related solely to Royalty Filings in respect of sales by DDM (or ACDC, as selling agent for DDM) and for greater certainty shall not include an adverse audit finding related to any Royalty Filing in respect of sales made by DDMI;
  - (b) "Applicable Records" means invoices and other supporting or backup documentation for the Applicable Period required to make the Royalty Filings that Diavik Diamond Mines (2012) Inc. ("DDMI") has agreed to make under the Diavik APA and respond to an audit by the Government of Northwest Territories ("GNWT") or its advisors of the following documents previously delivered by Dominion Diamond Mines ULC ("Dominion") to DDMI:
    - (i) sales ledger in Canadian and US dollars (with exchange rate used) showing all sales of Diavik diamonds made by or on behalf of Dominion and any of its affiliates (including but not limited to Dominion Diamond Marketing Corporation, Dominion Diamond Marketing N.V. and Dominion Diamond (India) Private Limited) (collectively, the "Dominion Entities") to third parties not related to Dominion, including sales made to DDMI, in 2020;
    - (ii) non-joint venture deductions and marketing costs claimed in Dominion's 2020 Royalty Filings (including costs incurred or expended by any of the Dominion Entities);
    - (iii) sales ledger in Canadian and US dollars (with exchange rate used) showing all sales of Diavik diamonds made by or on behalf of the Dominion Entities (including sales made by Diavik under the court-ordered monetization process) to third parties not related to Dominion in 2021;
    - (iv) marketing costs incurred by the Dominion Entities in 2021 for the sale of Diavik diamonds; and
    - (v) non-joint venture costs and allowances incurred in 2021 by Dominion that may be claimed as deductions in Royalty Filings;

For greater certainty, the Applicable Records shall be limited to the sale of diamonds from the Diavik Mine and shall not include any information related to sale of diamonds from the Ekati Mine.
  - (c) "Applicable Period" means the period between January 1, 2020 and November 17, 2021;

- (d) “Audit Period” means a period starting on February 4, 2022 and ending upon the later of (i) June 30, 2023 and (ii) completion of GNWT audit of Royalty Filings that DDMI is required to make under Section 11.6(c) of the Diavik APA, including the expiry of any opposition, contest, review or appeal periods;
  - (e) “Professional Recipient” means an external professional (legal, financial or other) person designated by DDMI, such external professional to be acceptable to ACDC acting reasonably; and
  - (f) “RT Recipient” means a person designated by DDMI who is a non-DDMI tax personnel of the Rio Tinto group of companies responsible for Royalty Filings and associated audits.
3. ACDC has confirmed that it has possession of or access to the Applicable Records and shall preserve the Applicable Records until the end of the Audit Period.
  4. From time to time, until the end of the Audit Period and subject to the delivery of the NDAs described in paragraph 5 below, ACDC shall:
    - (a) deliver to the GNWT, within the applicable legislative, regulatory or administrative delay, a copy of any Applicable Record requested by DDMI in support of an audit by the GNWT of the applicable Royalty Filings, which Applicable Record shall not be shared with or reviewed by DDMI or Rio;
    - (b) in the event of Adverse Audit Finding and subject to the prior delivery of the NDAs described in paragraph 5 below, deliver to the Professional Recipient designated by DDMI a copy of the Applicable Records underlying the Adverse Audit Finding; and
    - (c) in the event of Adverse Audit Finding and subject to the prior delivery of the NDAs described in paragraph 5 below, deliver to the RT Recipient designated by DDMI a copy of the Applicable Records described in subparagraphs 2(b)(ii), (iv) and (v) above underlying the Adverse Audit Finding; and
  5. In order for DDMI's tax advisors to have access to Applicable Records to respond to an Adverse Audit Finding, DDMI shall deliver to ACDC non-disclosure agreements in the forms attached to this Protocol (the "NDAs") executed by the Professional Advisor and the RT Recipient, in which they agree to: (i) keep any Applicable Records delivered hereunder confidential and accessible only to themselves; (ii) use any such Applicable Records exclusively for the purpose of responding to the applicable audits and associated record-keeping; and (iii) under no circumstance provide them to Rio Tinto personnel (other than the RT Recipient where disclosure is made under paragraph 4(c)) or DDMI personnel.
  6. The parties hereto agree that notwithstanding anything set out herein, ACDC shall have no liability to any person, including without limitation the GNWT or DDMI, with respect to any amounts determined to be owing to the GNWT for the Applicable Period.

[●], 2022

**Private & Confidential**

[●]

**Attn:**

[●]

Re: Protocol approved by the Alberta Court of Queen's Bench (the "Court") pursuant to an Order dated [●] (the "Court Order"), 2022 (the "Audit Protocol")

Dear [●]:

Pursuant to the Audit Protocol, Diavik Diamond Mines (2012) Inc. ("DDMI") wishes Arctic Canadian Diamond Company Ltd. ("Arctic") to provide the undersigned with the Confidential Information (as defined below) as a result of an Adverse Audit Finding (as defined in the Audit Protocol). The Confidential Information contains commercially and competitively-sensitive information and its improper use or disclosure of this information could result in significant detriment to us. Accordingly, in consideration of, and as a condition to, you being provided with such information, you agree to be bound by the terms of this letter agreement. We have no legal obligation to provide any information to you other than as expressly set out in the Audit Protocol, and any disputes with respect thereto shall be determined by the Court.

For the purposes of this letter agreement, the term "**Confidential Information**" includes all information set out in Schedule A. Notwithstanding the foregoing, the term "**Confidential Information**" does not include information that (i) is at the time of disclosure to you or thereafter becomes generally available to the public, other than as a result of a disclosure by you or any of your Representatives in breach of this letter agreement, (ii) is or was received by you on a non-confidential basis from a source other than us if such source is not known to you, after reasonable inquiry, to be prohibited from disclosing the information to you by a confidentiality obligation to us, (iii) was already in your lawful possession, prior to the date of this letter agreement, (iv) is or was independently acquired or developed by you without breaching this letter agreement, (v) we notify you or agree with you in writing that such information is not "Confidential Information". All Confidential Information made available by Arctic and its representatives to you shall be used by you solely for purpose of responding to an Adverse Audit Finding (the "**Permitted Purpose**"). All disclosure in any manner, format or circumstance whatsoever of any Confidential Information between the parties hereto, is subject to the terms and conditions of this letter agreement. You agree to treat confidentially and not disclose, except as permitted herein or otherwise permitted by obtaining the prior written consent of Arctic, any Confidential Information. You agree and acknowledge that the Confidential Information shall not be shared with or reviewed by either DDMI or Rio Tinto plc, or any employees, affiliates or advisors thereto (save and except for you). You shall use or cause the Confidential Information to be used only for preparing a response to an Adverse Audit Finding and in a manner consistent with the Permitted Purpose and at no time shall

you otherwise use the Confidential Information for your or any other third party's benefit or in any manner adverse to, or to the detriment of, us or our affiliates.

If you become legally compelled (whether by any law, regulation, subpoena, court order or similar process) to disclose any of the Confidential Information, you shall, if and to the extent reasonably practicable, (i) promptly notify us of the request or requirement, (ii) use commercially reasonable efforts to cooperate with us to take any legally available steps Arctic may choose to take to resist or narrow the request or lawfully avoid the requirement, and (iii) if requested by us, use commercially reasonable efforts to cooperate with Arctic's efforts to seek a protective order or other appropriate remedy (at Arctic's sole cost). If such a protective order or other remedy is not available or if we waive compliance with the provisions of this section, you will disclose to the person requiring disclosure only that portion of the Confidential Information which you are advised by counsel is legally required to be disclosed and will exercise your best efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information. Notwithstanding the above, it is further understood and agreed by Arctic that regulatory agencies and examiners, in the ordinary course of their examinations, audits or investigations, may request access to materials in your possession, including Confidential Information; and notwithstanding the foregoing, you may disclose Confidential Information to such examiners for the purposes of such examination or investigation without prior notice to or consent of Arctic.

We would not have an adequate remedy at law and may be irreparably harmed if you breach the terms of this letter agreement. Accordingly, we shall be entitled to seek injunctive relief to prevent breaches of the terms of this letter agreement and to specifically enforce the terms of this letter agreement, in addition to any other remedy to which we may be entitled at law or in equity.

Subject to the Court Order, this letter agreement will terminate at the request of Arctic. At such time, you will promptly return to Arctic or destroy all Confidential Information supplied to you by Arctic. In addition, if so requested you shall destroy any Confidential Information consisting of summaries, analyses, extracts or other documents or records prepared by you based on, derived from or otherwise reflecting Confidential Information. Upon written request of Arctic or our representatives, you shall confirm in writing that you are in compliance with the terms of this paragraph. Notwithstanding the foregoing and without prejudice to the duties of confidentiality regarding such information set out in this letter, you shall be permitted to retain copies, if any, of any such portion of Confidential Information: (i) that are retained pursuant to documented internal retention or compliance policies or audit requirements; or (ii) that are automatically retained as part of a computer back-up, recovery or similar archival or disaster recovery system.

You acknowledge and agree that you are aware that the Confidential Information will include commercially and competitively-sensitive information and that competition laws impose restrictions on competitors exchanging and using that information.

You agree and acknowledge that you will direct all requests for Confidential Information and inquiries regarding the same only to Arctic or as Arctic may direct.

You acknowledge that Arctic makes no express or implied representation or warranty as to the accuracy or completeness of the Confidential Information and agree that Arctic and its affiliates

shall have no liability, direct or indirect, to you relating to or resulting from the Confidential Information or the use thereof, errors or omissions therefrom.

You shall indemnify and hold harmless Arctic and its respective affiliates from any damages, loss, cost or liability (including reasonable legal fees and the cost of enforcing this indemnity) arising out of or resulting from any breach of this NDA by you.

No failure or delay by us in exercising any right, power or remedy under this letter agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or remedy under this agreement. This agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable federal laws of Canada therein.

If any provision of this letter agreement as applied to any party in any circumstance is adjudged by a court to be invalid or unenforceable, this will in no way affect any other provision of this agreement, the application of such provision in any other circumstance, or the validity or enforceability of this agreement.

If you are in agreement with the foregoing, please so indicate by signing and returning to the undersigned a signed copy of this letter whereupon this letter will constitute a binding agreement with respect to the subject matter hereof between us.

***[Remainder of page intentionally left blank.]***



Yours very truly,

ARCTIC CANADIAN DIAMOND  
COMPANY LTD.

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

Name:

Title:

Accepted and agreed as of the date first above written:

■ [Name of Professional Advisor]

By:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Schedule A<sup>1</sup>

“Applicable Records” means invoices and other supporting or backup documentation for the Applicable Period required to make the Royalty Filings that Diavik Diamond Mines (2012) Inc. (“DDMI”) has agreed to make under the Diavik APA and respond to an audit by the Government of Northwest Territories (“GNWT”) or its advisors of the following documents previously delivered by Dominion Diamond Mines ULC (“Dominion”) to DDMI:

- (i) sales ledger in Canadian and US dollars (with exchange rate used) showing all sales of Diavik diamonds made by or on behalf of Dominion and any of its affiliates (including but not limited to Dominion Diamond Marketing Corporation, Dominion Diamond Marketing N.V. and Dominion Diamond (India) Private Limited) (collectively, the “Dominion Entities”) to third parties not related to Dominion, including sales made to DDMI, in 2020;
- (ii) non-joint venture deductions and marketing costs claimed in Dominion’s 2020 Royalty Filings (including costs incurred or expended by any of the Dominion Entities);
- (iii) sales ledger in Canadian and US dollars (with exchange rate used) showing all sales of Diavik diamonds made by or on behalf of the Dominion Entities (including sales made by Diavik under the court-ordered monetization process) to third parties not related to Dominion in 2021;
- (iv) marketing costs incurred by the Dominion Entities in 2021 for the sale of Diavik diamonds; and
- (v) non-joint venture costs and allowances incurred in 2021 by Dominion that may be claimed as deductions in Royalty Filings;

For greater certainty, the Applicable Records shall be limited to the sale of diamonds from the Diavik Mine and shall not include any information related to sale of diamonds from the Ekati Mine.

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<sup>1</sup> Any capitalized terms used in this Schedule that are not otherwise defined shall have the meaning attributed thereto in the Audit Protocol

[●], 2022

**Private & Confidential**

[●]

**Attn:**

[●]

Re: Protocol approved by the Alberta Court of Queen's Bench (the "Court") pursuant to an Order dated [●] (the "Court Order"), 2022 (the "Audit Protocol")

Dear [●]:

Pursuant to the Audit Protocol, Diavik Diamond Mines (2012) Inc. ("DDMI") wishes Arctic Canadian Diamond Company Ltd. ("Arctic") to provide the undersigned with the Confidential Information (as defined below) as a result of an Adverse Audit Finding (as defined in the Audit Protocol). The Confidential Information contains commercially and competitively-sensitive information and its improper use or disclosure of this information could result in significant detriment to us. Accordingly, in consideration of, and as a condition to, you being provided with such information, you agree to be bound by the terms of this letter agreement. We have no legal obligation to provide any information to you other than as expressly set out in the Audit Protocol, and any disputes with respect thereto shall be determined by the Court.

For the purposes of this letter agreement, the term "**Confidential Information**" includes all information set out in Schedule A. Notwithstanding the foregoing, the term "**Confidential Information**" does not include information that (i) is at the time of disclosure to you or thereafter becomes generally available to the public, other than as a result of a disclosure by you or any of your Representatives in breach of this letter agreement, (ii) is or was received by you on a non-confidential basis from a source other than us if such source is not known to you, after reasonable inquiry, to be prohibited from disclosing the information to you by a confidentiality obligation to us, (iii) was already in your lawful possession, prior to the date of this letter agreement, (iv) is or was independently acquired or developed by you without breaching this letter agreement, (v) we notify you or agree with you in writing that such information is not "Confidential Information".

All Confidential Information made available by Arctic and its representatives to you shall be used by you solely for purpose of responding to an Adverse Audit Finding (the "**Permitted Purpose**"). All disclosure in any manner, format or circumstance whatsoever of any Confidential Information between the parties hereto, is subject to the terms and conditions of this letter agreement. You agree to treat confidentially and not disclose, except as permitted herein or otherwise permitted by obtaining the prior written consent of Arctic, any Confidential Information. You agree and acknowledge that the Confidential Information shall not be shared with or reviewed by either DDMI or Rio Tinto plc, or any employees, affiliates or advisors thereto (save and except for you). You shall use or cause the Confidential Information to be used only for preparing a response to an Adverse Audit Finding and in a manner consistent with the Permitted Purpose and at no time shall

you otherwise use the Confidential Information for your or any other third party's benefit or in any manner adverse to, or to the detriment of, us or our affiliates.

If you become legally compelled (whether by any law, regulation, subpoena, court order or similar process) to disclose any of the Confidential Information, you shall, if and to the extent reasonably practicable, (i) promptly notify us of the request or requirement, (ii) use commercially reasonable efforts to cooperate with us to take any legally available steps Arctic may choose to take to resist or narrow the request or lawfully avoid the requirement, and (iii) if requested by us, use commercially reasonable efforts to cooperate with Arctic's efforts to seek a protective order or other appropriate remedy (at Arctic's sole cost). If such a protective order or other remedy is not available or if we waive compliance with the provisions of this section, you will disclose to the person requiring disclosure only that portion of the Confidential Information which you are advised by counsel is legally required to be disclosed and will exercise your best efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information. Notwithstanding the above, it is further understood and agreed by Arctic that regulatory agencies and examiners, in the ordinary course of their examinations, audits or investigations, may request access to materials in your possession, including Confidential Information; and notwithstanding the foregoing, you may disclose Confidential Information to such examiners for the purposes of such examination or investigation without prior notice to or consent of Arctic.

We would not have an adequate remedy at law and may be irreparably harmed if you breach the terms of this letter agreement. Accordingly, we shall be entitled to seek injunctive relief to prevent breaches of the terms of this letter agreement and to specifically enforce the terms of this letter agreement, in addition to any other remedy to which we may be entitled at law or in equity.

Subject to the Court Order, this letter agreement will terminate at the request of Arctic. At such time, you will promptly return to Arctic or destroy all Confidential Information supplied to you by Arctic. In addition, if so requested you shall destroy any Confidential Information consisting of summaries, analyses, extracts or other documents or records prepared by you based on, derived from or otherwise reflecting Confidential Information. Upon written request of Arctic or our representatives, you shall confirm in writing that you are in compliance with the terms of this paragraph. Notwithstanding the foregoing and without prejudice to the duties of confidentiality regarding such information set out in this letter, you shall be permitted to retain copies, if any, of any such portion of Confidential Information: (i) that are retained pursuant to documented internal retention or compliance policies or audit requirements; or (ii) that are automatically retained as part of a computer back-up, recovery or similar archival or disaster recovery system.

You acknowledge and agree that you are aware that the Confidential Information will include commercially and competitively-sensitive information and that competition laws impose restrictions on competitors exchanging and using that information.

You agree and acknowledge that you will direct all requests for Confidential Information and inquiries regarding the same only to Arctic or as Arctic may direct.

You acknowledge that Arctic makes no express or implied representation or warranty as to the accuracy or completeness of the Confidential Information and agree that Arctic and its affiliates

shall have no liability, direct or indirect, to you relating to or resulting from the Confidential Information or the use thereof, errors or omissions therefrom.

You shall indemnify and hold harmless Arctic and its respective affiliates from any damages, loss, cost or liability (including reasonable legal fees and the cost of enforcing this indemnity) arising out of or resulting from any breach of this NDA by you.

No failure or delay by us in exercising any right, power or remedy under this letter agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or remedy under this agreement. This agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable federal laws of Canada therein.

If any provision of this letter agreement as applied to any party in any circumstance is adjudged by a court to be invalid or unenforceable, this will in no way affect any other provision of this agreement, the application of such provision in any other circumstance, or the validity or enforceability of this agreement.

If you are in agreement with the foregoing, please so indicate by signing and returning to the undersigned a signed copy of this letter whereupon this letter will constitute a binding agreement with respect to the subject matter hereof between us.

***[Remainder of page intentionally left blank.]***

Yours very truly,

ARCTIC CANADIAN DIAMOND  
COMPANY LTD.

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

Name:

Title:

Accepted and agreed as of the date first above written:

■

By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness

\_\_\_\_\_

## Schedule A<sup>2</sup>

“Applicable Records” means invoices and other supporting or backup documentation for the Applicable Period required to make the Royalty Filings that Diavik Diamond Mines (2012) Inc. (“DDMI”) has agreed to make under the Diavik APA and respond to an audit by the Government of Northwest Territories (“GNWT”) or its advisors of the following documents previously delivered by Dominion Diamond Mines ULC (“Dominion”) to DDMI:

- (i) [intentionally deleted]
- (ii) non-joint venture deductions and marketing costs claimed in Dominion’s 2020 Royalty Filings (including costs incurred or expended by any of the Dominion Entities);
- (iii) [intentionally deleted]
- (iv) marketing costs incurred by the Dominion Entities in 2021 for the sale of Diavik diamonds; and
- (v) non-joint venture costs and allowances incurred in 2021 by Dominion that may be claimed as deductions in Royalty Filings;

For greater certainty, the Applicable Records shall be limited to the sale of diamonds from the Diavik Mine and shall not include any information related to sale of diamonds from the Ekati Mine.

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<sup>2</sup> Any capitalized terms used in this Schedule that are not otherwise defined shall have the meaning attributed thereto in the Audit Protocol