

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF THE DOMINION
RESIDUAL ASSET TRUST

DOCUMENT SUPPLEMENTAL REPORT TO THE SEVENTEENTH
REPORT OF FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS MONITOR OF THE DOMINION RESIDUAL
ASSET TRUST

February 2, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

MONITOR

FTI Consulting Canada Inc.
1610, 520, 5th Ave S.W.
Calgary, AB T2P 3R7
Deryck Helkaa / Tom Powell
Telephone: (403) 454-6031 / (604) 551-9881
Fax: (403) 232-6116
E-mail: deryck.helkaa@fticonsulting.com
E-mail: tom.powell@fticonsulting.com

COUNSEL

Bennett Jones LLP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, AB, T2P 4K7
Christopher Simard / Kelsey Meyer
Telephone: (403) 298-4485 / (403) 298-3323
Fax: (403) 265-7219
E-mail: simardc@bennettjones.com
E-mail: meyerk@bennettjones.com

**SUPPLEMENTAL REPORT TO THE
SEVENTEENTH REPORT OF THE MONITOR**

Table of Contents

INTRODUCTION 3
TERMS OF REFERENCE 4
AMENDED TERMINATION ORDER AND AUDIT PROTOCOL 5
ESTIMATED DISTRIBUTION TO SECOND LIEN LENDERS..... 7

Appendix “A” Audit Protocol

INTRODUCTION

1. The purpose of this Supplemental Report to the Seventeenth Report (the “**Supplemental Report**”) is to supplement the Seventeenth Report of the Monitor dated January 24, 2022 (the “**Seventeenth Report**”) by providing this Honourable Court with information with respect to:
 - a) an amended form of the Termination Order that will be sought on February 4, 2022 which approves a protocol for ACDC to provide certain confidential information directly to the GNWT related to royalty filings that DDMI is required to make with the Government of the Northwest Territories (“**GNWT**”) respecting the Diavik diamond mine (the “**Audit Protocol**”); and
 - b) an updated estimate of the net proceeds available for distribution to the Second Lien Lenders.
2. This Supplemental Report should be read in conjunction with the Seventeenth Report and all capitalized terms used herein are as defined in the Seventeenth Report.
3. The Seventeenth Report was filed in connection with the Monitor’s Application for the following orders and relief:
 - a) the Distribution Order:
 - i. authorizing and directing the Monitor to distribute the proceeds of the estate of Dominion, net of costs to complete the administration of the estate, to the 2L Trustee on behalf of the Second Lien Lenders; and
 - ii. upon making the distribution to the 2L Trustee, terminating the Dominion Residual Asset Trust; and
 - b) the Termination Order:

- i. approving the Seventeenth Report of the Monitor and actions reported therein;
- ii. approving the fees and disbursements of the Monitor and its legal counsel;
- iii. terminating these CCAA Proceedings, upon the Monitor filing the Monitor's Termination Certificate;
- iv. upon filing of the Monitor's Termination Certificate, discharging FTI as Monitor in the CCAA Proceedings and as Trustee of the Creditor Trust;
- v. providing certain releases in favour of the Monitor; and
- vi. authorizing the Monitor to destroy the Applicants' books and records no earlier than 30 days after filing the Monitor's Termination Certificate.

TERMS OF REFERENCE

4. In preparing this Supplemental Report, the Monitor has relied upon certain information (the "**Information**") including Dominion's unaudited financial information, books and records and discussions with senior management ("**Management**").
5. Except as described in this Supplemental Report, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
6. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

7. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

AMENDED TERMINATION ORDER AND AUDIT PROTOCOL

9. As described in the Seventeenth Report, certain books and records in the possession of ACDC which contain confidential and commercially sensitive sales information may be required by GNWT when conducting its royalty audits of DDMI.
10. The Monitor, ACDC and DDMI have agreed to the Audit Protocol whereby ACDC will send the applicable confidential information directly to GNWT in order to facilitate the completion of its audit of DDMI, while preserving confidentiality over those ACDC records.
11. The Termination Order has been amended to provide for approval of the Audit Protocol, a copy of which is attached as Appendix "A".
12. The key terms of the Audit Protocol are as follows:
 - a) ACDC has confirmed that it has in its possession certain applicable records (the "**Applicable Records**") including invoices and other supporting documentation for the period between January 1, 2020 and November 17, 2021 (the "**Applicable Period**") required to make the royalty filings that DDMI has agreed to make under the Diavik APA and respond to an audit by GNWT or its advisors;
 - b) the Applicable Records shall be limited to information relating to the sale of diamonds from the Diavik mine and shall not include any information related to the sale of diamonds from the Ekati mine;

- c) ACDC has confirmed that it will preserve the Applicable Records for the period starting on February 4, 2022 and ending upon the later of:
- i. June 30, 2023; and
 - ii. Completion of the 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 (the “**Audit Period**”);
- d) from time to time, until the end of the Audit Period, and subject to delivery of non-disclosure agreements (“**NDA**s”), ACDC shall:
- i. deliver to GNWT a copy of any Applicable Record requested by DDMI in support of an audit by GNWT of the applicable royalty filings, which shall not be shared with or reviewed by DDMI or Rio Tinto;
 - ii. in the event of an adverse audit finding for the Applicable Period related solely to the royalty filings made by DDM (or ACDC, as agent for DDM) and for greater certainty shall not include an adverse audit finding related to any royalty filing made by DDMI (an “**Adverse Audit Finding**”), and subject to the prior delivery of the NDAs, deliver a copy of the Applicable Records underlying the Adverse Audit Finding to an external professional person designated by DDMI, such external professional to be acceptable to ACDC acting reasonably (a “**Professional Recipient**”);
 - iii. in the event of an Adverse Audit Finding, and subject to prior delivery of the NDAs, deliver to 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 (“**RT Recipient**”) a copy of certain categories of the Applicable Records underlying the Adverse Audit Finding;

- e) in order for DDMI's tax advisors to have access to the Applicable Records to respond to an Adverse Audit Finding, DDMI shall deliver to ACDC NDAs in the form attached to the Audit Protocol, executed by the Professional Advisor and RT Recipient in which they agree to:
 - i. keep any Applicable Records exclusively for the purposes of responding to the applicable audits and associated record keeping; and
 - ii. under no circumstances provide them to Rio Tinto or DDMI personnel other than the RT Recipient; and
- f) the parties agree that notwithstanding anything set out in the Audit Protocol, ACDC shall have no liability to any person, including without limitation GNWT or DDMI, with respect to any amounts determined to be owing to GNWT for the Applicable Period.

ESTIMATED DISTRIBUTION TO SECOND LIEN LENDERS

13. As described in the Seventeenth Report of the Monitor, ACDC has advanced certain claims against the estate, including for amounts Dominion was obligated to pay with respect to services required by the Monitor pursuant to the TSA as well as reimbursement of ACDC's post-closing legal costs pursuant to provisions of the Ekati APA.
14. The Monitor and its legal counsel have reviewed the TSA and the Ekati APA and have concluded that ACDC is entitled to claim these categories of costs from the Dominion estate. The Monitor and ACDC have conducted negotiations and the Monitor has agreed to make a total payment to ACDC of \$300,000 in respect of these claims. This amount is lower than the full amount of the claims being asserted by ACDC. The Monitor has explained these claims to the 2L Trustee, and understands that the 2L Trustee does not object to the payment of these claims from the Dominion estate.

15. The updated estimated net proceeds available for distribution to the Second Lien Lenders are set out in the table below:

Estimated Net Distribution (CAD thousands)	
Net Cash on Hand	\$ 2,031
Less:	
Repayment of RVO Process Costs	106
ACDC Claims	300
Post-filing Accounts Payable	101
Accrued Professional Fees and Estimated Fees to Completion	300
Estimated Net Cash Available for Distribution to the Second Lien Lenders	\$ 1,224

- a) the RVO Term Sheet provided that any unused portion of the RVO Process Costs would be returned to Washington. The full amount of the RVO Process Costs have not yet been incurred and the Monitor will return the surplus RVO Process Costs upon confirmation from Washington that no other work is required by the Monitor in respect of the RVO Transaction;
 - b) the payment of ACDC Claims is the negotiated amount to be paid from the estate for reimbursement for services provided to the Monitor under the TSA and reimbursement of ACDC's post-closing legal costs pursuant to provisions of the Ekati APA, as explained above; and
 - c) the Post-filing Accounts Payable include unpaid professional fee invoices.
16. Overall, the Monitor is estimating that the final distribution to the Second Lien Lenders will be approximately \$1.2 million.

All of which is respectfully submitted this 2nd day of February, 2022.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants

A handwritten signature in blue ink, appearing to read 'Deryck Helkaa', with a large circular flourish at the beginning.

Deryck Helkaa
Senior Managing Director

A handwritten signature in black ink, appearing to read 'Tom Powell', with a stylized, angular initial.

Tom Powell
Senior Managing Director

APPENDIX “A”

Audit Protocol

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.

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

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 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) [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.

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