



No. 1910194  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c.57, AS AMENDED**

**AND**

**IN THE MATTER OF ENERGOLD DRILLING CORP., CROS-MAN DIRECT  
UNDERGROUND LTD., EGD SERVICES LTD., BERTRAM DRILLING CORP., AND  
OMNITERRA INTERNATIONAL DRILLING INC.**

**PETITIONERS**

**PRE-FILING REPORT OF THE PROPOSED MONITOR**

**SEPTEMBER 13, 2019**

**IN THE MATTER OF ENERGOLD DRILLING CORP., CROS-MAN DIRECT  
UNDERGROUND LTD., EGD SERVICES LTD., BERTRAM DRILLING CORP., AND  
OMNITERRA INTERNATIONAL DRILLING INC.**

**PRE-FILING REPORT OF THE PROPOSED MONITOR**

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## INTRODUCTION

1. FTI Consulting Canada Inc. ("**FTI Consulting**" or the "**Proposed Monitor**") has been advised that Energold Drilling Corp. ("**EDC**"), Cros-Man Direct Underground Ltd. ("**Cros-Man**"), Bertram Drilling Corp. ("**BDC**"), EGD Services Ltd. ("**EGD**") and Omniterra International Drilling Inc. ("**Omniterra**" and, collectively, the "**Applicants**" or "**Energold**") intend to make an application to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended (the "**CCAA**").
2. On September 12, 2019 Energold filed a Petition with this Honourable Court for an order (the "**Initial Order**") which provides for, among other things:
  - a. commencing proceedings under the CCAA in respect of the Applicants;
  - b. establishing a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants and certain affected subsidiaries until October 11, 2019;
  - c. appointing FTI Consulting as Monitor in the CCAA Proceedings;
  - d. approving the appointment of a Chief Restructuring Officer ("**CRO**");
  - e. approving a debtor-in-possession interim financing arrangement (the "**DIP Agreement**") with certain of the Applicants' senior secured noteholder group (the "**Interim Lender**").
  - f. granting the following proposed Court-ordered charges:
    - i. an administration charge (the "**Administration Charge**");
    - ii. a financial advisor's charge (the "**Financial Advisor's Charge**");

- iii. a charge securing interim financing (the “**Interim Lender’s Charge**”);  
and
  - iv. a directors and officers charge (the “**D&O Charge**”).
  - g. approving a debtor-in-possession interim financing arrangement (the “**DIP Agreement**”) with certain of the Company’s senior secured noteholder group (the “**Interim Lenders**”).
3. The Applicants have also filed Notices of Application for the following orders:
- a. an order approving an auction services agreement (the “**Asset Disposition Agreement**”) between BDC and Century Services Corp. (“**Century Services**”) to dispose of certain drilling assets owned by BDC and located in Alberta (the “**BDC Assets**”) and vesting the BDC Assets in any auction purchasers free and clear of any encumbrances upon payment of the purchase price therefore (the “**Approval and Vesting Order**”); and
  - b. an order authorizing and approving a sale solicitation process (“**SSP**”) in respect of Energold’s businesses and assets (the “**SSP Approval Order**”).

## **PURPOSE**

4. The purpose of this report is to provide this Honourable Court and the Applicants’ stakeholders with information regarding the following, together with the Proposed Monitor’s comments as appropriate:
- a. the qualifications of FTI Consulting to act as Monitor;
  - b. a cash flow statement (“**Cash Flow Statement**”) for the 12-week period ending December 1, 2019 (the “**Forecast Period**”) as well as the key assumptions on which the Cash Flow Statement is based;

- c. Energold's application for the Initial Order;
- d. the status of an independent opinions being prepared by counsel to the Proposed Monitor (collectively, the "**Security Opinion**") on the validity and enforceability of various security held by the Noteholders;
- e. Energold's application for the SSP Approval Order; and
- f. Energold's application for the Approval and Vesting Order.

## **TERMS OF REFERENCE**

- 5. In preparing this report, the Proposed Monitor has relied upon certain information (the "**Information**") including Energold's unaudited financial information, books and records and discussions with senior management and the CRO (collectively, "**Management**").
- 6. Except as described in this report, the Proposed 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.
- 7. The Proposed 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.
- 8. 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.
- 9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## PROPOSED MONITOR

10. FTI Consulting was previously engaged by Extract Advisors LLC (“**Extract**”), the administrative agent for Energold’s senior secured noteholders (the “**Noteholders**”), on or around February 26, 2019 to provide advisory services in relation to the Noteholders’ loans to EDC and its subsidiaries.
  
11. Since the date of its engagement, FTI Consulting has, among other things:
  - a. attended conference calls and meetings involving Extract, Extract's legal counsel, Management, Energold’s financial advisor and Energold’s legal counsel in order to gain information regarding the financial position of EDC and its subsidiaries; and
  - b. provided strategic advice to Extract with respect to its loans to Energold and its subsidiaries.
  
12. On September 3, 2019 FTI Consulting was engaged by the Applicants to provide financial, strategic and restructuring advice and to assist the Applicants with preparing for a filing under the CCAA. FTI Consulting’s role as financial advisor to Extract was concluded at this time and FTI Consulting has no financial interest or other engagements or relationship with Extract.
  
13. FTI Consulting is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. FTI Consulting has provided its consent to act as Monitor in these CCAA Proceedings a copy of which is attached to the Affidavit #1 of Mark Berger dated September 12, 2019 (the “**Berger Affidavit**”).

14. FTI Consulting is familiar with the business and operations of the Applicants and the key stakeholders in the CCAA Proceedings. The senior FTI Consulting personnel with carriage of this matter are Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees who have acted in restructurings and CCAA matters of this nature and scale.

#### **APPOINTMENT OF THE CHIEF RESTRUCTURING OFFICER**

15. FTI Consulting is advised by the Applicants that prior to June 28, 2019, the Board of Directors of EDC decided to retain a CRO as a result of, among other things, determining that Energold's management team had experienced turnover and lacked the resources to meet its many competing demands and the depths of skills required to direct a successful restructuring.

16. On June 28, 2019, Energold entered into an agreement (the "**CRO Agreement**") with Portage Point Partners LLC ("**Portage Point**") to retain Mr. Mark Berger as CRO of Energold. Pursuant to the CRO Agreement, Portage Point is to provide resources to manage Energold's business affairs and formulate and implement a restructuring plan for Energold.

17. The key commercial terms of the CRO Agreement are as follows:

- a. the CRO is to report to the Board of EDC and is to have the authority of EDC's COO and CFO;
- b. the Portage Point team is to assist EDC in evaluating and implementing strategic and tactical initiatives throughout the operational and financial restructuring process;
- c. the CRO is to have the authority and responsibility typical of a CFO and CRO of an enterprise undergoing a financial and operational restructuring;

- d. the CRO is authorized to assist in planning, overseeing and implementing any insolvency or corporate reorganization filing, as authorized by the Board of Directors of EDC;
- e. Portage Point professionals will bill for time spent at their standard hourly rates commensurate with their respective role and experience levels; and
- f. Portage Point and its directors and officers are released and discharged from any obligations or liabilities arising from providing the services, except for obligations or liabilities arising from gross negligence or willful misconduct.

18. On September 3, 2019 the Board of Directors of EDC passed a resolution to authorize and empower the CRO to make decisions and act on behalf of EDC and the Board including:

- a. authorizing the Applicants to file for creditor protection under the CCAA;
- b. concluding a transaction with Century Services for the sale of the BDC Assets;  
and
- c. expanding the CRO's powers.

19. The Initial Order provides for, among other things, the following in respect of the CRO:

- a. confirmation of the CRO appointment and approval of the CRO Agreement;
- b. a declaration that Portage Point and the CRO shall not incur any liability in respect of its appointment, save and except for any gross negligence or willful misconduct;
- c. a declaration that no action shall be commenced against or in respect of the CRO without written consent of the CRO or with leave of the Court; and



- d. indemnification by the Applicants for Portage Point and the CRO against all liabilities in respect of its appointment, except for any gross negligence or willful misconduct and all such indemnity obligations shall be covered by the D&O Charge.

20. Pursuant to the Initial Order, the CRO is granted powers including:

- a. to permanently or temporarily cease, downsize or shut down all or any part of Energold's business or operations and commence marketing efforts in respect of any of its redundant or non-material assets;
- b. dispose of any redundant or non-material assets of the Applicants as approved by the Monitor and subject to the thresholds set out in the Initial Order;
- c. terminate the employment of such of the Applicants' employees or temporarily lay off such of its employees as it deems appropriate;
- d. pursue all avenues of refinancing for its business or property, in whole or part;
- e. to disclaim or resiliate agreements to which the Applicants are parties;
- f. to continue, implement, conduct and complete the SSP;
- g. to take all steps and execute such necessary documents and agreements, on behalf of the Applicants, in respect of or reasonably incidental to the banking, financial or administrative activities of such Applicants; and
- h. to perform such other duties or take steps reasonably incidental to the exercise of any powers and obligations conferred upon the CRO by this Order or any further order of this Court.

21. The Proposed Monitor has reviewed the terms of the CRO Agreement and supports the confirmation of the appointment of Portage Point as CRO to continue to provide the Energold enterprise with the necessary expertise to manage a complex restructuring in the context of the CCAA Proceedings to the benefit of all stakeholders, and grant the CRO the powers to effectively manage the Applicants' affairs.

#### **AMOUNT AND PRIORITY OF COURT ORDERED CHARGES**

22. The Initial Order provides for certain Court-ordered charges that rank in priority to all other charges and security interests against the Applicants, other than in respect of certain excluded serial numbered goods. The nature of the charges and the relative priorities of each charge are described below.

#### **ADMINISTRATION CHARGE**

23. The Applicants are seeking an Administration Charge in the amount of \$450,000. The Administration Charge shall be divided amongst parties with \$150,000 allocated to the Monitor and its counsel, \$150,000 allocated to the CRO and \$150,000 allocated to the Applicants' counsel.

24. The beneficiaries of the Administration Charge, if granted, would be the Monitor, the CRO, counsel to the Monitor and counsel to the Applicants. The Administration Charge will serve as security for the professional fees and disbursements of the beneficiaries incurred both before and after the granting of this Initial Order.

25. The Proposed Monitor has reviewed the underlying assumptions upon which the Applicants have based the quantum of the proposed Administration Charge, including the potential complexities of these proceedings and the services to be provided by the beneficiaries of the Administration Charge and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances, in particular based off of the cash flow projections prepared by the Applicants in contemplation of these proceedings.

26. If granted, the Administration Charge will rank *pari passu* with the Financial Advisor's Charge (discussed below) and in priority to the Interim Financing Charge.

#### **FINANCIAL ADVISOR'S CHARGE**

27. The Applicants have retained Ernst & Young Orenada Corporate Finance Inc. and Ernst & Young Inc. (collectively, "EYO") as financial advisor to Energold in respect of the SSP.

28. The Initial Order contemplates a Financial Advisor's Charge of \$200,000 to secure the obligations that may become owing to EYO in relation to hourly fees, disbursements and potential completion fees earned by EYO. FTI Consulting has reviewed the blended hourly fees and completion fees to be earned by EYO and is of the view that they are consistent with market for such a mandate.

29. If granted, the Financial Advisor's Charge will rank *pari passu* with the Administration Charge and in priority to the Interim Financing Charge.

#### **INTERIM LENDER'S CHARGE**

30. The Initial Order provides for the Interim Lender's Charge in favour of the Interim Lender in an amount not to exceed \$3.75 million plus applicable fees and interest. The key terms of the proposed interim financing are described in greater detail in paragraph 47.

31. The Proposed Monitor has considered the terms and the need for the proposed interim financing and understands that the Interim Lender is not prepared to advance funds under the DIP Agreement without the benefit of the Interim Lender's Charge. Without the funds from the Interim Lender, Energold would be unable to undertake an organised restructuring in these proceedings, which would be to the detriment of all stakeholders. Accordingly, the Proposed Monitor is of the view that the Applicants' request for the Interim Lender's Charge is reasonable and appropriate in the circumstances.

32. If granted, the Interim Lender's Charge will rank subordinate to the Administration Charge and the Financial Advisor's Charge and in priority to the D&O Charge.

#### **D&O CHARGE**

33. The Applicants are seeking the D&O Charge in the amount of \$200,000.

34. The beneficiaries of the D&O Charge, if granted, would be the directors and officers of the Applicants and the CRO to the extent of any indemnity claim. It is the Proposed Monitor's view that the continued support and service of the directors and officers during the CCAA Proceedings would be beneficial to the Applicants efforts to preserve value and maximize recoveries for stakeholders through completion of the SSP.

35. The D&O Charge was calculated based on the estimated maximum liability of directors and officers arising from statutory obligations for employee related liabilities and sales taxes that may arise during the CCAA Proceedings including for employee related liabilities for a two-week payroll cycle and forecast goods and services tax obligations.

36. The Proposed Monitor has reviewed the underlying calculations upon which the Applicants have based the estimate of the potential liability in respect of director's statutory obligations and is of the view that the D&O Charge is reasonable in relation to the quantum of the estimated potential liability and appropriate in the circumstances.

37. As described in the Berger Affidavit, the Applicants maintain certain insurance coverage for the director and officers, but the deductibles and exclusions from the policies mean that the insurance may not fully cover the potential statutory liabilities of the directors and officers of the Applicants.

38. The Proposed Monitor has not reviewed the terms of the insurance policies held by the Applicants, but notes that the directors and officers will only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any existing insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the directors and officers are entitled to be indemnified pursuant to the provisions of the proposed Initial Order.
39. The Proposed Monitor believes that the proposed Court-ordered charges and their priority are required and reasonable in the circumstances of the CCAA Proceedings in order to preserve the going concern operations of the Applicants and maximize the recoveries to all stakeholders and accordingly, supports the granting of and the proposed rankings of the charges.

#### **CASH FLOW STATEMENT**

40. The CRO has prepared the Cash Flow Statement to set out the liquidity requirements of the Applicants during the Forecast Period of the 12 weeks ending December 1, 2019. The Cash Flow Statement is summarized in the following table:

<i>(\$000's)</i>	Forecast Period
<b>Operating Receipts</b>	
Collection of Existing AR	1,108
Other Collections	1,205
<b>Total Operating Receipts</b>	<b>2,313</b>
<b>Operating Disbursements</b>	
Payroll	1,266
Recurring Operating Disbursements	779
Other Operating Disbursements	555
<b>Total Operating Disbursements</b>	<b>2,599</b>
<b>Net Operating Cash Flow</b>	<b>(286)</b>
<b>Other Cash Flow Items</b>	
Professional Fees	(2,668)
Disposition of BDC Assets	4,733
Intercompany to Energold Mexico	(1,953)
Intercompany from BDI	961
Intercompany to EMEA	(218)
Repayment of RBC Operating Line	(1,181)
DIP Agreement Advances	3,713
DIP Agreement Repayments	(3,713)
DIP Agreement Interest	(37)
<b>Net Cash Flow</b>	<b>(651)</b>
Opening Cash Balance	921
<b>Ending Cash Balance</b>	<b>\$ 270</b>

41. The Cash Flow Statement is based on the following key assumptions and factors:

- a. collection of contract receipts is consistent with Management's guidance with respect to project backlog and historical collection patterns;
- b. payroll includes variable hourly payroll based on historical labour as a percentage of contract revenue and corporate and overhead payroll based on current run rates, with forecast reductions for certain employee redundancies. Payroll source deductions are assumed to remain current during the Forecast Period;

- c. recurring operating disbursements include employee benefits, insurance, rent, and utilities and are consistent with the current amounts and timing of payments;
- d. other operating disbursements including supplies, parts, freight and shipping are consistent with historical percentages of revenue;
- e. professional fees are comprised of restructuring related fees and disbursements which include \$603,000 for the CRO, \$556,000 for Energold's counsel, \$434,000 for the Monitor, \$163,000 for the Monitor's counsel, \$360,000 for the Noteholder's counsel, \$381,000 for EYO and \$170,000 for other professionals;
- f. disposition of BDC Assets relates to the estimated net proceeds from the Asset Disposition Agreement which is described in further detail in paragraph 56;
- g. intercompany advances to Energold de México, S.A. de C.V. ("**Energold Mexico**") and European, Middle Eastern and African operating entities ("**EMEA**") are intended to permit certain of Energold's subsidiaries to continue operations including pursuing new drilling contracts with a view to preserving and potentially enhancing the near-term going concern value of those businesses. The funds are primarily being used by the subsidiaries to fund operations and as working capital to add drilling contract capacity;
- h. intercompany receipts from BDI relates to net cash flows available to Energold from the operations of BDI during the Forecast Period;
- i. repayment of the Royal Bank of Canada ("**RBC**") operating line relates to the senior secured operating facility of BDC. The Initial Order provides for a financial arrangement whereby the Applicants are authorized and empowered to repay amounts owed to RBC pursuant to loans due from BDC and Energold as guarantor, provided such repayments are made from the collection of accounts receivable by BDC in the course of the CCAA Proceedings;

- j. DIP Agreement advances relate to the interim financing which is disbursed to the Applicants by the Interim Lender on an as-required basis. The DIP Agreement advances are presented net of fees of \$90,000;
  - k. DIP Agreement repayments relate to the repayment of the interim financing from the net proceeds of the disposition of the BDC Assets pursuant to the Asset Disposition Agreement; and
  - l. DIP Agreement interest relates to the interest owing on the DIP Agreement advances and assumes payment at mid-month.
42. The Applicants own certain thinly-traded marketable securities. The Cash Flow Statement does not provide for any cash receipts relating to the potential sales of marketable securities owned by the Applicants due to uncertainty regarding the liquidity of the assets and timing of sales. However, should any securities be sold, we understand that the Applicants intend to use the proceeds to repay the Interim Lender.
43. Overall, the Applicants are forecasting to incur net cash outflows of approximately \$651,000 during the Forecast Period.

**PROPOSED MONITOR'S REPORT ON THE CASH FLOW STATEMENT**

44. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- a. the Cash Flow Statement has been prepared by the Management of the Applicants for the purpose described in the notes to the Cash Flow Statement, using the probable assumptions and the hypothetical assumptions set out in Notes 1 to 13 thereof;



- b. the Proposed Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by Management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Proposed Monitor has also reviewed the support provided by Management for the probable assumptions, and the preparation and presentation of the Cash Flow Statement;
- c. based on its review, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:
  - i. the hypothetical assumptions are not consistent with the purpose of the Cash Flow Statement;
  - ii. as at the date of this report, the probable assumptions developed by Management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Statement, given the hypothetical assumptions; or
  - iii. the Cash Flow Statement does not reflect the probable and hypothetical assumptions;
- d. since the Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Statement will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Proposed Monitor in preparing this Report; and

- e. the Cash Flow Statement has been prepared solely for the purpose described in the notes to the Cash Flow Statement and readers are cautioned that it may not be appropriate for other purposes.

## **INTERIM FINANCING**

- 45. The Applicants are unable to pay current and ongoing operating expenses without an immediate infusion of cash. Accordingly, Energold has arranged for interim financing to fund the continuation of its businesses and preservation of its assets through to the conclusion of the SSP at November 30, 2019.
- 46. While the Applicants approached and/or had discussions with multiple parties regarding the provision of interim financing, the Interim Lender is a subset of the Noteholders, are the most practical party to provide the required short-term financing.
- 47. We understand that the DIP Agreement is still subject to finalization with the Interim Lender. In the event that any of the key terms of the DIP Agreement are revised the Proposed Monitor will provide a further update to the Court. The key commercial terms of the DIP Agreement, provided to us to date, are as follows:
  - a. the Interim Lender will lend Energold up to \$3.75 million under an interim credit facility;
  - b. the interim credit facility will be advanced under two tranches:
    - i. Tranche 1 - \$1.35 million will be immediately available to the Applicants following completion of the conditions precedent;
    - ii. Tranche 2 - \$2.4 million will be available conditional upon and subject to Export Development Canada consenting to the Interim Lender being granted security against Energold Mexico and the Applicants granting a valid first lien priority against Energold Mexico's property.

- c. the following fees and interest are to be paid to the Interim Lender:
  - i. a closing fee of \$90,000;
  - ii. an agent fee of \$90,000;
  - iii. interest at a rate of 8% per annum for the first 45 days post-filing, 12% for the next 30 days, and 14% thereafter;
  - iv. an exit fee of \$90,000; and
  - v. the closing fee and the exit fee are only payable if.
- d. amounts drawn under the facility are to be repaid by the earlier of:
  - a. the date on which the stay of proceedings in favour of the Applicants pursuant to the Initial Order, as amended from time to time, expires or is terminated;
  - b. the date on which the CCAA Proceedings are terminated;
  - c. November 15, 2019; or
  - d. such later date as may be agreed to in writing by the Interim Lender.

48. Energold is subject to covenants that include:

- a. not exceeding a 5% unfavorable variance from forecast on various cash flow forecast disbursement categories at the entity and consolidated levels;
- b. may not incur a cumulative unfavorable variance for fees paid to professional firms, measured individually, exceeding 5%; and

- c. must receive the net proceeds from the Asset Disposition Agreement at least one week prior to the loan's repayment date.

49. The Proposed Monitor has considered Energold's application for approval of the DIP Agreement and Interim Lender's Charge in the context CCAA section 11.2 which sets out the factors to be considered in deciding whether to grant an interim financing charge. The Proposed Monitor is satisfied that the circumstances of Energold meet the factors prescribed by the CCAA and has the following specific comments in support of Energold's application:

- a. absent interim financing, the Applicants will be unable to carry on operations at its key subsidiaries which will have a negative impact on the value of its assets and businesses;
- b. the Applicants are in urgent need of funding to support Energold's ordinary course operating expenses, restructuring costs and costs associated with the SSP;
- c. the Stalking Horse Bid amounts submitted in the SSP indicate that certain of the Applicants' assets and businesses may have substantial going concern values which could be preserved or enhanced through access to the interim financing;
- d. the DIP Agreement will provide sufficient liquidity and working capital for the Applicants to pursue various operational restructuring initiatives including planned cost reductions and dispositions;

- e. the DIP Agreement calls for a graduating interest rates that increase over time. The initial interest rate of 8% and the first increase of 10% are consistent with the market terms for other interim financings. While the final rate step of 14% is higher than typical market terms, it is still within the range of rates charged in interim financings for distressed entities and approved by the Court and are commensurate with the short term of the loan, nature of the collateral. It is further noted that the loan is projected to be repaid before the interest rate graduates to 14%. However, due to the short term of the loan, and depending on the specific timing of advances and repayments, the fees charged in respect of the loan could result in very high annualized effective interest rates that may exceed rates prohibited by law. The DIP Agreement provides that if any interest or amount payable under the DIP Agreement would constitute interest at a rate prohibited by law, that rate shall be adjusted retroactively to reflect the maximum interest or amount as so would not be prohibited by law;
- f. the Interim Lender has advised the Proposed Monitor that it would not be prepared to extend the Interim Financing without the Interim Lender's Charge; and
- g. the DIP Agreement provides for intercompany advances to Energold Mexico and EMEA which are intended to permit the subsidiaries to continue to pursue drilling contracts and enhance the near-term going concern value of their operations.

50. Overall, it is the Proposed Monitor's view that the financing contemplated by the DIP Agreement is necessary for the funding of the Applicant's operations and restructuring costs in the near term and will enhance the Applicants prospects of achieving one or more successful restructuring transactions. The terms of the DIP Agreement were subject to a competitive process which did not yield a better option for the Company. The Proposed Monitor supports the Applicants' application for approval of the DIP Agreement and the Interim Lender's Charge.

## **SECURITY OPINION**

51. Legal counsel for the Proposed Monitor is in the process of completing a review of the Noteholders' security and expects to be in a position to deliver the Security Opinion shortly. If appointed as Monitor, the Proposed Monitor will report on the Security Opinion in due course.

## **APPROVAL AND VESTING ORDER**

52. The BDC Assets are comprised primarily of drilling rigs for use in the oil and gas industry in Alberta.

53. The EGD engaged EYO on May 22, 2019 to conduct a marketing and sales process in respect of, among other things, the BDC Assets. In conducting this process, EYO approached 15 parties that are active in North American oil and gas or drilling industries and were identified by EYO as being prospective strategic buyers, including two directors and officers of BDC that were considering a management buyout. Four of the parties entered into non-disclosure agreements and conducted due diligence. However, none of the parties approached by EYO expressed an interest in acquiring the BDC Assets as a going concern.

54. As a result of being unable to identify a going concern buyer of the BDC Assets, EYO approached four asset liquidation companies that EYO viewed as being the most active in the Western Canadian market for drilling equipment and related assets to solicit bids to purchase the BDC Assets and established a bid deadline for all parties of August 23, 2019.

55. Seven bids, including four auction proposals were ultimately received by EYO. EYO, in consultation with Energold and the CRO, selected the Asset Disposition Agreement with Century Services.

56. The Asset Disposition Agreement includes the following key terms:

- a. Century Services will conduct an online auction for the BDC Assets to be concluded by October 17, 2019 or a mutually agreed date. Century Services may solicit pre-sales in advance of the auction, where appropriate;
- b. Century Services will provide a guaranteed net minimum auction proceeds to Energold of \$4.8 million;
- c. gross proceeds from \$4.8 million to \$5.7 million would be retained by Century Services, and gross proceeds in excess of \$5.7 million would be split 75% to Energold and 25% to Century Services;
- d. in the event that three specific pieces of equipment are sold to Cross Borders Drilling for \$1.25 million or greater, the guaranteed net minimum auction proceeds to Energold increases to \$5.1 million then revenues above a threshold of \$6.0 million will be split 75% to Energold and 25% to Century Services;
- e. Century Services will remit the net sales proceeds to Energold within 21 days of the auction sale along with a full report of all sales of the BDC Assets;
- f. certain costs including facility and insurance costs, site security and clean-up costs will be borne by Energold; and
- g. the proposal assumes all of the BDC Assets are in average operating condition and, if at any point up to and including the pickup of any of the BDC Assets by the ultimate buyer following the auction sale, assets are not present, are not as inspected or are not in reasonable working condition, Century Services shall have the right to adjust the offer in any reasonable manner.

57. Based on the auction terms and applicable costs and deductions, EYO estimates that the minimum net proceeds available to Energold will be approximately \$4.4 million, with potential additional recoveries should the gross auction revenue exceed \$5.7 million.

58. The Proposed Monitor's comments on the Auction Services Agreement are as follows:

- a. the Proposed Monitor is satisfied that Century Services has the requisite experience and is appropriately qualified to conduct the auction process contemplated by the Asset Disposition Agreement;
- b. the process of soliciting competing auction proposals was undertaken by EYO which has extensive experience in transactions of a similar nature;
- c. based on the Proposed Monitor's experience with auctioneers and liquidators in the context of an insolvency or restructuring, the terms of the Asset Disposition Agreement are commercially reasonable given the nature and condition of the assets and the apparent urgency of monetizing the BDC Assets;
- d. the estimated minimum net proceeds to Energold from the Asset Disposition Agreement and projected timing of receipt of same will, along with the DIP Agreement, provide critical liquidity to fund Energold which is required to allow Energold to continue to operate during the CCAA Proceedings and complete the SSP; and
- e. conducting a further sales or marketing process or soliciting additional auction proposals during the CCAA Proceedings will be unlikely to result in a more favorable result.

59. It is noted that the net minimum auction proceeds are not being guaranteed on an "as-is, where-is" basis but rather subject to adjustment in the event of equipment that is either absent or not in working condition. This represents a risk to the ultimate proceeds realized. However, the timeline and diligence periods required to solicit "as-is, where-is" bids would be prohibitive due to the Applicant's urgent need of the auction proceeds to fund near term liquidity requirements, as reflected in the Cash Flow Statement.



60. Extract has confirmed that it approves of BDC accepting the Asset Disposition Agreement and has consented to the commercial terms of the Auction Agreement.

61. The key commercial terms of the Approval and Vesting Order are as follows:

- a. the Asset Disposition Agreement is authorized and approved;
- b. Century Services is authorized to market the BDC Assets in accordance with the Asset Disposition Agreement;
- c. upon receipt of the proceeds of sale that are to be paid to BDC, all such proceeds will be impressed with a charge in favour of BDC;
- d. upon Century Services paying BDC the net auction proceeds and the Proposed Monitor filing a certificate with Court, all right, title and interest in the BDC Assets shall vest absolutely in the purchaser(s), free from any security interests or other financial claims; and
- e. for the purposes of determining the nature and priority of claims, the net sale proceeds shall stand in place and stead of the BDC Assets.

#### **SALE SOLICITATION PROCESS**

62. One of the primary objectives of the CCAA Proceeding is to undertake the SSP in order to divest of some or all of the Applicant's businesses and assets in a timely and orderly fashion. Accordingly, the Applicants are seeking the SSP Approval Order to authorize and direct the Applicants, through its CRO and with the assistance of the Monitor, to carry out the SSP.

63. A copy of the SSP is attached hereto as Appendix "B".

64. The key components of the SSP as proposed by the Applicants include the following:

- a. the CRO with the assistance of EYO (collectively, the "**SSP Team**") shall conduct the SSP subject to the oversight of the Monitor;
- b. any sale of the property or business will be on an "as-is, where-is" basis and all rights, titles and interests will be transferred to a purchaser free and clear of any claims or interests and pursuant to an approval and vesting order;
- c. by September 13, 2019, EYO will send a solicitation letter summarizing the opportunity (the "**Teaser**") to known potential bidders to notify them of the SSP and inviting them to enter into a confidentiality agreement ("**CA**") with Energold;
- d. by September 13, 2019, Energold and EYO will have prepared a confidential information memorandum ("**CIM**") providing a detailed description of the businesses and assets available for sale including a summary of the opportunity and historical projected financial results;
- e. on or about September 13, 2019, EYO shall provide potential bidders with the draft form of purchase agreement;
- f. due diligence materials made available to potential purchasers may include management presentations, physical and online data rooms, on-site inspections and other such information as may be requested by the bidders. The SSP Team will ensure that all potential bidders have access to the same information. The SSP Team, with approval of the Proposed Monitor, may not disclose certain information to all parties if it is considered reasonable to protect proprietary information;
- g. EYO may, with the consent of the potential bidder and Extract, facilitate discussions between a potential bidder and Extract in respect of a potential financing for the potential bidders' offer;

- h. by October 11, 2019, any potential bidders who intend to continue in the SSP must deliver a proposal to EYO, which may be conditional or non-binding, indicating the terms of their offer, accompanied by a refundable deposit of the lesser of 10% of the bid value or \$500,000;
- i. the SSP Team will prepare a report of the potential bidders that submit proposals to the Monitor, the Interim Lender and the agent for the Noteholders;
- j. a compliant bid in the prescribed form will be deemed to be a qualified bid (a "Qualified Bid");
- k. Extract shall be deemed to be a Qualified Bidder and submits the following credit bids (the "**Stalking Horse Bids**"):
  - a. \$1.5 million in respect of BDC's shareholdings of BDI;
  - b. \$3.0 million in respect of the assets of Cros-Man;
  - c. \$2.0 million in respect of EDC's shareholdings of EGD; and
  - d. \$6.8 million in respect of EDC's shareholdings of Omniterra and Energold Drilling Peru.
- l. if the SSP Team determines that more than one or more Qualified Bids was received and there is a likelihood of concluding a successful transaction and proceeding that is in the best interests of Energold, they can proceed to negotiate a binding bid with one or more parties or proceed to an auction;
- m. if no Qualified Bids were received other than that of the Noteholders', the SSP Team shall forthwith terminate the SSP, notify each Qualified Bidder that the SSP has been terminated, and consult with Extract regarding next steps, including concluding the Stalking Horse Bids;

- n. on October 28, 2019 Qualified Bidders may submitted definitive documents;
- o. if an auction is held, it will be conducted by EYO commencing on October 31, 2019 at the offices of EYO in accordance with the following procedures:
  - vi. three business days prior to the auction, each Qualified Bidder must inform the SSP Team whether it intends to participate in the auction;
  - vii. at least two business days prior to the auction, EYO will provide the material terms and conditions of the Qualified Bid(s) that the SSP Team believes is the highest and best Qualified Bid (the “**Starting Bid**”);
  - viii. auction bidders will have an opportunity to bid a higher price than the previous bid by at minimum of \$100,000;
  - ix. if an auction round ends without any bidder beating the leading bid, the auction shall be closed and the highest bidder will win the auction;
  - x. the Applicants must apply to Court by November 7, 2019 to seek approval of any successful bids; and
  - xi. all transactions must close by November 30, 2019.

65. For ease of reference, key dates included in the SSP are set out in the table below:

<b>Activity</b>	<b>Date</b>
Completion of marketing materials Completion of standard form purchase agreement Teaser distributed Confidentiality agreements available for execution Buyer due diligence is commenced	September 13, 2019
Bid deadline for non-binding offers	October 11, 2019
EYO to provide the SSP Team with a summary of offers received	October 14, 2019
SSP Team to determine which bids are Qualified Bids SSP Team to notify Qualified Bidders and obtain deposit	October 16, 2019
SSP Team to assess Qualified Bids with requisite deposits	October 21, 2019
Additional due diligence and negotiation with Qualified Bidders	October 28, 2019 and earlier
Delivery of definitive documents by Qualified Bidders	October 28, 2019
Auction held (if appropriate)	October 31, 2019
Application for Court approval of transaction(s)	November 7, 2019
Closing of Transactions	November 30, 2019 or earlier

66. The Proposed Monitor has the following comments on the SSP:

- a. the CRO and EYO have the appropriate experience and qualifications to execute the SSP;
- b. key stakeholders including Extract and certain noteholders have been consulted in respect of the SSP;
- c. the SSP is structured to allow the process to be terminated in the event no Qualified Bids are received before the bid deadline, thereby avoiding the incremental costs of continuing a process with an uncertain result;
- d. the Stalking Horse Bid provided has the effect of a reserve bid and may serve to either enhance potential bid values or facilitate an expedited conclusion of the SSP in the event there are no Qualified Bids after the Bid Deadline;

- e. the process for preparation and distribution of information to potentially interested parties is reasonable and preserves the confidentiality of such information where applicable;
- f. the timeframe to market and sell the businesses and/or property, while aggressive and compressed, is appropriate in light of Energold's circumstances and the significant negative net cash flow being incurred during the CCAA Proceedings. It is further noted that the Interim Lender has expressed that it is not willing to fund Energold if it were to pursue a lengthier sales process;
- g. it is the Proposed Monitor's view that adherence to the timelines as outlined above may be critical to maximizing the going concern value of the non-debtor companies and completing a successful restructuring transaction before available interim financing proceeds are depleted; and
- h. the process and criteria for assessment and comparison of offers is structured to identify the highest and/or best offer(s).

67. Overall, it is the Proposed Monitor's view the SSP terms and timeframe are reasonable in the circumstances and afford the Applicants with an opportunity to achieve a successful restructuring transaction while avoiding a protracted sales process within the constraints of the interim financing available.

## **CONCLUSIONS AND RECOMMENDATIONS**

68. The Auction Agreement and the DIP Agreement, should they be approved, will provide Energold with urgently needed liquidity that will allow the Applicants to pursue one or more successful restructuring transactions pursuant to the SSP.

69. The Proposed Monitor respectfully recommends that this Honourable Court grant the following orders:

- a. the Initial Order;

- b. the SSP Approval Order; and
- c. the Approval and Vesting Order.

All of which is respectfully submitted this 13<sup>th</sup> day of September 2019.

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



Toni Vanderlaan  
Senior Managing Director



Tom Powell  
Senior Managing Director

## Appendix A







**12-Week Cash Flow Reporting Package**  
9/12/2019



*CONFIDENTIAL - NOT FOR DISTRIBUTION*  
*DRAFT - SUBJECT TO CHANGE*

Energold Drilling Corp. et al.  
 Combined Cash Flow Statement  
 For the Twelve Weeks ending December 1, 2019

Filing Entities (BDC, Cros-Man, Energold and EGD Services)

Week Ending	Notes	Week 1 9/15/2019	Week 2 9/22/2019	Week 3 9/29/2019	Week 4 10/6/2019	Week 5 10/13/2019	Week 6 10/20/2019	Week 7 10/27/2019	Week 8 11/3/2019	Week 9 11/10/2019	Week 10 11/17/2019	Week 11 11/24/2019	Week 12 12/1/2019	Total
<b>Collections</b>														
Completed / In-Progress - Invoiced	1	100,997	61,397	81,914	150,230	17,793	185,928	65,946	98,183	7,030	78,644	183,234	76,611	1,107,907
Other Collections	2	-	-	-	172,375	3,132	20,377	2,713	654,123	25,000	58,140	58,217	210,761	1,204,836
<b>Total Collections</b>		<b>100,997</b>	<b>61,397</b>	<b>81,914</b>	<b>322,605</b>	<b>20,925</b>	<b>206,305</b>	<b>68,658</b>	<b>752,306</b>	<b>32,030</b>	<b>136,784</b>	<b>241,450</b>	<b>287,372</b>	<b>2,312,743</b>
<b>Operating Disbursements</b>														
Payroll	3	382,187	-	274,554	-	151,836	-	163,193	3,600	140,854	3,600	142,257	3,600	1,265,680
Other Recurring Disbursements	4	80,595	22,158	55,188	168,049	29,223	21,358	28,975	159,009	29,055	20,495	27,797	136,635	778,538
Operating Disbursements	5	31,558	86,727	41,709	131,796	27,480	37,525	22,128	29,667	29,538	55,556	32,367	28,706	554,756
<b>Total Operating Disbursements</b>		<b>494,340</b>	<b>108,885</b>	<b>371,451</b>	<b>299,845</b>	<b>208,539</b>	<b>58,882</b>	<b>214,296</b>	<b>192,276</b>	<b>199,447</b>	<b>79,651</b>	<b>202,422</b>	<b>168,941</b>	<b>2,598,975</b>
<b>Net Operating Cash Flow</b>		<b>(393,343)</b>	<b>(47,488)</b>	<b>(289,536)</b>	<b>22,760</b>	<b>(187,614)</b>	<b>147,423</b>	<b>(145,638)</b>	<b>560,030</b>	<b>(167,417)</b>	<b>57,132</b>	<b>39,028</b>	<b>118,430</b>	<b>(286,231)</b>
<b>Non-Operating Disbursements</b>														
Interest	6	-	-	-	-	9,707	-	-	-	-	27,728	-	-	37,435
Professional Fees	7	515,887	447,000	234,667	220,667	208,167	161,500	161,500	128,750	128,750	128,750	136,250	196,604	2,668,491
<b>Total Non-Operating Disbursements</b>		<b>515,887</b>	<b>447,000</b>	<b>234,667</b>	<b>220,667</b>	<b>217,874</b>	<b>161,500</b>	<b>161,500</b>	<b>128,750</b>	<b>128,750</b>	<b>156,478</b>	<b>136,250</b>	<b>196,604</b>	<b>2,705,926</b>
<b>Asset Sales</b>														
BDC Divestiture Costs / (Net Proceeds)	8	-	45,938	45,938	45,938	45,938	45,938	45,938	45,938	45,938	(5,100,000)	-	-	(4,732,500)
<b>Net Cash Flow</b>		<b>(909,230)</b>	<b>(540,425)</b>	<b>(570,140)</b>	<b>(243,844)</b>	<b>(451,426)</b>	<b>(60,014)</b>	<b>(353,075)</b>	<b>385,343</b>	<b>(342,105)</b>	<b>5,000,654</b>	<b>(97,222)</b>	<b>(78,174)</b>	<b>1,740,343</b>
<b>Cash Balance</b>														
Beginning Book Balance		921,240	221,246	100,000	100,000	100,000	100,000	486,791	100,000	197,805	100,000	1,159,044	726,549	921,240
Royal Bank of Canada Repayment	9	(100,997)	(61,397)	(81,914)	(322,605)	(20,925)	(43,783)	(68,658)	(480,865)	-	-	-	-	(1,181,144)
Net Cash Flow		(909,230)	(540,425)	(570,140)	(243,844)	(451,426)	(60,014)	(353,075)	385,343	(342,105)	5,000,654	(97,222)	(78,174)	1,740,343
Intercompany to / from Energold de Mexico	10	115,910	13,895	(304,065)	52,228	(290,519)	(164,676)	(92,273)	(205,329)	(661,947)	(107,269)	(373,586)	64,843	(1,952,788)
Intercompany to / from Bertram Drilling Inc.	11	194,323	180,822	6,866	(135,293)	(203,633)	655,264	21,911	398,655	150,066	(121,725)	38,313	(224,879)	960,689
Intercompany to Energold (EMEA) Drilling	12	-	-	-	-	-	-	-	-	-	-	-	(218,123)	(218,123)
DIP Funding	13	-	285,860	949,254	649,514	966,502	-	105,305	-	756,180	(3,712,616)	-	-	-
<b>Ending Cash Balance</b>		<b>221,246</b>	<b>100,000</b>	<b>100,000</b>	<b>100,000</b>	<b>100,000</b>	<b>486,791</b>	<b>100,000</b>	<b>197,805</b>	<b>100,000</b>	<b>1,159,044</b>	<b>726,549</b>	<b>270,217</b>	<b>270,217</b>

**Global Assumptions:**

- CCAA assumed to commence on September 13, 2019
- Interest on all credit facilities not including DIP assumed to be PIK'd throughout forecast period
- There are no cash flows considered for Omniterra as the Company is dormant over the forecast period
- Forecasted receipts do not provide for any proceeds from any potential sale of thinly traded marketable securities due to uncertainty surrounding liquidity and timing through the cash flow period
- The Combined Cash Flow Statement reflects the combined cash receipts and disbursements of Bertram Drilling Corporation, Cros-Man Direct Underground, Energold Drilling Services and EGD Services

**Notes:**

The Company has prepared this Combined Cash Flow Statement solely for the purposes of determining the liquidity requirements of the Company during the CCAA Proceedings. The Combined Cash Flow Statement is based on the probably and hypothetical assumptions detailed below. Actual results will likely vary from performance projected and such variations may be material

1 - Completed / In-Progress - Invoiced collections is driven off of outstanding balances currently in the Company's accounts receivable. Forecasted collection dates have been established using management guidance and historical patterns

2 - Other Collections includes work that is completed / in-progress and has not been invoiced as well as contracted, and backlog that has not been invoiced. Contract level revenue forecasts were used to forecast expected invoices and subsequent collections

3 - Payroll includes administrative and hourly payroll amounts. Hourly payroll amounts are driven by contract level revenue forecasts in conjunction with estimates for labor as a percent of contract value, as provided by management

4 - Other recurring disbursements consists of items such as benefits, insurance, rent and utilities, of which estimates and cadence were provided by management

5 - Operating disbursements relates to items such as supplies / parts, fuel and shipping / freight. These are driven off of historical records of these amounts as a percentage of total revenue, applied to our revenue forecast

6 - Interest on the DIP financing is assumed to be 9% for the first 8 weeks, followed by an increase to 12% for the following 8 weeks. Interest is assumed to be paid out monthly

7 - Professional fees includes advisor / legal fees for the Company, Monitor, Monitor's counsel, Chief Restructuring Officer, Noteholder's counsel and fees related to the sales process

8 - BDC Divestiture Costs / (Net Proceeds) assumes \$5.1mm in total proceeds from the auction of Bertram Drilling Corporation's assets. Additionally, it contemplates \$367,500 in total expenses related to the liquidation process being paid as incurred

9 - Bertram Drilling Corporation and Cros-Man Direct Underground both currently hold credit facilities provided by the Royal Bank of Canada. It is assumed that over the forecast period these credit facilities will be repaid in full utilizing collections from Bertram Drilling Corporation and Cros-Man Direct Underground respectively

10 - Intercompany to / from Mexico shows the funding needs of the Mexican operations over the forecast period. The large funding requirements are primarily related to a large working capital building over the forecast period with minimal accounts receivable to collect in the interim

11 - Intercompany to / from Bertram Drilling Inc. shows the funding needs of the BDI operations as well as it's ability to fund the parent company over the forecast period

12 - Intercompany to / from Energold (EMEA) Drilling shows the funding needs of the EMEA operations as well as it's ability to fund the parent company over the forecast period

13 - DIP Funding totaling \$3.713mm is expected to be needed on a delayed draw basis over the forecast period



September 12, 2019

FTI Consulting Canada Inc.  
15 Floor, 555 Burnard Street  
Vancouver, BC  
V7X 1M8

Attention: Tom Powell, CPA-CA, CFP, LIT

Dear Sir:

**Re: Proceedings under the Companies' Creditors Arrangement Act ("CCAA") for Energold Drilling Corp., Cross-man Direct Underground Ltd., EGD Services Ltd., Bertram Drilling Corp., and Omniterra International Drilling Inc. - Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections**

In connection with the application by Energold Drilling Corp., Cross-man Direct Underground Ltd., EGD Services Ltd., Bertram Drilling Corp., and Omniterra International Drilling Inc. (collectively the "Applicants") for the commencement of proceedings under the CCAA in respect of the Applicants, the management of the Applicants ("Management") has prepared the attached cash-flow statement and the assumptions on which the cash-flow statement is based.

The Applicants confirm that:

1. the cash-flow statement and the underlying assumptions are the responsibility of the Applicants;
2. all material information relevant to the cash-flow statement and to the underlying assumptions has been made available to FTI Consulting Canada Inc. in its capacity as proposed Monitor; and
3. Management has taken all actions that it considers necessary to ensure:
  - a. That the individual assumptions underlying the cash-flow statement are appropriate in the circumstances; and
  - b. That the assumptions underlying the cash-flow statement, taken as a whole, are appropriate in the circumstances.
  - c. That all relevant assumptions have been properly presented in the cash-flow statement or in the notes accompanying the cash-flow statement.
4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of the Debtor, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination.
5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make the Applicants' Management liable to fines and imprisonment in certain circumstances.
6. The cash-flow statement and assumptions have been reviewed and approved by the Debtor's board of directors or management has been duly authorized by the Debtor's board of directors to prepare and approve the cash-flow assumptions.

  
Mark Berger  
Chief Restructuring Officer

## Appendix B

## SALE SOLICITATION PROCEDURE

Pursuant to a petition filed in the Supreme Court of British Columbia (the “**Court**”) on September 13, 2019 (the “**Petition**”), the Court made an order (the “**Initial Order**”) granting Energold Drilling Corp. (“**Energold**”), Cros-Man Direct Underground Ltd., EGD Services, Bertram Drilling Corp. and Omniterra International Drilling Inc. (collectively, the “**Petitioners**”) protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c.C-36, as amended (the “**CCAA**”). Within this Sale Solicitation Procedure (“**SSP**”), Energold and its direct and indirect wholly owned subsidiaries, including, but not limited to, the other Petitioners, are referred to collectively as the “**Energold Group**”.

Pursuant to the Initial Order, FTI Consulting Canada Inc. (“**FTI**”) was appointed as monitor of the Petitioners (in such capacity, the “**Monitor**”) and Ernst & Young Orenda Corporate Finance and Ernst & Young Corporate Finance (Canada) Inc. (together, “**EY**”) was appointed as financial advisor (in such capacity, the “**Financial Advisor**”).

Pursuant to a Sale Process Order, the Petitioners through its CRO (defined below), with the assistance of the Monitor, are authorized and directed to carry out a process for the solicitation of offers to purchase all, or any part, of the Energold Property (as defined herein) (the “**Solicitation Process**”).

The Sale Process Order, as it applies to the Solicitation Process and this SSP, shall exclusively govern the process for soliciting and selecting bids for the sale of all or any part of the Energold Property.

This Solicitation Process has been prepared with input from the Financial Advisor, Monitor and Extract (as defined below).

The purpose of this Solicitation Process is to govern the process for soliciting and selecting bids for the acquisition of some or all of the assets and business of the Energold Group that will benefit Energold and its stakeholders, and to facilitate negotiations that will result in one or more definitive agreements concerning a restructuring transaction with respect to the sale or liquidation of some or all of the Energold Property or Energold Business (as defined herein) for the benefit of the Petitioners and their stakeholders.

The completion of any transaction(s) will be conditional upon Court approval.

Unless otherwise indicated, all amounts set out in this SSP are in Canadian dollars and any event occurring on a day that is not a Business Day shall be deemed to occur on the next Business Day.

### Defined Terms

“Approval Hearing” has the meaning set out in paragraph 37 herein

“Auction” has the meaning set out in paragraph 30 herein

“Auction Bidders” has the meaning set out in paragraph 30 herein

“Backup Bid” has the meaning set out in paragraph 33 herein

“Backup Bid Expiration Date” has the meaning set out in paragraph 35 herein

“BDI Unit” means the right, title and interest Bertram Drilling Corp. holds in Bertram Drilling Inc.

“Bid Deadline” means 12:00pm (Vancouver time) on October 11, 2019

“Backup Bidder” has the meaning set out in paragraph 33 herein

“Business Day” means any day other than (a) a Saturday or Sunday; or (b) a day that is a statutory holiday in Vancouver, British Columbia

“CCAA” has the meaning set out above

“Claims and Interests” has the meaning set out in paragraph 5 herein

“Confidential Information Memorandum” has the meaning set out in paragraph 8 herein

“Confidentiality Agreement” means the form of non-disclosure and confidentiality agreement to be provided to potential bidders by the Financial Advisor, and which must be executed for parties to become Potential Bidders under this SSP

“Court” has the meaning set out above

“CRO” means Portage Point Partners LLC in its capacity as Chief Restructuring Officer of the Energold Group

“Cros-Man Unit” means the right, title and interest Energold holds in Cros-Man Direct Underground Ltd. or the right title and interest of Cros-Man Direct Underground Ltd. in assets as further particularized in information from the Financial Advisor

“Data Room” means the data room to be created by the Financial Advisor which will include a detailed listing of the Energold Property, a form of Purchase Agreement and such other materials that the SSP Team deems necessary to allow Potential Bidders to conduct such due diligence as those parties may require

“Deposit” has the meaning set out in paragraph 17 herein

“DIP Lender” means Energold DIP Lender LLC

“EMEA Unit” means the right, title and interest of Energold in E-Global Drilling Corp. and its subsidiaries including Energold Drilling (EMEA) Limited

“Energold Group” has the meaning set out above

“Energold Group Insiders” means an individual that is currently a director, officer or in an executive management position of Energold or any of its direct or indirect subsidiaries, or an individual that held such a position at any time after September 1, 2018

“Energold Business” means the business carried out by the Energold Group

“Energold Property” means the property, assets and undertakings of the Energold Group or any part thereof, including without limitation the directly or indirectly wholly owned subsidiaries of Energold



“Extract” means Extract Advisors LLC, in its capacity as the administrative agent for noteholders pursuant to certain convertible secured notes issued pursuant to the note purchase agreement dated as of June 15, 2017 among Energold as issuer, certain other Energold subsidiaries as guarantors and certain noteholders

“Financial Advisor” has the meaning set out above

“Latin America Unit” means Energold’s right title and interest in Energold Mexico S.A. de C.V., Energold Argentina S.A., OroEnergy S.A., Energold de Colombia S.A.S., Energold Drilling Dominicana S.R.L., and E Drilling Nicaragua and Omniterra International Drilling Inc.’s right title and interest in Energold Drilling Peru and Energold Perfuracoes

“Leading Bid” has the meaning set out in paragraph 30 herein

“Minimal Incremental Overbid” means \$100,000

“Monitor” has the meaning set out above

“Noteholders” means the noteholders pursuant to certain convertible secured notes issued pursuant to the note purchase agreement dated June 15, 2017 as amended and restated from time to time among Energold, as issuer, certain other subsidiaries as guarantors and certain noteholders

“Notice Parties” has the meaning set out in paragraph 42 herein

“Petition” has the meaning set out above

“Potential Bidder” has the meaning set out in paragraph 10 herein

“Proposal” means a proposal to purchase or liquidate some or all of the assets or business of the Energold Group, including binding term sheets and draft agreements and ancillary agreements, with a blackline to the template form of purchase agreement to be provided by the Financial Advisor

“Purchase Agreement” means a draft purchase and sale agreement in respect of the Energold Property

“Qualified Bidder” has the meaning set out in paragraph 21 herein and includes Extract

“Qualified Bid” has the meaning set out in paragraph 21 herein and, subject to a satisfactory security review by the Monitor, includes the Stalking Horse Bids

“Sale Process Order” means an order of the Court in respect of this SSP

~~“Sale Proposal” means an indication of interest or proposal to purchase all or substantially all, or one or more of the Energold Business or the Energold Property~~

“Solicitation Process” has the meaning set out in the preamble above

“SSP” means this Sale Solicitation Procedure

“SSP Team” has the meaning set out in paragraph 3 herein

“Stalking Horse Bids” means the credit bids to be submitted by Extract in connection with this SSP and which, subject to a satisfactory security review by the Monitor’s legal counsel, shall be deemed to be Qualified Bids pursuant to paragraph 21 of this SSP

“Starting Bid” has the meaning set out in paragraph 30 herein

“Subsequent Bid” has the meaning set out in paragraph 30 herein

“Successful Bid” has the meaning set out in paragraph 33 herein

“Successful Bidder” has the meaning set out in paragraph 33 herein

“Teaser” has the meaning set out in paragraph 7 herein

**Timeline for Solicitation Process**

1. The timeline and activities for the Solicitation process are as follows:
  - a. September 13, 2019: Completion of the list of potential bidders and draft marketing materials, including Purchase Agreement and Confidentiality Agreement to be provided to the Potential Bidders;
  - b. September 16, 2019: Commencement of post-CCAA marketing activities;
  - c. September 16, 2019 to October 11, 2019: Formal due diligence by Potential Bidders (after each has delivered an executed Confidentiality Agreement);
  - d. By 5 p.m. (PST) October 11, 2019: Bid Deadline for submission of non-binding offers. A blackline of the offer to the Purchase Agreement to be provided to the Financial Advisor by Potential Bidders. Potential Bidders must submit a non-binding offer and Deposit by the Bid Deadline;
  - e. October 14, 2019: Financial Advisor to provide to the SSP Team a summary of submissions and copies of offers received;
  - f. Noon (PST) on October 16, 2019: SSP Team to determine which bids to qualify as Qualified Bids (or Monitor to make the determination if the SSP Team cannot agree);

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  - g. By noon (PST) on October 16, 2019: Financial Advisor to notify Qualified Bidders that they may proceed with their due diligence and inform those Potential Bidders who have not been approved as Qualified Bidders that their deposit will be returned;
  - h. October 21, 2019: SSP Team to assess Qualified Bids for which Deposits are received;
  - i. October 16, to 25, 2019: additional due diligence by Qualified Bidders and negotiation of definitive agreements;

- j. October 28, 2019: conclusion and delivery of definitive documents by Qualified Bidders;
  - k. 9am (PST) on October 29, 2019: Financial Advisor to provide SSP Team with a summary of the material terms and conditions of the Qualified Bids which the SSP Team believes is (individually or in aggregate) the highest or otherwise best Qualified Bid(s);
  - l. October 31, 2019: Auction, if appropriate;
  - m. On or before November 7, 2019: court application for court approval of transaction(s); and
  - n. November 30, 2019: closing of transaction(s).
2. The SSP Team will make all reasonable efforts to carry out the Solicitation Process in accordance with the timeline set out above. However, the SSP Team may extend this timeline with the approval of the Monitor, provided the Bid Deadline may not be extended beyond October 18, 2019 and a potential Auction shall not be extended beyond November 5, 2019, without the prior written consent of Extract and the DIP Lender.

**Solicitation Process**

- 3. The CRO and with the assistance of the Financial Advisor (collectively, the “SSP Team”), and with the oversight of the Monitor, shall conduct the Solicitation Process as outlined in this SSP. The degree of oversight of the Monitor shall be as determined by the Monitor in its reasonable discretion.

**“As Is, Where Is”**

- 4. The sale of the Energold Property or the Energold Business will be on an “as is, where is” basis without surviving representations, warranties, covenants or indemnities of any kind, nature or description by the Monitor, the Financial Advisor, the Energold Group or any of their agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant sale agreement.

**“Free of any and all Claims and Interests”**

- 5. In the event of a sale, all of the rights, titles and interests of the Energold Group in and to the Energold Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, interests thereon and there against (collectively, the “Claims and Interests”) pursuant to approval and vesting orders made by the Court. Contemporaneously with such approval and vesting orders being made, all such Claims and Interests, to the extent valid and enforceable, shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement. Extract has confirmed that, should this SSP result in a sale of any of the Energold Property to a third party, it will discharge the Noteholders security from the underlying subsidiaries and assets.

### **Solicitation of Interest**

6. The SSP Team is preparing, and will finalize by September 13, 2019, a list of potential bidders for the Energold Business and the Energold Property. Such list will include both strategic and financial parties who, in the SSP Team's reasonable business judgment, may be interested in acquiring the Energold Business and the Energold Property.
7. By noon PST on September 16, 2019, the Financial Advisor will prepare a solicitation letter summarizing the acquisition opportunity, notifying potential bidders of the existence of the Solicitation Process and inviting them to enter into a confidentiality agreement with the Energold Group and to express their interest in making an offer to acquire all or substantially all of the Energold Business or the Energold Property, in whole or in part (the "Teaser"). The Financial Advisor will distribute the Teaser to the potential bidders.

### **Participation Requirements**

8. By noon PST on September 16, 2019, the Financial Advisor and the Energold Group will have prepared a confidential information memorandum (the "**Confidential Information Memorandum**") providing a detailed description of the Energold Business and the Energold Property, a summary of the industry and opportunities within the market and financial information including analysis of historical results and future projections.
9. Unless otherwise ordered by the Court, in order to receive the Confidential Information Memorandum, conduct its due diligence and participate in the Solicitation Process, an interested party must deliver an executed Confidentiality Agreement which shall inure to the benefit of any purchaser of the Energold Property or the Energold Business.
10. Interested parties will be deemed a "**Potential Bidder**" after having delivered the executed confidentiality agreement.

### **Due Diligence**

11. By noon PST on September 16, 2019, the Financial Advisor will provide a Confidential Information Memorandum to each Potential Bidder describing the opportunity to acquire all or any part of the Energold Property.
12. Each Potential Bidder shall have such due diligence access to materials and information relating to the Energold Property and the Energold Business as the SSP Team, in its collective reasonable business judgment deems appropriate.
13. At the discretion of the Monitor and the SSP Team, due diligence access may include management presentations (the Energold Group agrees to participate in such presentations as is reasonably

practicable), access to physical and online data-rooms, on-site inspections and such other matters as a Potential Bidder may reasonably request and as to which the Monitor and the SSP Team, in their reasonable exercise of discretion, may agree. The Financial Advisor may also, with the consent of the Potential Bidder and Extract, facilitate discussions between a Potential Bidder and Extract in respect of financing for the Potential Bidder's offer.

14. The SSP Team (and their respective officers, directors, employees, agents, counsel and professionals) are not responsible for, and will have no liability with respect to, any information obtained by any Potential Bidder or Qualified Bidder in connection with the Energold Business or the Energold Property. The SSP Team (and their respective officers, directors, employees, agents, counsel and professionals) do not make any representations or warranties whatsoever as to the information or the material provided, except in the case of the Energold Group, to the extent expressly provided under any definitive sale agreement executed and delivered by a Successful Bidder and the applicable Energold Gold Group entity (or entities).

#### **Bidding Process**

15. On or about September 13, 2019, the Financial Advisor shall provide the Potential Bidders with the draft Purchase Agreement, which will also be made available in the Data Room.
16. The SSP Team will ensure that all Potential Bidders have access to the same information. If the SSP Team determines that it is not appropriate to provide certain information to all Potential Bidders, the SSP Team will consult with the Monitor in respect of (a) the information to be withheld; (b) the Potential Bidders that will not receive the information; and (c) the SSP Team's reasons that the information should not be provided. If the Monitor does not approve the information being provided to only some Potential Bidders, the SSP Team must either provide the information to all Potential Bidders or none of the Potential Bidders.
17. On or before October 11, 2019, the Bid Deadline, any Potential Bidders who intend to continue in the Solicitation Process must deliver (i) a Proposal to the Financial Advisor, which may be conditional or non-binding, indicating the key terms of their offer, including a blackline comparison of their Proposal to the Purchase Agreement, (ii) deliver a refundable deposit (the "Deposit") to the Petitioners' counsel in the form of a wire transfer (to a trust account specified by the Petitioners' counsel) in an amount equal to the lesser of 10% of the purchase price or CAD\$500,000.
18. The SSP Team shall direct the Financial Advisor to review each Proposal that is submitted before the Bid Deadline and may do any of the following:
  - a. Request additional information from a Potential Bidder with respect to their Proposal;
  - b. Engage in discussions with the Potential Bidder in respect of their Proposal with the intention of better understanding the possible definitive agreement and offer that such Potential Bidder may make; and

- c. Provide additional information in the Data Room in response to any issues raised by any Proposal.
19. If after review of a Proposal, the SSP Team determines that the Proposal is unlikely to result in a transaction, the SSP Team on October 16, 2019, shall advise the Potential Bidder of that determination and may terminate the Potential Bidder's access to due diligence information and involvement in the Solicitation Process and will instruct petitioner counsel to return the deposit.
20. The SSP Team will prepare a report of the Potential Bidders that submit Proposals and the results of its preliminary evaluation of the Proposals received and provide the report to the Monitor, the DIP Lender and Extract.

**Qualified Bids**

21. In order to qualify as a "Qualified Bidder" a Potential Bidder must deliver a Proposal by 5 p.m. (PST) October 11, 2019 on the Bid Deadline. A proposal will be considered a "Qualified Bid" if the following is satisfied:
- (1)
    - a. the proposal is in the form of the Purchase Agreement, along with a blackline comparison showing the Potential Bidder's changes;
    - b. for parcels subject to Stalking Horse Bids, the proposal contemplates consideration of at least the Stalking Horse Bid amount plus the Minimum Incremental Overbid;
    - c. the proposal contemplates concluding a transaction within the timelines set out in this SSP;
    - d. the proposal fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Proposal, including:
      - i. for Potential Bidders which are affiliated with or controlled by one or more Energold Group Insiders or one or more Noteholders, identifying the Potential Bidder's direct and indirect owners;
      - ii. for all other Potential Bidders, identifying the Potential Bidder's direct and indirect owners holding more than 25% ownership in the Potential Bidder;
- 
- e. the proposal identifies whether the Proposal is subject to debt or equity financing, and if so, the expected source and amount of that funding, the status of any discussions with funding sources, the steps and timing necessary to obtain firm commitments;
  - f. if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the SSP Team that names the Energold Group as third party beneficiaries of any such commitment letter with recourse against such parent entity

or sponsor or alternatively a guarantee from the parent entity or sponsor of such Qualified Bidders;

- g. the proposal includes contact information for the Potential Bidder's financial advisor and legal counsel, if applicable; and
- h. the proposal contains other information reasonably requested by the SSP Team.

(2) The Financial Advisor has notified in writing the Potential Bidder's proposal is a Qualified Bid.

(3) Petitioner Counsel has received the Deposit from the Potential Bidder by 5 p.m. (PST) on October 11, 2019.

22. Notwithstanding paragraph 21, the SSP Team, in consultation with the Monitor, may waive compliance with any one or more of the Qualified Bid requirements specified above, and deem such non-compliant bids to be a Qualified Bid.

23. Extract shall be deemed to be a Qualified Bidder and submits the following credit bids:

- a. \$1,500,000 in respect of the BDI Unit;
- b. \$3,000,000 in respect of the Cros-Man Unit;
- c. \$2,000,000 in respect of EMEA Unit; and
- d. \$6,800,000 in respect of the Latin America Unit

(collectively, the "**Stalking Horse Bids**" and each a "**Stalking Horse Bid**").

24. Other than the report described at paragraph 20 above, Extract shall only be entitled to receive such information as all other Qualified Bidders may receive. In submitting the Stalking Horse Bid, Extract may credit bid to the extent of the amounts outstanding to Extract, subject to a satisfactory security review by the Monitor and provided the Stalking Horse Bids contain a sufficient cash component to satisfy any priority encumbrances, including the Court-ordered charges and amounts due to the Financial Advisor.

25. The Financial Advisor will notify all Qualified Bidders that their Proposal was found to be a Qualified Bid within the meaning of this SSP.

26. The Financial Advisor may facilitate negotiations between the Energold Group and Qualified Bidders in order to negotiate binding offers in respect of the Qualified Bidder's Proposal and definitive documents in respect of the Proposal.

#### Assessment of Qualified Bids

27. The SSP Team will assess the Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated and whether proceeding with this SSP is in the best interests of the Energold Group and its stakeholders including the DIP Lender and Extract. Such assessments will be made as promptly as practicable but no later than noon (PST) on October 16, 2019.
28. If the SSP Team, in accordance with paragraph 27 above determines that (a) no Qualified Bids were received other than Extract's; (b) at least one Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bids will be consummated; (c) proceeding with this SSP is not in the best interests the Energold Group and its stakeholders, including Extract, the SSP Team shall forthwith: (i) terminate this SSP; (ii) notify each Qualified Bidder that this SSP has been terminated; and (iv) subject to a satisfactory security review by the Monitor's legal counsel, consult with Extract regarding next steps, including concluding the Stalking Horse Bids.
29. If the SSP Team, in accordance with paragraph 27 above, determines that (a) one or more Qualified Bids were received, (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, and (c) proceeding with this SSP is in the best interests of the Energold Group and its stakeholders including Extract, the SSP Team will: (i) proceed to negotiate with one or more of the Qualified Bidders in an attempt to conclude definitive documents, or (ii) proceed to an Auction, in which case, the Financial Advisor will promptly notify all Qualified Bidders that they are entitled to participate in the Auction.

#### Auction

30. If, in accordance with paragraph 29 above, the Auction is to be held, the Financial Advisor will conduct an auction (the "Auction") at 9:30am (local time) on October 31, 2019, at the offices of Ernst & Young Inc., located at Pacific Centre, 700 West Georgia Street, Vancouver, British Columbia, V7Y 1C7, or such other location as shall be communicated on a timely basis to all entities entitled to attend at the Auction. The Auction shall run in accordance with the following procedures, which may be modified by SSP Team in its discretion, after consultation with the Monitor:
- a. At least three (3) Business Days prior to the Auction, each Qualified Bidder must inform the SSP Team whether it intends to participate in the Auction (the parties who so inform the SSP Team, the "Auction Bidders");
  - ~~b. Extract shall be deemed to be an Auction Bidder in respect of its Stalking Horse Bids, and will be entitled to bid at the Auction, on the same terms as the other Auction Bidders;~~
  - c. At least two (2) Business Days prior to the Auction, the Financial Advisor will provide the material terms and conditions of the Qualified Bid(s) which the SSP Team believes is (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) for each Company or group of assets (the "Starting Bid") to all Auction Bidders;



- d. Only representatives of the Auction Bidders, the Energold Group, the Financial Advisor, the Monitor, the CRO, the DIP Lender and Extract and such other persons permitted by the SSP Team and the Monitor (and the advisors to each of the forgoing) are entitled to attend the Auction. All Auction participants must attend in person, unless the Financial Advisor, in consultation with the Monitor, provides written consent for such participant to attend by phone or other electronic means;
- e. At the commencement of the Auction, each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder to detrimentally affect the price for any sale;
- f. Only the Auction Bidders will be entitled to make any subsequent bids at the Auction;
- g. All Subsequent Bids presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- h. All Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- i. The SSP Team, after consultation with the Monitor, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances, (e.g. the amount of time allotted to make Subsequent Bids, requirement to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with any applicable law, and (ii) disclosed to each Auction Bidder at the Auction;
- j. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "Subsequent Bid") that the SSP Team determines, after consultation with the Monitor, is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid; in each case by at least the Minimum Incremental Overbid. Each bid at the Auction shall provide net value to the Energold Group of at least the Minimum Incremental Overbid over the Starting Bid or the Leading Bid, as the case may be; provided however that the SSP Team, after consultation with the Monitor, shall retain the right to modify the incremental requirements at the Auction and provided further that the SSP Team, in determining the net value of an incremental bid, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in paragraph 32 of this SSP. After each Subsequent Bid, the SSP Team shall, after consultation with the Monitor, announce whether such bid (including the value and

material terms thereof) is higher or otherwise better than the prior bid (the "Leading Bid"). A round of bidding will conclude after each Auction Bidder has the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- k. If, in any round of bidding, no new Subsequent Bid is made that becomes a Leading Bid, the Auction shall be closed;
- l. The Auction shall be closed by Midnight on the day of the Auction unless extended for a further 24 hour period by the SSP Team with the approval of the Monitor; and,
- m. No bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.

### **Selection Criteria**

31. In selecting the Starting Bid, each Leading Bid, the Successful Bid and the Backup Bid, the SSP Team will review each Qualified Bid.

32. Evaluation criteria with respect to Proposals may include, but are not limited to, items such as

- a. the purchase price and the net value, including assumed liabilities or other obligations to be performed or assumed by the bidder, provided by such bid;
  - b. the claims likely to be created by such bid in relation to the other bids;
  - c. the counterparties to the transaction;
  - d. the proposed revisions to the form of agreement provided by the SSP Team and the terms of the transaction documents;
  - e. other factors affecting the speed, certainty and value of the transaction, including any regulatory approvals required to close the transaction;
  - f. the assets included or excluded from the bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Energold Property;
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- g. the estimated number of employees of the Energold Group that will be offered post-closing employment by the bidder and any proposed measures associated with their continued employment;
  - h. the transition services required from the Energold Group post-closing and any related restructuring costs; and
  - i. the likelihood and timing of consummating the transaction.

with the weight of each factor set out above, or other factors, being determined by the SSP Team in its discretion.

33. Upon the conclusion of the bidding, the Auction shall be closed and the SSP Team will identify the highest or otherwise best Qualified Bid received (such offer, the “**Successful Bid**”) and the next highest or otherwise best Qualified Bid received (such offer, the “**Backup Bid**”). The Qualified Bidder(s) who made the Successful Bid is the “**Successful Bidder**” and the Qualified Bidder(s) who made the Backup Bid is the “**Backup Bidder**”. At the conclusion of the Auction, the Financial Advisor will notify the Qualified Bidders of the identities of the Successful Bidder and the Backup Bidder.
34. The SSP Team shall finalize a definitive agreement in respect of the Successful Bid and the Backup Bid, if any, conditional upon the approval of the Court.
35. The Backup Bid shall remain open until the consummation of the transaction contemplated by the Successful Bid (the “**Backup Bid Expiration Date**”).
36. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected on the earlier of: (i) the date of closing of the Successful Bid or the Backup Bid, and (ii) November 30, 2019.

#### **Approval Hearing**

37. The Petitioners shall seek a hearing before the Court to be heard no later than November 7, 2019 to authorize the Energold Group to enter into an agreement to conclude the Successful Bid or the Backup Bid (the “**Approval Hearing**”). The Approval Hearing may be adjourned or rescheduled with the approval of the Monitor, without further notice, by notice to the service list in the CCAA proceedings.
38. If following the approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then the Backup Bid, if there is one, will be deemed to be the Successful Bid hereunder and the SSP Team shall effect a transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

#### **Deposits**

39. All Deposits shall be retained by the Petitioners’ counsel and invested in an interest bearing trust account in a Schedule I Bank in Canada. If there is a Successful Bid or a definitive agreement with a Qualified Bidder, the Deposit (plus accrued interest) paid pursuant to the Approval Hearing shall be released and applied to the purchase price to be paid by the Successful Bidder or the Qualified Bidder upon closing. The Deposit (plus accrued interest) paid by the Backup Bidder shall be retained by the Petitioners’ counsel until the Backup Bid Expiration Date or, if the Backup Bid becomes the Successful Bid, shall be released and applied to the purchase price to be paid by the Backup Bidder upon closing of the Backup Bid. The Deposits (plus applicable interest) of all

Qualified Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders within five (5) Business Days of the earlier of (i) the date of closing of the Successful Bid or the Backup Bid; and (ii) November 30, 2019. If this SSP is terminated in accordance with the terms in this document, all Deposits shall be returned to the bidders within five (5) Business Days of the date upon which it is determined that this SSP is terminated.

40. If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close, it shall forfeit its Deposit, provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Energold Group has against such breaching entity.

#### **Approvals**

41. For greater certainty, the approvals required pursuant to the terms of this SSP are in addition to and not in substitution for any other approvals required by the CCAA or any other statute or are otherwise required at law.

#### **Notice Parties**

42. As used herein, the "Notice Parties" are, collectively, the Energold Group, the CRO, the Financial Advisor and the Monitor. The addresses to be used for delivering documents to the Notice Parties are as follows:

##### **The Energold Group and the CRO:**

1100 – 543 Granville Street  
Vancouver BC V6C 1X8

Attention: Mark Berger, Chief Restructuring Officer

Email: mberger@pppllc.com

with a copy to:

Borden Ladner Gervais LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, BC V7X 1T2

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Attention: Lisa Hiebert and Ryan Laity

Email: lhiebert@blg.com and rlaity@blg.com

##### **The Financial Advisor:**

Ernst & Young Orenda Corporate Finance and Ernst & Young Corporate Finance  
(Canada) Inc.  
Pacific Centre, 700 West Georgia Street

PO Box 10101  
Vancouver BC V7Y 1C7

Attention: Mike Bell

Email: mike.bell@ca.ey.com

**The Monitor:**

FTI Consulting Canada Inc.  
555 Burrard Street, 15<sup>th</sup> Floor.  
Vancouver BC V7X 1M8

Attention: Toni Vanderlaan and Tom Powell

Email: toni.vanderlaan@fticonsulting.com and tom.powell@fticonsulting.com

with a copy to:

Cassels Brock LLP  
2200 HSBC Building  
885 West Georgia Street  
Vancouver BC V6C 3E8

Attention: Mary Buttery, Q.C. and Lance Williams

Email: mbuttery@casselsbrock.com and lwilliams@casselsbrock.com

43. Proposals shall be delivered to all Notice Parties at the same time by electronic mail, personal delivery or courier.
44. Interested bidders requesting information about the qualification process, including the form of Purchase Agreement, and information in connection with their due diligence should contact the Financial Advisor.

**Reservation of Rights**

45. The Monitor, after consultation with the SSP Team, may reject, at any time any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirement of the CCAA, this SSP or any orders of the Court applicable to the Energold Group; (iii) contrary to the interests of the Energold Group, its estate and stakeholders (including the DIP Lender and Extract) as determined by the SSP Team.
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46. At or before the Approval Hearing, the SSP Team or the Monitor may impose such other terms and conditions as the Monitor determines to be in the best interest of the Energold Group's estates and stakeholders, provided that such terms and conditions are not inconsistent with this SSP.
47. This SSP does not, and shall not be interpreted to create any contractual or other legal relationship between the Energold Gold Group and any other party, other than as specifically set forth in definitive agreements that may be executed by the Energold Group.

**Further Orders**

48. At any time during this SSP, the Monitor or the Petitioners may, following consultation with the Monitor, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.