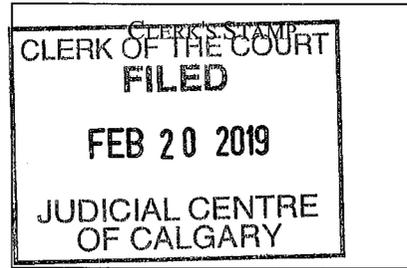


FORM 7  
[RULE 3.8]



COURT FILE NUMBER 1901 - 02578  
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**  
**IN THE MATTER OF THE BUSINESS  
CORPORATIONS ACT, R.S.A. 2000, c. B-9, as  
amended**  
**AND IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF ELCANO  
EXPLORATION INC., ELCANO EXPLORATION  
LTD. and ELCANO EXPLORATION  
PARTNERSHIP**

DOCUMENT **ORIGINATING APPLICATION**

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 and Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 86037.1

**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 Court.

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

Date: Monday, February 25, 2019  
Time: 3:30 p.m.  
Where: Calgary Courts Centre  
601 - 5<sup>th</sup> Street S.W., Calgary

Before: The Honourable Madam Justice K.M. Horner

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

**Basis for this claim:**

1. Elcano Exploration Inc. ("**EEI**") and Elcano Exploration Ltd. ("**EEL**") are related companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies (collectively, the "**Applicants**"). The Applicants meet the statutory requirements to be eligible for relief under the CCAA.
2. Elcano Exploration Partnership ("**EEP**") is a partnership, with respect to which EEI and EEL are the partners. While EEP is not an applicant herein, the Applicants are requesting that this Honourable Court grant a stay of proceedings with respect to EEP as it is integrally related to the Applicants' business and it is necessary to stay proceedings against EEP to meet the purposes of the CCAA.
3. EEI, EEL and EEP are referred to collectively herein as the "**Elcano Group**".
4. The Applicants meet the statutory requirements to be eligible for relief under the CCAA, in that the Applicants are insolvent and each owe more than \$5,000,000.00 to creditors.
5. The Elcano Group is an independent oil and gas exploration, development, and production ("**E&P**") company with its management and management activities, operations, assets and undertaking exclusively in Canada. The Elcano Group's operations focus on light oil in the Williston Basin in Southwestern Manitoba. The Elcano Group has core properties in three areas in Manitoba: North Hargrave, Miniota, and Two Creeks.
6. The Elcano Group established its business in 2013, after the individuals comprising EEI's management team sold a previous E&P company to Corex Resources Ltd. in 2012. Over the past five years, the Elcano Group's business has grown to encompass an asset base including 3,002 Mbbl of estimated reserves as at December 31, 2018 (determined in accordance with the requirements of the U.S. Securities and Exchange Commission), including approximately 362 Mbbl of proved developed producing reserves, 28,035 gross (26,816 net) acres of land (approximately 23,168 of which was undeveloped) and 26.0

(22.7 net) proved undeveloped drilling locations classified as proved undeveloped reserves with an NPV10 value of \$40 million.

7. The Elcano Group's business is fully integrated. All directors and officers of the Elcano Group are Canadian and are residents of the Calgary, Alberta area. The primary duties of the Elcano Group's directors and executives are performed out of the Elcano Group's Calgary head office.
8. Pursuant to an amended and restated offering letter dated October 16, 2017 (the "**Offering Letter**"), EEI as borrower is party to three secured credit facilities (collectively the "**Facilities**") with the National Bank of Canada ("**NBC**"). The primary Facility ("**Credit Facility A**") is an uncommitted demand revolving reducing credit facility for up to, initially, \$11.75 million (and the limit of which has been permanently reduced to \$6.5 million, as described below), which is provided for EEI's general corporate purposes, including capital expenditures.
9. The Facilities are secured pursuant to two demand debentures (the "**Debentures**"), a general assignment of book debts, an assignment of revenues and monies under material contracts, and an unlimited guarantee of the obligations of EEI to NBC from each of EEL and EEP, supported by a further demand debenture over all of the assets of EEL and EEP.
10. The amount currently outstanding under Credit Facility A is approximately CAD \$6.25 million.
11. Several key factors have resulted in the Applicants having constrained working capital, including the recent volatility of WTI oil prices, the effect of mandated hedging programs, the softening of the Canadian dollar, the deteriorating differential price for Canadian-produced crude oil, temporary operational challenges and limited access to necessary cash flow for reinvestment due to significant monthly payments to NBC.
12. Pursuant to the Offering Letter, NBC required that EEI:
  - (a) market the company in order to sell a combination of some or all of its assets;

- (b) reduce its borrowing base under the primary Credit Facility by \$250,000.00 on October 31, 2017 and in monthly increments of \$500,000.00 on the last day of each successive month thereafter (the “**Reductions**”); and
  - (c) enter into a commodity swap agreement with NBC covering no less than 200 bbl/d of oil for calendar 2018.
- 13. EEI complied with its obligations under the Offering Letter. The result of the Reductions was that by September 2018, the credit limit under Credit Facility A had been permanently reduced to from \$11.75 million to \$6.5 million. However, as the majority of EEI’s 2018 cash flow was directed to make payments to NBC to reduce the bank debt through the Reductions, settle hedge losses, and service monthly interest, EEI conducted only limited development operations during 2018.
- 14. On November 14, 2018, NBC served the Elcano Group with a demand for payment of all indebtedness owed to NBC and Notices of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*.
- 15. On November 21, 2018, EEI and NBC entered into a Forbearance Agreement, which has been amended and restated subsequently.
- 16. Since that time, among other things, the Elcano Group has been assisted by Meta Capital Advisors Corporation (“**Meta**”) to conduct a marketing process (the “**Meta Marketing Process**”) to seek investments in the Elcano Group to solicit sales or investments proposals for the Elcano Group.
- 17. The Elcano Group has received a number of letters of intent during the marketing process conducted by Meta, which offer consideration sufficient to repay NBC in full, pay all liabilities of the Elcano Group, and provide value to EEI’s shareholders. Among other proposals received is a financing commitment letter from Tallinn Capital Energy Corp. (“**Tallinn**”) dated January 31, 2019 that has been amended subsequently (the “**Tallinn Proposal**”).
- 18. Under the terms of the current forbearance agreement with NBC, EEI must satisfy all conditions precedent under the Tallinn Proposal by February 22, 2019. If EEI does not do

so, it will be in breach of its obligations under the forbearance agreement, and all amounts outstanding in respect of the Facilities will become due and owing immediately. The Elcano Group would not have the liquidity to satisfy these obligations immediately.

19. Due to the robust response to the marketing process conducted by Meta (notwithstanding the compressed timelines and unfavourable timing of the process) and positive changes in the Elcano Group's circumstances since October 31, 2018, the Elcano Group is confident that it will be able to secure a transaction that will allow payment of all indebtedness owed to NBC, and its other creditors, provided that it is given a reasonable amount of time to complete the marketing process.
20. The fair market value of the assets of the Elcano Group is greater than the aggregate indebtedness owed to NBC and the Elcano Group's other creditors.
21. The Applicants require a stay of proceedings in order to (i) maintain the *status quo* in order to preserve the value of the Elcano Group in consideration of the interests of all stakeholders, and (ii) provide the Elcano Group with the time to run a comprehensive and transparent sale and investment solicitation process ("**SISP**") through the CCAA proceedings, intended to yield the best offer(s) available, including allowing for the consummation of one or more of the proposals solicited in the Meta Marketing Process, including the Tallinn Proposal.
22. A SISP under the CCAA is in the best interest of the Applicants and their creditors and stakeholders, in the circumstances, and is the most expedient and efficient means of restructuring the Applicants and their debt obligations. It is the Applicants' expectation that they, their creditors and their stakeholders will derive a greater benefit from a restructuring than through liquidation in a receivership or bankruptcy.
23. The provisions of the CCAA and the equitable jurisdiction of this Court.
24. Such further and other grounds as counsel may advise and this Court may permit.

**Remedy sought:**

25. An Order dispensing with service of the Originating Application and supporting materials on all creditors of the Applicants and/or deeming service thereof to be good and sufficient and abridging the time for service, if necessary.
26. An Order pursuant to the CCAA granting an interim stay order pursuant to section 11 of the CCAA on the terms substantially set out in the draft Initial Order attached hereto as Schedule "A", and which shall include, but not be limited to, the following relief:
  - (a) declaring that the Applicants are companies to which the CCAA applies;
  - (b) staying all proceedings and remedies taken or that might be taken in respect of the Elcano Group or any of their property, except as otherwise set forth in the Initial Order or otherwise permitted by law;
  - (c) authorizing the Applicants to carry on business in a manner consistent with the preservation of their property and business;
  - (d) appointing Hardie & Kelly Inc. as Monitor (the "**Monitor**" or "**H&K**") of the Applicants in these proceedings;
  - (e) granting certain priority charges against the property of the Applicants;
  - (f) approving the engagement letter from GMP FirstEnergy (the "**SISP Advisor**") dated February 19, 2019, and authorizing and directing the Applicants to engage the SISP Advisor thereunder and to fulfil all of their obligations thereunder;
  - (g) authorizing the Applicants to pay the reasonable fees and disbursements of the professional advisors of the Applicants, including the Applicants' legal counsel, the Monitor, the Monitor's legal counsel and the SISP Advisor;
  - (h) approving a proposed SISP as described in the draft Initial Order attached hereto as **Schedule "A"**, and authorizing and directing the SISP Advisor, the Monitor and the Applicants to perform their obligations thereunder;
  - (i) sealing certain confidential information on the Court file;

- (j) requesting the aid and recognition of local, national and foreign administrative bodies to give effect to the Order granted;
- (k) deeming service of the Application for the Initial Order to be good and sufficient; and
- (l) such further and other relief as to this Honourable Court may seem just.

**Affidavit or other evidence to be used in support of this application:**

- 27. The Affidavit of Scott Pincock sworn the 20th day of February, 2019, filed;
- 28. The Consent of Hardie & Kelly Inc. to act as Monitor of the Applicants;
- 29. The Pre-Filing Report of the Proposed Monitor; and
- 30. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

- 31. The CCAA; and
- 32. Such further and other Acts and regulations as counsel may advise.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicants and against all persons claiming under the applicants. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicants are entitled to make without any further notice to you. 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 applicants a reasonable time before the application is to be heard or considered.

# SCHEDULE "A"

**FORM 49**  
[RULE 13.19]

COURT FILE NUMBER 1901 –  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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

**IN THE MATTER OF THE BUSINESS  
CORPORATIONS ACT, R.S.A. 2000, c. B-9, as amended**

**AND IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF ELCANO  
EXPLORATION INC., ELCANO EXPLORATION  
LTD. and ELCANO EXPLORATION PARTNERSHIP**

DOCUMENT **CCAA INITIAL ORDER AND SISP APPROVAL**

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 and Kelsey Meyer  
Tel No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No. 86037.1

**DATE ON WHICH ORDER WAS PRONOUNCED:** Monday, February 25, 2019

**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary Courts Centre  
601 – 5<sup>th</sup> Street SW, Calgary, AB

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Mme. Justice K.M. Horner

UPON the Application of Elcano Exploration Inc. ("EEI"), together with Elcano Exploration Ltd. (collectively the "**Applicants**") AND UPON having read the Originating Application, the Affidavit of Scott Pincock, sworn on February 20, 2019 (the "**Pincock**")

**Affidavit**"), the consent of Hardie & Kelly Inc. ("**H&K**") to act as Monitor, the Pre-Filing Report of H&K, and the Affidavit of Service of [●], all filed; AND UPON being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this Application; AND UPON hearing counsel for the Applicants, counsel for the National Bank of Canada ("**NBC**"), and counsel for other interested parties; IT IS HEREBY ORDERED AND DECLARED THAT:

### **SERVICE**

1. The time for service of notice of the application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **APPLICATION**

2. The Applicants are companies to which the *Companies Creditors' Arrangement Act*, RSC 1985 c C-36, as amended (the "**CCAA**") applies.

### **PLAN OF ARRANGEMENT**

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicants shall:
  - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property; and

- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order;
- 5. To the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order, including the SISP Advisor, as defined below.
- 6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance;
    - (ii) Canada Pension Plan; and
    - (iii) income taxes;but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
  - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.
8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under

real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.

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

## **RESTRUCTURING**

10. The Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants, or the Monitor shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, the Monitor or by further order of this Court upon application by the Applicants, or the Monitor on at least two (2) days' notice to such landlord and any such secured creditors. If the Monitor disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then:
  - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during

normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

- (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

- 13. Until and including March 26, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants, Elcano Exploration Partnership ("**EEP**"), or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or EEP or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

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

- 14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants, EEP or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicants or EEP to carry on any business that the Applicants or EEP are not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or
  - (e) exempt the Applicants or EEP from compliance with statutory or regulatory provisions relating to health, safety or the environment.
15. Nothing in this Order shall prevent any party from taking an action against the Applicants or EEP where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH RIGHTS**

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or EEP, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

17. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Applicants or EEP, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants or EEP

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or EEP or exercising any other remedy provided under such agreements or arrangements. The Applicants and EEP shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and/or EEP in accordance with the payment practices of the Applicants and/or EEP, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants, EEP and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order.

#### **NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT**

18. Notwithstanding anything else contained in this Order, no creditor of the Applicants or EEP shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants or EEP.

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

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants or EEP whereby the directors or officers

are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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

20. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and/or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or willful misconduct.
21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000.00, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.
22. Notwithstanding any language in any applicable insurance policy to the contrary:
  - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
  - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

## **APPOINTMENT OF MONITOR**

23. H&K is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their current and (where applicable) former shareholders, officers, directors, employees, agents, representatives and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and other such matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
  - (c) advise the Applicants in their development of the Plan and any amendments to the Plan;
  - (d) advise the Applicants, to the extent required by the Applicants, with the holding and administering of meetings for voting on the Plan;
  - (e) give any consent or approval as is contemplated by this Order or any other order made in these proceedings;

- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Applicants' Property, Business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel in Canada, the United States and elsewhere, and such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in

possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
29. The Monitor and its legal counsel shall pass their accounts from time to time.
30. The Monitor, counsel to the Monitor, and counsel to the Applicants, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the

"**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000.00 as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

## **VALIDITY AND PRIORITY OF CHARGES**

31. The priorities of the Charges (as defined below), as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000.00);

Second - Directors' Charge (to the maximum amount of \$50,000.00);

(collectively, the "**Charges**").

32. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. The Charges shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

34. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the other beneficiaries of the Charges affected thereby, or further order of this Court.

35. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are parties;
    - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
    - (iii) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or

other challengeable, voidable or reviewable transactions under any applicable law.

## **ALLOCATION**

36. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Charges amongst the various assets comprising the Property.

## **SALE AND INVESTMENT SOLICITATION PROCESS**

37. The agreement dated February 19, 2019 between GMP FirstEnergy (the "**SISP Advisor**") and the Applicants is hereby approved and the Applicants are authorized and directed to continue the engagement of the SISP Advisor as an Assistant hereunder and to comply with all of their obligations thereunder.
38. The Sale and Investment Solicitation Process (the "**SISP**") attached as **Schedule "A"** to this Order is hereby approved, and the SISP Advisor, the Monitor and the Applicants are authorized and directed to perform each of their obligations thereunder and to do all things reasonably necessary to perform their obligations thereunder.
39. Each of the Monitor, the SISP Advisor and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the SISP Advisor, as applicable, in performing its obligations under the SISP (as determined by this Court).
40. In connection with the SISP and pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Applicants, the SISP Advisor and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but

only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Applicants, the SISP Advisor or the Monitor, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the SISP Advisor or the Monitor, as applicable, or ensure that other personal information is destroyed.

## **SEALING**

41. Confidential Exhibits "1" - "9" to the Pincock Affidavit shall be sealed on the Court file, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*.

## **SERVICE AND NOTICE**

42. The Monitor shall, (i) without delay, publish in the Globe & Mail (National Edition) and in a Manitoba newspaper a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. The Applicants and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicants' creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor shall establish and maintain a website in respect of these proceedings at [www.relieffromdebt.ca](http://www.relieffromdebt.ca) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders or other materials filed in these proceedings by or behalf of the Monitor, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

## **GENERAL**

44. All references to dollar amounts in this Order, unless indicated otherwise, are references to dollar amounts in Canadian currency.
45. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
46. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, this Monitor will report to the Court from time-to-time, which reporting is not required to be in Affidavit form and shall be considered by this Court as evidence.
47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any or all of the Applicants, the Business or the Property.

48. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
49. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
50. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
51. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Time on the date of this Order.

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J.C.Q.B.A.

## SCHEDULE "A"

### Procedures for the Sale and Investment Solicitation Process

On February 25, 2019, Elcano Exploration Inc. ("**EEL**") and Elcano Exploration Ltd. ("**EEL**", and together with EEL, the "**Applicants**") obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* ("**CCAA**") from the Alberta Court of Queen's Bench (the "**Court**"). The Initial Order, among other things, approved the Sale and Investment Solicitation Process (the "**SISP**") set forth herein to determine whether a Successful Bid (as defined below) can be obtained.

### Defined Terms

1. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order. In addition:
  - (a) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta; and
  - (b) "**SISP Advisor**" means GMP FirstEnergy retained by the Applicants to conduct the SISP.

### Sale and Investment Solicitation Process Procedures

#### *Opportunity*

2. The SISP is intended to solicit interest in, and opportunities for, a sale of all or part of the assets, property and undertakings (the "**Property**") of the Applicants and of Elcano Exploration Partnership ("**EEL**", and, together with the Applicants, the "**Elcano Group**") or for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of all or part of the Elcano Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Elcano Group as a going concern or a sale of all, substantially all or certain of the Property of the Elcano Group, or a combination thereof (the "**Opportunity**").
3. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Elcano Group and its Property, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder(s) (as defined below) and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have jurisdiction to hear and resolve such dispute.

***Solicitation of Interest: Notice of the SISP***

4. As soon as reasonably practicable after the granting of the Initial Order:
  - (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Daily Oil Bulletin*; and
  - (b) in any event no later than March 8, 2019, the Elcano Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate following consultation with the SISP Advisor and the Monitor, with Canada Newswire designating dissemination in Canada.
5. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a "**Teaser Letter**"), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders by no later than March 8, 2019.
6. A confidential virtual data room ("**VDR**") in relation to the Opportunity will be made available by the SISP Advisor to prospective purchasers that have executed a non-disclosure agreement with the Applicants. The VDR will be available by March 8, 2019.

**PHASE 1: NON-BINDING LOIs**

***Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum***

7. In order to participate in the SISP, each person (a "**Potential Bidder**") must deliver to the SISP Advisor at the address specified in **Appendix "A"** hereto (including by email), and prior to the distribution of any confidential information by the SISP Advisor to a Potential Bidder (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants, the SISP Advisor and the Monitor (an "**NDA**"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below).
8. A Potential Bidder that has executed a NDA will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the SISP Advisor.
9. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") as soon as reasonably practicable, but in any event, by no later than March 8, 2019. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
10. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their

respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a proposed Letter of Intent (“**LOI**”) and a proposed Purchase and Sale Agreement (“**PSA**”).

11. A Phase 1 Qualified Bidder, if it wishes to submit a bid, must deliver a non-binding LOI in the form of the LOI provided in the VDR (a "**Phase 1 Qualified Bid**"), along with a marked version showing edits to the original form of LOI provided in the VDR, to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on April 26, 2019, or such other date or time as may be agreed by the SISP Advisor, in consultation with the Applicants and the Monitor (the "**Phase 1 Bid Deadline**"). The LOI may provide for confirmatory title and environmental due diligence and potential purchase price adjustments therefor.
12. A Phase 1 Qualified Bid will only be considered as such by the Applicants, the Monitor and the SISP Advisor if the Phase 1 Qualified Bid complies at a minimum with the following:
  - (a) it contains a duly executed LOI;
  - (b) it is received by the Phase 1 Bid Deadline;
  - (c) it provides written evidence of financial commitment or other evidence of the ability to consummate the transaction contemplated by the Phase 1 Qualified Bid satisfactory to the SISP Advisor, in consultation with the Monitor and the Applicants;
  - (d) it is not conditional upon:
    - (i) the outcome of any unperformed due diligence, except completion of confirmatory title and environmental due diligence; and/or
    - (ii) obtaining financing;
  - (e) it clearly indicates whether the Phase I Qualified Bidder is offering to:
    - (i) acquire all, substantially all or a portion of the Property of the Elcano Group (a "**Sale Proposal**"); or
    - (ii) make an investment in, restructure, recapitalize, reorganize or refinance the Elcano Group or its business (an "**Investment Proposal**");
  - (f) it includes a statement that the Phase 1 Qualified Bidder's offer is irrevocable until the selection of the Phase 2 Qualified Bidder(s) (as defined below), provided that if such Phase 1 Qualified Bidder is selected as a Phase 2 Qualified Bidder, its offer shall remain irrevocable until the date of the last closing of the transaction(s) with the Successful Bidder(s) (as defined below);

- (g) it contains such other information as reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;
- (h) in the case of a Sale Proposal, it identifies or contains the following:
  - (i) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
  - (ii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;
  - (iii) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;
  - (iv) a description of the conditions and approvals required for a final and binding offer;
  - (v) an outline of any additional confirmatory title or environmental due diligence required to be conducted in order to submit a final and binding offer; and
  - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (i) in the case of an Investment Proposal, it identifies the following:
  - (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Elcano Group or its business in Canadian dollars;
  - (iii) the underlying assumptions regarding the pro forma capital structure;
  - (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
  - (v) a description of the conditions and approvals required for a final and binding offer;
  - (vi) an outline of any additional confirmatory title or environmental due diligence required to be conducted in order to submit a final and binding offer; and
  - (vii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

13. The SISP Advisor, in consultation with the Applicants and the Monitor, may waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be Phase 1 Qualified Bids.

***Assessment of Phase 1 Qualified Bids and Subsequent Process***

14. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any Phase 1 Qualified Bid, seek clarification with respect to any of the terms or conditions of such Phase 1 Qualified Bid and/or request and negotiate one or more amendments to such Phase 1 Qualified Bid prior to determining if the Phase 1 Qualified Bid is a Phase 1 Successful Bid (as defined below).
15. Following the Phase 1 Bid Deadline, the Applicants, in consultation with the SISP Advisor and the Monitor, shall determine the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a "**Phase 1 Successful Bid(s)**" and which Phase 1 Qualified Bidder(s) shall be deemed a "**Phase 2 Qualified Bidder(s)**". Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.
16. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Successful Bid within five business days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.
17. If the Applicants, in consultation with the SISP Advisor and the Monitor, are not satisfied with the Phase 1 Qualified Bids, the Applicants may, in consultation with the SISP Advisor and with the approval of the Monitor, extend the Phase 1 Bid Deadline, or the Applicants may seek Court approval of an amendment to the SISP.

**PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS**

***Formal Binding Offers***

18. Phase 2 Qualified Bidders that wish to make a formal offer to purchase Property of or make an investment in, restructure, recapitalize, reorganize or refinance all or part of the Elcano Group or its business shall submit a binding offer in the form of the PSA provided in the VDR (a "**Phase 2 Qualified Bid**"), along with a marked version showing edits to the original form of PSA provided in the VDR, to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on May 17, 2019, or such other date or time as may be agreed by the SISP Advisor, in consultation with the Monitor and the Applicants (the "**Phase 2 Bid Deadline**").
19. A Phase 2 Qualified Bid will only be considered as such by the Applicants, the SISP Advisor and the Monitor if the Phase 2 Qualified Bid:
  - (a) has been received by the Phase 2 Bid Deadline;

- (b) is a binding offer to purchase all or part of the Property or to make an investment in, restructure, recapitalize, reorganize or refinance all or part of the Elcano Group or its business, on terms and conditions reasonably acceptable to the Applicants;
  - (c) is in the form of the PSA provided in the VDR along with a marked version showing edits to the original form of PSA provided in the VDR;
  - (d) includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction that will allow the Applicants, the SISP Advisor and the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
  - (e) is unconditional, other than upon the receipt of the Approval Order (as defined below);
  - (f) fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such transaction;
  - (g) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property of the Elcano Group in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith;
  - (h) is accompanied by a deposit in the amount of not less than 10% of the purchase price offered or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court; and
  - (i) contemplates closing the transaction set out therein on or before June 14, 2019 (the "**Closing Date**").
20. The Applicants, in consultation with the SISP Advisor and the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

***Selection of Successful Bid***

21. The Applicants, in consultation with the SISP Advisor and with the approval of the Monitor, will (a) review and evaluate each Phase 2 Qualified Bid, provided that each Phase 2 Qualified Bid may be negotiated among the Applicants, the SISP Advisor, and

the applicable Phase 2 Qualified Bidder and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and (b) identify the highest or otherwise best bid(s) (the "**Successful Bid(s)**", and the Phase 2 Qualified Bidder(s) making such Successful Bid(s), the "**Successful Bidder(s)**"). The determination of any Successful Bid(s) by the Applicants, in consultation with the SISP Advisor and the Monitor, shall be subject to approval by the Court.

22. The Applicants shall have no obligation to enter into a Successful Bid, and the Applicants reserve the right, after consultation with the SISP Advisor and the Monitor, to reject any or all Phase 2 Qualified Bids.
23. Once the Successful Bid(s) has been determined, the SISP Advisor shall provide notice of the determination of the Successful Bid(s) to the Successful Bidder(s).
24. The PSA(s) in respect to the Successful Bid(s) must be executed no later than June 3, 2019, which PSA(s) shall be conditional only upon the receipt of the Approval Order and shall provide for a closing on or before June 14, 2019, or such longer period as shall be agreed to by the Applicants, in consultation with the SISP Advisor and the Monitor.
25. The Applicants shall apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid(s) and vesting title to any purchased Property in the name of the Successful Bidder(s) (the "**Approval Order**"). The Approval Motion will be held on a date to be scheduled by the Applicants and confirmed by the Court upon application by the Applicants, who shall use their best efforts to schedule the Approval Motion on or before June 12, 2019. The Approval Motion may be adjourned or rescheduled by the Applicants without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the Service List prior to the Approval Motion.
26. Upon the PSA(s) in relation to the Successful Bid(s) being negotiated and settled and the Approval Order being granted, the Deposit(s) paid in respect of the Successful Bid(s) shall become non-refundable in the event the approved transaction is not completed.
27. All Phase 2 Qualified Bids (other than the Successful Bid(s)) shall be deemed rejected on and as of the date of the last closing of the Successful Bid(s).

### ***Deposits***

28. The Deposit(s):
  - (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and invested in an interest bearing trust account;
  - (b) received from the Successful Bidder(s) shall:
    - (i) be applied, with accrued interest, to the purchase price to be paid by the applicable Successful Bidder(s) whose Successful Bid(s) are subject of the Approval Order, upon closing of the approved transaction(s); and

- (ii) shall be non-refundable, unless the Approval Order is not granted on or before June 12, 2019 or such later date as agreed to by the Applicants, in consultation with the SISP Advisor and the Monitor, in which case the Deposit(s) shall be fully refunded, with accrued interest, to the Successful Bidder(s);
- (c) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bidder(s) shall be fully refunded, with accrued interest, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) on or before the earlier of (i) two (2) business days after the date of the last closing of the Successful Bid(s); or (ii) June 30, 2019.

### **Approval**

29. For greater certainty, the approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

### **"As is, Where is"**

30. Any sale of the Property will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Applicants, the SISP Advisor or the Monitor or any of their advisors, except to the extent set forth in the relevant PSA entered into between the Applicants and a Successful Bidder where the contemplated transaction has closed.

### **Free Of Any And All Claims And Interests**

31. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant PSA with a Successful Bidder.

### **No Obligation to Conclude a Sale**

32. The Applicants have no obligation to conclude a sale arising out of this SISP, and they reserve the right and unfettered discretion to reject any offer or proposal, but shall not do so without first consulting with the Monitor and the SISP Advisor.

### **Further Orders**

33. At any time during the SISP, the Monitor may, following consultation with the SISP Advisor and the Applicants, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

**Appendix "A"**

**TO THE SISP ADVISOR:**

GMP FirstEnergy  
Suite 1100, 311 – 6<sup>th</sup> Avenue SW  
Calgary AB T2P 3H2

Attention: ●

Phone: ●

E-Mail: ●

**TO THE MONITOR:**

Hardie & Kelly Inc.  
Suite 110, 5800 2<sup>nd</sup> Street SW  
Calgary AB T2H 0H2

Attention: Marc Kelly

Phone: 403-252-1766

E-Mail: mkelly@insolvency.net

WITH A COPY TO:

**[MONITOR'S COUNSEL]**