

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
855-2nd 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 in its capacity as Trustee, Notes Collateral Agent, Payment Agent, Transfer Agent and Registrar (collectively, the "**2L Trustee**") under an indenture dated October 23, 2017 related to 7.125% Senior Secured Second Lien Notes due 2022 between Northwest Acquisition ULC, as Issuer, Dominion Finco Inc., as Co-Issuer, the Guarantors named therein and the 2L Trustee (as amended, the "**2L Indenture**"), on behalf of the senior secured second lien noteholders in accordance with the terms of the 2L Indenture (the "**2L Trustee Distribution**");

- (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 and the parties to the Audit Protocol are authorized and directed to perform their respective obligations thereunder.

11. For the avoidance of doubt, the existence and terms of the Audit Protocol do not and shall not i) impose any obligation on the 2L Trustee, ii) affect or alter the 2L Indenture or iii) affect, reduce or otherwise serve as a basis for disgorgement of any amounts paid pursuant to the 2L Trustee Distribution from any person or entity, including the 2L Trustee and its counsel and other professionals.

AID AND RECOGNITION

12. 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

13. The Monitor shall serve this Order 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

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 A¹

“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.

¹ 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 A²

“**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.

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