

COURT FILE NUMBER B201 – 719774
25-2719774

Clerk's Stamp:

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS In THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A.
2000, c. B-9

IN THE MATTER OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2

IN THE MATTER OF GS E&R CANADA INC.

APPLICANT GS E&R CORPORATION and GS E&R CANADA INC.

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP
4300 Bankers Hall West
888 – 3rd Street S.W.
Calgary, AB T2P 5C5

Solicitor: Karen Fellowes, K.C.
Phone Number: (403) 724-9469
Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicants, GS E&R Corporation and GS E&R Canada Inc.

NOTICE TO RESPONDENT: MNP Ltd. and Stikeman Elliott LLP

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

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

Date: March 29, 2023

Time: 11:00am

Where: Edmonton Law Courts
VIA WEBEX: <https://albertacourts.webex.com/meet/virtual.courtroom86>

Before: The Honourable Justice Little

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

Remedy claimed or sought:

1. The Applicants, GS E&R Corporation (“**E&R PARENT**”) and GS E&R Canada Inc. (“**E&R CANADA**”) and collectively “**E&R**”), apply for an Order (the “**Order**”) in substantially the form attached as **Appendix A** to this application, as follows:
 - (a) in addition to the powers set forth in paragraphs 15 to 20 of the SAVO (as defined below), MNP Ltd. (“**MNP**”) is authorized and empowered to:
 - (i) transfer the Remaining Assets, currently being held in trust by MNP, to E&R PARENT’s legal counsel, Stikeman Elliott LLP (“**Stikeman**”) to be held in accordance with the terms of an Escrow Agreement, substantially in the form attached as Schedule B to the Order;
 - (ii) take all steps necessary to file the Company’s final tax returns and deal with the Canada Revenue Agency’s audit of such final tax returns, including its final GST returns, if any; and
 - (iii) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
 - (b) approving the form of Escrow Agreement attached as Schedule B to the Order; and
 - (c) authorizing and empowering Stikeman to distribute balance of the Remaining Assets, if any, to E&R PARENT in accordance with the terms of the Escrow Agreement.
2. Such further and other relief as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this application:

I. NOI Procedural Background

3. E&R CANADA was a privately-owned company based in Calgary, Alberta, which was dissolved effective January 2, 2023.
4. E&R PARENT is the sole shareholder of E&R CANADA.
5. On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (“**BIA**”) (the “**NOI Proceedings**”) and appointed MNP as the Proposal Trustee.

6. On March 24, 2021, this Court pronounced an initial order (the “**Initial Order**”) which, among other things, authorized E&R CANADA to engage in a sale investment solicitation process (“**SISP**”) assisted by Sayer Energy Advisors and MNP.
7. Acting in accordance with the Court-authorized SISP, E&R CANADA negotiated and executed an Asset Purchase Agreement on July 30, 2021 (the “**APA**”) with Bench Creek Resources Ltd. (the “**Purchaser**”), an arm’s length party not related to E&R CANADA (the “**Transaction**”).
8. On August 16, 2021, Justice Dunlop approved a SAVO, *inter alia*:
 - (a) approving the Transaction contemplated by the APA;
 - (b) vesting all right, title and interest held by E&R CANADA in the Assets outlined in the APA in the Purchaser free and clear of any and all Claims, save for Permitted Encumbrances (each as defined in the SAVO); and
 - (c) granting expanded powers to MNP, to take effect upon the resignation of E&R CANADA’s directors and officers, as set out at paragraph 15 to 20 of the SAVO.
9. On August 17, 2021, E&R CANADA filed its Proposal with the OSB (the “**Proposal**”), which was approved unanimously by E&R CANADA’S Creditors by way of virtual meeting on September 7, 2021.
10. The Proposal provided, *inter alia*, that:
 - (a) E&R CANADA would assign to MNP all funds remaining in E&R CANADA after deducting amounts for administrative and professional fees and costs of the Proposal, and the payment of post-filing Creditors; and
 - (b) subject to the Claims Process and the closing of the Transaction, it was anticipated that all Creditors affected by the Proposal would be paid in full plus interest up to a maximum of 5% per annum, less the levy payable to the Superintendent of Bankruptcy, in accordance with the BIA.
11. On September 17, 2021, Justice Jones approved and sanctioned the terms of the Proposal (the “**Approval Order**”).
12. The sole remaining director of E&R CANADA, Jungho Park, resigned effective September 17, 2021.

II. Steps Taken by the Proposal Trustee Post-Approval Order

13. At all relevant times, E&R have been kept informed of steps taken by MNP to give effect to the terms of the Approval Order and complete the Proposal. To the best of E&R's knowledge, MNP has made all payments and distributions E&R CANADA's creditors in satisfaction of its obligations under the Proposal.
14. MNP has advised E&R PARENT that, following payment to E&R CANADA's creditors under the terms of the Proposal, as of February 28, 2023, it held \$1,508,914.72 in cash as an asset in the estate, subject to (a) payment of professional fees of MNP and its legal counsel up to and including February 28, 2023, (b) any interest earned on the funds until payout, and (c) any GST refund received by MNP on behalf of E&R CANADA (the "**Remaining Assets**").
15. E&R is advised by MNP that the only remaining obligation of the Trustee is to file with the Canada Revenue Agency ("**CRA**") all final tax returns, including with respect to E&R CANADA's GST account in respect of its 2021 corporate fiscal year end tax return, its 2022 corporate fiscal year end tax return, a final tax return for 2023, and its corporate tax account (the "**Final Tax Returns**").
16. MNP advises that the CRA may perform a final audit of E&R CANADA's GST and corporate tax accounts (the "**Audit**"), however such Audit (if it occurs) can only be completed after the Final Tax Returns are filed. It is understood that if the CRA completes the Audit, MNP will advise E&R if any amounts are owing thereunder.

III. Transfer of Remaining Assets

17. E&R CANADA has no further obligations to any other creditor under the Proposal and was dissolved on January 2, 2023, by the Corporate Registrar for failure to file its annual return for the years 2021 and 2022.
18. As noted in paragraph 15 above, the only remaining obligation of the Trustee is to file the Final Tax Returns, which will trigger the Audit.
19. MNP is unable to file the Final Tax Returns until there are no assets and liabilities remaining in E&R CANADA (i.e. the Remaining Assets).
20. Subject to payment of any obligations due to the CRA resulting from the Audit, the Remaining Assets are properly payable to E&R PARENT.
21. MNP and E&R have determined that the most efficient and secure manner for the Remaining Assets to be held, is pursuant to an Escrow Agreement in Stikeman's trust account, until the

earlier of (i) six months elapse from the date on which MNP has received the last Notice of Assessment from CRA in respect of each of E&R CANADA's Final Tax Returns, provided that Escrow Agent has first confirmed to MNP that any balance owing, if any, under any Notice of Assessment received by MNP in respect of E&R CANADA's Final Tax Returns has been transferred to CRA from the Remaining Assets to satisfy the outstanding obligation to the CRA on behalf of E&R CANADA; or (ii) the date on which MNP receives a Clearance Certificate from CRA in respect of the Audit of E&R CANADA. The form of Escrow Agreement is attached as Schedule B to the Order.

22. Stikeman has agreed to the form of Escrow Agreement attached as Schedule B to the Order and will hold the Remaining Assets until such time as is released of its trust conditions under the Escrow Agreement and the order sought herein.

Material or evidence to be relied on:

23. The pleadings and materials filed in the within action;
24. The Affidavit of Alex (Hyunsoo) Yoon sworn March 23, 2023, filed;
25. The Eighth Report of the Proposal Trustee, dated March 20, 2023; and
26. Such further and other evidence as counsel may advise and this Court may permit.

Applicable Acts and regulations:

27. *Alberta Rules of Court*, Alta Reg 124/2010, as amended;
28. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
29. *Alberta Business Corporations Act*, RSA 2000, c. B-9, and in particular, subsections 215 and 218 thereof;
30. *Judicature Act*, RSA 2000, c J-2; and
31. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

32. None.

How the application is proposed to be heard or considered:

33. Via WebEx videoconference before the presiding Justice on the Commercial List.

WARNING

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

APPENDIX A
FORM OF ORDER

COURT FILE NUMBER B201 – 719774

25-2719774

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTER

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

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IN THE MATTER OF GS E&R CANADA INC.

APPLICANTS

GS E&R CORPORATION and GS E&R CANADA INC.

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ORDER

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STIKEMAN ELLIOTT LLP

4300 Bankers Hall West

888 – 3rd Street S.W.

T2P 5C5

Karen Fellowes, K.C.

Phone Number: (403) 724-9469

Email: kfellowes@stikeman.com

Fax Number: (403) 266-9034

File No.: 148767.1001

Counsel for the Applicants, GS E&R Canada Inc. and GS E&R Corporation

DATE ON WHICH ORDER WAS PRONOUNCED:

March 29, 2023

NAME OF JUDGE WHO MADE THIS ORDER:

The Honourable Justice Little

LOCATION OF HEARING:

Edmonton Courthouse, via Webex

UPON the Application of GS E&R Corporation (“**E&R PARENT**”) and GS E&R Canada Inc. (“**E&R CANADA**” or the “**Company**”) (collectively, “**E&R**”); **AND UPON** being advised that E&R PARENT is the sole shareholder of the Company;

AND UPON being advised that MNP Ltd. (“**MNP**”) was appointed as Proposal Trustee (“**Proposal Trustee**”) with respect to a Notice of Intention to Make a Proposal pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**NOI Proceedings**”); **AND UPON** being advised that on August 16, 2021, Justice Dunlop granted a Sale Approval and Vesting Order, which provided MNP, *inter alia*, enhanced powers to act in the name of and on behalf of E&R CANADA (the “**SAVO**”); **AND UPON** being

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advised that on September 17, 2021, Justice Jones approved and sanctioned the terms of the Proposal under the NOI Proceedings;

AND UPON being advised the E&R CANADA was dissolved on January 2, 2023; **AND UPON** it appearing just, equitable and convenient that all remaining funds held in the Company's estate, as shown in the final statement of receipts and disbursements for the period of September 17, 2021 to February 28, 2023, be distributed to E&R PARENT net of the professional fees incurred by the Trustee and its legal counsel to and including February 28, 2023, and together with any interest earned on the funds until payout and any GST refund received by MNP on behalf of E&R CANADA (the "**Remaining Assets**");

AND UPON READING the Applicant's Application; the Affidavit of Alex (Hyunsoo) Yoon, sworn March 23, 2023; the Affidavit of Service of Zandrhea de Guzman dated March ____, 2023; the Eighth Report of the Proposal Trustee dated March 20, 2023 (the "**Eighth Report**"); and the form of Escrow Agreement appended as Schedule B to this Order (the "**Escrow Agreement**");

AND UPON hearing counsel for the Applicant and counsel for MNP;

IT IS HEREBY ORDERED THAT:

Service and Definitions

1. The time for service of this Application together with all supporting materials is hereby declared good and sufficient and no other person is required to have been served with such documents, and this hearing is properly returnable before this Honourable Court today and further service thereof is dispensed with.
2. Service of this Order shall be deemed good and sufficient by serving the same on:
 - (a) the persons recorded on the Service List to be maintained by the Proposal Trustee; and
 - (b) by posting a copy of this Order on MNP's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/gs-eandr-canada>
3. No other Persons are entitled to be served with a copy of this Order.
4. All capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Escrow Agreement.

Transfer of Remaining Assets

5. MNP is hereby expressly authorized to:
 - (a) transfer the Remaining Assets, currently being held in trust by MNP, to E&R PARENT's legal counsel, Stikeman Elliott LLP ("**Stikeman**") (the "**Transfer**") to be held in accordance with paragraphs 7 to 9 of this Order;
 - (b) take all steps necessary to file the Final Tax Returns and deal with the CRA in respect of the Audit, if any; and
 - (c) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

6. Upon the completion of the Transfer as outlined in paragraph 4(a) of this Order, MNP shall file a copy of the Trustee's Transfer Certificate, substantially in the form attached as **Schedule A** hereto, certifying that the Transfer has been completed.

Approval of Escrow Agreement and Transfer of Remaining Assets

7. The Escrow Agreement is hereby approved, and MNP, E&R Parent, and Stikeman are authorized to enter into the Escrow Agreement in substantial accordance with its terms .

8. MNP is ordered and directed to complete the Transfer of the Remaining Assets to Stikeman, to be held in trust for the benefit of E&R PARENT, as a return of paid-up capital, pursuant to and in accordance with the Escrow Agreement, until the earlier of the following events:
 - (a) six months elapse from the date on which MNP has received the last Notice of Assessment from CRA in respect of each of E&R CANADA's Final Tax Returns, provided that Escrow Agent has first confirmed to MNP that any balance owing under any Notice of Assessment received by MNP in respect of E&R CANADA's Final Tax Returns has been transferred to CRA from the Escrowed Property to satisfy the outstanding obligation to the CRA on behalf of E&R CANADA; or
 - (b) MNP receives a Clearance Certificate from CRA in respect of the Audit of E&R CANADA.

9. In the case of the occurrence contemplated in paragraph 8(a) or paragraph 8(b), as the case may be, MNP shall provide to Stikeman a notice, substantially in the form attached as Schedule A to the Escrow Agreement, that it is released of its trust conditions contemplated in the Escrow Agreement and this Order, and Stikeman shall be authorized to release the Remaining Property to E&R PARENT.

Justice of the Court of King's Bench of Alberta

SCHEDULE A

FORM OF TRUSTEE TRANSFER CERTIFICATE

COURT FILE NUMBER B201 – 719774
25-2719774

COURT COURT OF KING'S BENCH OF ALBERTA IN
BANKRUPTCY

JUDICIAL CENTRE CALGARY

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MATTER In THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000,
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 IN THE MATTER OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2

 IN THE MATTER OF GS E&R CANADA INC.

APPLICANT GS E&R CORPORATION

DOCUMENT **PROPOSAL TRUSTEE'S CERTIFICATE**

ADDRESS FOR **STIKEMAN ELLIOTT LLP**
SERVICE AND 4300 Bankers Hall West
CONTACT 888 – 3rd Street S.W.
 T2P 5C5

INFORMATION OF Karen Fellowes, K.C.
PARTY FILING THIS Phone Number: (403) 724-9469
DOCUMENT Email: kfellowes@stikeman.com
 Fax Number: (403) 266-9034
 File No.: 148767.1001

Counsel for the Applicants, GS E&R Canada Inc. and GS E&R Corporation

RECITALS

- A. On March 11, 2021, MNP Ltd was appointed as the Proposal Trustee (the "**Proposal Trustee**") of GS E&R Canada Inc. pursuant to the Bankruptcy and Insolvency Act, RSC 1985, c. B-3, as amended.

- B. Pursuant to an Order of the Court dated March 29, 2023 (the "**Order**") the Court authorized the Proposal Trustee to transfer the Remaining Assets (as defined in the Order) to be transferred by MNP Ltd. to the parent corporation of GS E&R CANADA INC. in accordance with the terms of an Escrow Agreement between Stikeman Elliott LLP, MNP Ltd. and GS E&R Corporation ("**the Escrow Agreement**").

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Escrow Agreement or the Order, as applicable.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. On _____, 2023, MNP transferred the remaining funds in the Estate to Stikeman Elliott LLP in accordance with the terms of the Escrow Agreement and the Order; and
2. MNP no longer holds any assets of GS E&R Canada Inc.

This Certificate was delivered by the Proposal Trustee at **[Time]** on **[Date]**.

MNP LTD., in its capacity as the Proposal Trustee of the GS E&R CANADA INC. and not in its personal capacity.

Per: _____

Name: [●]

Title: [●]

SCHEDULE B
ESCROW AGREEMENT

ESCROW AGREEMENT

Escrow Agreement dated March 29, 2023 between GS E&R Corporation (“**E&R PARENT**”), MNP Ltd. in its capacity as trustee under the Division I Proposal of GS E&R Canada Inc. (“**E&R CANADA**”) and not in its personal capacity (“**MNP**”) and Stikeman Elliott LLP (the “**Escrow Agent**”).

RECITALS:

- (a) On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”) and MNP was appointed as Proposal Trustee;
- (b) On August 17, 2021, E&R Canada made a proposal to its creditors under Part III, Division I of the *BIA* (the “**Proposal**”). At a creditors’ meeting on September 7, 2021, E&R CANADA’s creditors unanimously approved the Proposal, which was subsequently sanctioned by the Honourable Justice Jones on September 17, 2021 (the “**Approval Order**”);
- (c) MNP carried out its duties as Proposal Trustee in accordance with the terms of the Proposal and the Approval Order and made all distributions to E&R CANADA’s creditors contemplated in the Proposal;
- (d) Following completion of the distributions to creditors contemplated in the Proposal, MNP holds \$1,508,914.72 of cash in hand, which, (i) less payment of all outstanding professional fees of MNP and its legal counsel up to and including February 28, 2023, and (ii) together with any interest earned on the funds until payout and any GST refunds received by MNP on behalf of E&R CANADA (the “**Escrowed Property**”), is distributable under the *BIA* to E&R PARENT as E&R CANADA’s sole shareholder;
- (e) In accordance with the terms of an Order granted by the Honourable Justice Little on March 29, 2023, MNP and E&R PARENT have agreed that MNP will transfer the Escrowed Property to the Escrow Agent to be held pursuant to the terms of this Agreement (the “**Order**”);
- (f) The Escrow Agent is willing to act as escrow agent for the sole purpose of accepting, holding and releasing the Escrowed Property in accordance with this Agreement.

In consideration of the above and for other good and valuable consideration, the parties agree as follows:

Section 1 Defined Terms

Capitalized terms used in this Agreement and not otherwise defined have the meanings specified in the Order. As used in this Agreement, “Business Day” means any day of the year, other than a Saturday, Sunday, or any day on which Canadian chartered banks are closed for business in Calgary, Alberta.

Section 2 Appointment of Escrow Agent

E&R PARENT and MNP hereby appoint the Escrow Agent to act as escrow agent in accordance with this Agreement and the Escrow Agent accepts such appointment.

Section 3 Delivery of Escrowed Property and Receipt

Upon delivery of the Escrowed Property by MNP to the Escrow Agent, the Escrow Agent shall acknowledge receipt of the Escrowed Property to E&R PARENT and MNP. The Escrow Agent shall hold and deal with the Escrowed Property in accordance with this Agreement.

Section 4 Investment of Escrowed Property

- (1) The Escrow Agent shall deposit the Escrowed Property in its trust account and, until the Escrowed Property is delivered or deposited in accordance with Section 6, the Escrow Agent shall invest and reinvest the Escrowed Property in Guaranteed Investment Certificates issued by the Canadian Imperial Bank of Commerce with an initial term of 30 days payable to the Escrow Agent "in trust".
- (2) Interest earned and paid on such investments will be added to and form part of the Escrowed Property and the Escrow Agent shall invest and reinvest such interest in accordance with this section. Interest earned on the Escrowed Property will be for the benefit of the party to whom such Escrowed Property, or a portion thereof, is released and the Escrow Agent may provide such information (including the identity of the party receiving the Escrowed Property) to CIBC as may be required for tax reporting and other purposes.

Section 5 Holding of Escrowed Property

The Escrow Agent shall retain the Escrowed Property and the certificates (including any replacement securities or certificates) representing the Escrowed Property and shall not do or cause anything to be done to release the Escrowed Property from escrow or transfer, hypothecate or alienate the Escrowed Property, except as expressly provided for in this Agreement.

Section 6 Release of Escrowed Property

- (1) In this Agreement,
 - (a) "**Audit**" means the CRA audit of the Final Tax Returns and/or review of pre-filing GST deemed trust claims;
 - (b) "**Clearance Certificate**" means the certificate from the CRA confirming that E&R CANADA has paid all amounts of income tax and GST, interest, and penalties owed by it, if any;
 - (c) "**CRA**" means the Canada Revenue Agency;
 - (d) "**Final Tax Returns**" means, collectively, the 2021 corporate fiscal year-end tax return, the 2022 corporate fiscal year-end tax return, and the 2023 final tax return for E&R CANADA; and
 - (e) "**Notice of Assessment**" means the CRA's evaluation of the Final Tax Returns.
- (2) Subject to Section 11, Escrow Agent will hold the Escrowed Property in trust for the benefit of E&R PARENT until the earlier of the following occurrences:
 - (a) six months elapse from the date on which MNP has received the last Notice of Assessment from CRA in respect of each of E&R CANADA's Final Tax Returns, provided that Escrow Agent has first confirmed to MNP that any balance owing, if any, under any Notice of Assessment received by MNP in respect of E&R CANADA's Final Tax Returns has been transferred to CRA from the Escrowed Property to satisfy the outstanding obligation to the CRA on behalf of E&R CANADA; or
 - (b) MNP receives a Clearance Certificate in respect of the Audit of E&R CANADA.
- (3) In the case of the occurrence contemplated in either Section 6(2)(a) or Section 6(2)(b), as the case may be, MNP shall provide to the Escrow Agent a notice, substantially in the form attached as Schedule A to this Agreement (the "**Escrow Release Notice**"), that it is released of its trust

conditions contemplated in this Agreement and the Escrow Agent shall be authorized to release the Escrowed Property to E&R PARENT.

Section 7 No Requirement for Determination or Decision

The Escrow Agent is not required to make any determination or decision with respect to the validity of any claim made by any party, or of any denial thereof (including, without limitation, the validity of any Escrow Release Notice), but may rely conclusively on the terms of this Agreement, the Order and the documents delivered to it in connection with this Agreement and Order.

Section 8 Duties and Liabilities of the Escrow Agent

- (1) The Escrow Agent has no duties or responsibilities other than those expressly set forth in this Agreement and the Order, which the parties agree are purely administrative in nature, and no implied duties or obligations may be read into this Agreement against the Escrow Agent. For greater certainty, the Escrow Agent is not bound by any agreement, arrangement or understanding relating to or arising out of the matters provided for in this Agreement, except as expressly set forth in this Agreement.
- (2) The Escrow Agent is not liable for any action it takes or omits to take in good faith and in the exercise of its own judgment, for any error in judgment made in good faith or for any mistake of fact or law, except for its own bad faith or fraud.
- (3) The Escrow Agent may rely on, and is protected in acting upon, any judgment, order, notice, demand, direction, certificate or other instrument, paper or document which it may receive (including by e-mail) in connection with its duties under this Agreement and may accept them as sufficient evidence of the facts stated in them. The Escrow Agent is in no way bound to enquire as to the veracity, accuracy or adequacy thereof or call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and is not responsible for any actions, proceedings, losses, liabilities, costs, claims, damages, expenses (including legal fees and expenses) and demands that may be occasioned by its failing to do so.
- (4) If the Escrow Agent becomes involved in any arbitration or litigation relating to this Agreement and/or the Order, the Escrow Agent may comply with any decision reached through such arbitration or litigation.
- (5) In the following circumstances, the Escrow Agent may (A) refrain from taking any action under this Agreement and/or the Order until it is authorized or directed otherwise in writing by both E&R PARENT and MNP, or by an order of a court of competent jurisdiction from which no further appeal may be taken or (B) deposit the Escrowed Property with a court of competent jurisdiction in Calgary, in the Province of Alberta:
 - (b) The Escrow Agent is uncertain as to its duties or rights under this Agreement and/or Order,
 - (c) The Escrow Agent receives instructions, claims or demands from any party to this Agreement, the Order or from a third Person with respect to any matter under this Agreement which, in its opinion, are in conflict with this Agreement and/or the Order,
 - (d) There is a disagreement between any of the parties to this Agreement and/or the Order which, in the reasonable opinion of the Escrow Agent, may result in adverse claims or demands with respect to the Escrowed Property, or
 - (e) Any of the parties to this Agreement, including the Escrow Agent, disagree about the interpretation of this Agreement, the Order or about the rights and obligations of the Escrow

Agent or the propriety of an action contemplated by the Escrow Agent under this Agreement and/or the Order.

- (6) Upon the Escrow Agent depositing the Escrowed Property with a court in accordance with Section 8(5), the Escrow Agent will be released from its duties and obligations under this Agreement and the Order.

Section 9 Escrow Agent's Fees, Costs and Expenses

There will be no additional fees or expenses associated with Escrow Agent's performance of its obligations under this Agreement and Order to E&R PARENT.

Section 10 Indemnification of Escrow Agent

E&R PARENT shall indemnify and save harmless the Escrow Agent and each of its shareholders, partners, directors, officers, employees, agents, representatives and their respective affiliates, of and from, and shall pay for, all actions, proceedings, losses, liabilities, costs, claims, damages, expenses (including legal fees and expenses on a full indemnity basis without reduction for tariff rates or similar reductions) and demands that may be made or brought against it or any of them or which it or any of them may suffer or incur as a result of, in respect of, or arising out of or in connection with this Agreement and/or the Order, the performance or non-performance by the Escrow Agent under this Agreement and/or the Order or any transactions contemplated by this Agreement and/or the Order, except such as shall result solely and directly from its own bad faith or fraud.

Section 11 Resignation, Removal of Escrow Agent

- (1) The Escrow Agent may resign and be discharged from all further duties and liabilities under this Agreement and Order at any time on 30 calendar days written notice to E&R PARENT and MNP or such shorter notice as E&R PARENT and MNP may accept as sufficient. E&R PARENT and MNP may jointly remove the Escrow Agent from its office at any time on 30 calendar days written notice to the Escrow Agent.
- (2) If the Escrow Agent resigns or is removed, E&R PARENT has 20 calendar days to jointly appoint a successor and the Escrow Agent shall deliver the Escrowed Property and all interest accrued thereon as E&R PARENT directs.
- (3) If a successor is not appointed in accordance with Section 11(2), then the Escrow Agent shall cease its function at the expiration of the notice period and deposit the Escrowed Property with a court of competent jurisdiction in Calgary, in the Province of Alberta.
- (4) This Agreement terminates and ceases to be of any further force and effect with respect to the Escrow Agent on the date on which the Escrow Agent delivers the Escrowed Property to a successor or deposits it with a court in accordance with this Section 11, except that Section 10 and all other provisions of this Agreement relating to the protection of the Escrow Agent survive the resignation or removal of the Escrow Agent.
- (5) Upon the appointment of any successor escrow agent, the successor escrow agent will be vested with the same powers, rights, duties and responsibilities as if the successor escrow agent had been originally named as Escrow Agent under this Agreement and will be subject to removal under this Section 11. E&R PARENT, MNP and the successor escrow agent shall execute and deliver all documents and take all such actions as may, in the reasonable opinion of the Escrow Agent, be necessary or desirable for the purpose of effectively transferring the Escrowed Property to the successor escrow agent upon and subject to the terms of this Agreement.

Section 12 Termination of Agreement

In addition to terminating in accordance with Section 11, this Agreement terminates and ceases to be of any further force and effect on the date on which the Escrow Agent delivers the Escrowed Property in accordance with Section 6 or deposits it with a court in accordance with Section 8, except that Section 10 and all other provisions of this Agreement relating to the protection of the Escrow Agent survive the termination of this Agreement.

Section 13 Right to Continue to Act

Each of E&R PARENT and MNP acknowledge that the Escrow Agent has acted and will continue to act as legal counsel to E&R PARENT with respect to various matters, including the Order. Each of E&R PARENT and MNP agrees that, as the Escrow Agent is not acting as legal counsel to MNP, the Escrow Agent will not, by virtue of acting as Escrow Agent, be disqualified from continuing to act for and represent E&R PARENT in connection with the Order and otherwise, including in matters adverse to MNP and its interests.

Section 14 Notices

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each, a "**Notice**") must be in writing, sent by hand delivery, courier, facsimile or e-mail and addressed:

- (a) If to E&R PARENT, to:

Stikeman Elliott LLP
4300, 888 3 Street Southwest
Calgary, Alberta T2P 5C5

Attention: Karen Fellowes, K.C.
Telephone: (403) 831-9488
Facsimile: (403) 266-9034
E-mail: kfellowes@stikeman.com

- (b) If to the Escrow Agent, to:

Stikeman Elliott LLP
4300, 888 3 Street Southwest
Calgary, Alberta T2P 5C5

Attention: Keith R. Chatwin
Telephone: (403) 266-9088
Facsimile: (403) 266-9034
E-mail: kchatwin@stikeman.com

- (c) If to MNP, to:

Lawson Lundell LLP
1100, 225 6 Avenue Southwest
Calgary, Alberta T2P 1N2

Attention: Alexis E. Teasdale
Telephone: (403) 218-7564
Facsimile: (403) 269-9494
E-mail: ateadale@lawsonlundell.com

A Notice is deemed to be given and received (i) if sent by hand, courier or facsimile (with facsimile machine confirmation of transmission), on the date of delivery or transmission if it is a Business Day and the delivery or transmission was made prior to 4:00 p.m. (local time in the place of receipt), and otherwise on the next Business Day; and (ii) if sent by e-mail, when the sender receives an e-mail from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgement of an e-mail for purposes of this Section. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

Section 15 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by all of the parties.

Section 16 Entire Agreement

Subject to the provisions of the Order, Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Order, parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Order, which cannot be resolved by both provisions being complied with, the provisions of this Agreement will prevail to the extent of such conflict.

Section 17 Enurement and Assignment

This Agreement becomes effective when executed by all of the parties. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties.

Section 18 Severability

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 19 Waiver

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

Section 20 Further Assurances

On or after the date of this Agreement, E&R PARENT and MNP shall execute and deliver such documents and take all such action as the other or the Escrow Agent may request from time to time in order to carry

out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies intended to be created in favour of the Escrow Agent.

Section 21 Expenses

E&R PARENT and MNP will each pay for its own expenses incurred in connection with this Agreement and the transactions contemplated by it.

Section 22 Time

Time is of the essence in this Agreement.

Section 23 Governing Law

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each party irrevocably attorns and submits to the exclusive jurisdiction of the courts situated in the City of Calgary, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

Section 24 Counterparts

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, e-mail or other electronic means is as effective as a manually executed counterpart of this Agreement.

Section 25 English Language

The parties to this Agreement have agreed that this Agreement as well as any document or instrument relating to it be drawn up in English only but without prejudice to any such document or instrument which may from time to time be drawn up in French only or in both French and English. *Les parties aux présentes ont convenu que la présente Convention ainsi que tous autres actes ou documents s'y rattachant soient rédigés en anglais seulement mais sans préjudice à tous tels actes ou documents qui pourraient à l'occasion être rédigés en français seulement ou à la fois en anglais et en français.*

[Rest of page intentionally left blank. Signature page follows.]

The parties have executed this Agreement.

GS E&R Corporation

By: _____
Name:
Title:

MNP Ltd.

By: _____
Name:
Title:

Stikeman Elliott LLP

By: _____
Name: Keith Chatwin
Title: Partner
Without individual or personal liability

SCHEDULE A
ESCROW RELEASE NOTICE

TO: STIKEMAN ELLIOTT LLP, Attention: Keith R. Chatwin, Partner, email: kchatwin@stikeman.com

CC: STIKEMAN ELLIOTT LLP, Attention: Karen Fellowes, K.C., Senior Counsel, email: kfellowes@stikeman.com

DATE: **[Month], [Date], [Year]**

RE: Escrow Agreement made on **[Date]** among GS E&R Corporation and MNP Ltd. (the **"Instructing Parties"**), and Stikeman Elliott LLP as Escrow Agent (the **"Escrow Agreement"**)

Unless otherwise defined herein, all capitalized terms used in this Escrow Release Notice shall have the meaning ascribed to them in the Escrow Agreement.

The Instructing Parties hereby irrevocably instruct the Escrow Agent, forthwith upon receipt of this Escrow Release Notice, to release **[Remaining Property]** to GS E&R Corporation in accordance with the wire instructions attached hereto as Appendix "A". This Escrow Release Notice shall be the Escrow Agent's good, sufficient and irrevocable authority for so doing.

GS E&R CORPORATION

By: _____
Name:
Title:

MNP LTD.

By: _____
Name:
Title:

APPENDIX A
WIRE INSTRUCTIONS

Name	Primary Contact	Receiving Banking Details