

Clerk's stamp:

COURT FILE NUMBER 1301-02432  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE ALBERTA *BUSINESS  
CORPORATIONS ACT*, R.S.A. 2000, c. B-9, AS  
AMENDED

APPLICANT RS TECHNOLOGIES INC.  
DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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File Ref.: 89300/1

### **AFFIDAVIT OF HOWARD R. ELLIOTT**

**(Re: Reverse Claims Procedure, Stay Extension  
and Sale and Investor Solicitation Procedure)**

I, Howard R. Elliott, of the City of Milan, in the State of Michigan, United States of America, **MAKE OATH AND SAY THAT:**

1. I am the President and Chief Executive Officer of RS Technologies Inc. (“RS” or the “Company”) and swear this Affidavit on behalf of RS. I have personal knowledge of the facts deposed to herein or, where indicated, I have been advised and believe the facts to be true to the best of my knowledge. In preparing this Affidavit, I have also consulted with other members of the senior management team at RS.

2. I am authorized to make this Affidavit on behalf of RS.
3. All capitalized terms used but not defined herein have the meaning ascribed to them in my Affidavit sworn on March 13, 2013 (the "**First Affidavit**").

#### **RELIEF REQUESTED**

4. This Affidavit is made in support of an application by the Company for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:
  - (a) approving the form of reverse claims procedure (the "**Claims Procedure**") as set forth in the draft order attached as Schedule "A" to the Application filed by the Company in these proceedings on April 10, 2013, and authorizing the Company and the Monitor to do all such things as are reasonably necessary to implement and carry out the Claims Procedure (the "**Claims Procedure Application**"); and
  - (b) extending the Stay Period (as defined below) to June 28, 2013.
5. The Company understands that the Monitor has filed, or intends to file, an application, to be heard in conjunction with the Company's application, seeking an Order approving a form of sale and investor solicitation procedure (the "**SISP**") with respect to the potential sale of the Company's assets or shares (the "**SISP Application**"). This affidavit is also made in support of the Monitor's SISP Application.

#### **BACKGROUND**

6. The Initial Order granted by this Honourable Court as part of the within proceedings, *inter alia*:
  - (a) stayed all proceedings and remedies taken or that might be taken in respect of the Company or any of its property, except as otherwise set forth in the Initial Order or as otherwise permitted by law, for an initial period of 30 days to April 12, 2013 (the "**Stay Period**");
  - (b) authorized the Monitor to obtain interim financing from Werklund Capital Corporation ("**WCC**") and Melbye Skandinavia AS ("**Melbye**", and collectively

with WCC, the “**Interim Lender**”) on behalf of the Company and granted a charge against all of the property and assets of the Company in favour of the Interim Lender to secure the interim financing; and

(c) permitted the Company to file with the Court a plan or plans of compromise or arrangement between the Company and its creditors.

7. In conjunction with this Affidavit and the Claims Procedure Application, I swore an Affidavit on April 8, 2013 (the “**April 8<sup>th</sup> Affidavit**”) in support of an application filed by the Company on April 8, 2013 (the “**April 8<sup>th</sup> Application**”) seeking an order to extend the Stay Period (as defined below) to May 10, 2013, or such later date as this Honourable Court sees fit.
8. The April 8<sup>th</sup> Affidavit was also made in support of an application that the Company understands the Monitor has filed, or intends to file, where the Monitor is seeking an Order authorizing further advances under the Credit Agreement (as defined in the April 8<sup>th</sup> Affidavit) for Interim Financing up to the maximum amount of \$2,750,000 (the “**Increased Financing Application**”).
9. It is intended that: (i) the Claims Procedure Application; (ii) the Monitor’s SISP Application; (iii) the April 8<sup>th</sup> Application; and (iv) the Monitor’s Increased Financing Application, will all be heard in conjunction with each other.

#### **THE SISP**

10. I have reviewed a current copy of the SISP, a copy of which is attached hereto and marked as Exhibit “A”, as negotiated by the Monitor. All capitalized terms used in this section of this Affidavit but not defined herein have the meaning ascribed to them in the SISP.
11. Without a sale or investment, the long term viability of the Company is at risk. More particularly, the Company will not be able to maintain its operations and service its customers. The Company has had recent success in improving operational efficiencies and increasing sales, as more particularly described in the First Affidavit; however, it requires additional investment and financing to continue this momentum. As a result, the

implementation, conduct and carrying out of the SISP will benefit all of the Company's stakeholders.

12. In connection with the SISP, the Company understands that the Monitor will be seeking the Court's authorization to enter into, and approval of, a stalking horse asset and share purchase agreement (the "**Stalking Horse PA**") between the Monitor and WCC and Melbye (collectively, the "**Stalking Horse Bidder**"), which will serve as the stalking horse bid (the "**Stalking Horse Bid**") for the purchase of all or substantially all of the Company's assets or shares, or equity investment in and restructuring or recapitalization of the Company.
13. The Company further understands that the Stalking Horse PA, if transacted, would see the Stalking Horse Bidder acquire substantially all of the assets or shares of the Company.
14. By way of general overview only, and as more particularly described in the SISP, the SISP involves the following steps:
  - (a) distribution of the Teaser Letter and draft confidentiality agreement to Known Potential Bidders;
  - (b) advertisement of the SISP;
  - (c) submission by Potential Bidders of certain limited information and an executed Confidentiality Agreement by no later than April 29, 2013;
  - (d) determination of which Potential Bidders are Qualified Phase 1 Bidders within 5 Business Days of a Potential Bidder having delivered its materials;
  - (e) provision of a confidential information memorandum to each Qualified Phase 1 Bidder and conduct of necessary due diligence;
  - (f) submission by Qualified Phase 1 Bidders of a Non-Binding Indication of Interest by May 21, 2013;

- (g) assessment of Qualified Non-Binding Indications of Interest within 5 Business Days of Phase 1 Bid Deadline;
  - (h) provided there is a Qualified Phase 2 Bidder, submission of a Qualified Asset Bid, Qualified Restructuring Proposal or Qualified Hybrid Bid, no later than June 10, 2013;
  - (i) assessment of all Qualified Asset Bids, Qualified Restructuring Proposals or Qualified Hybrid Bids, if any; and
  - (j) in the event that there are more than one Qualified Bids, conduct of an Auction on June 18, 2013.
15. The SISP also contains procedures that allow the process to be terminated in certain circumstances.
16. The Company is of the view that the SISP and the proposed timetable contained therein will provide an adequate opportunity for a solicitation of the marketplace and that the SISP will provide a rigorous test for whether the Stalking Horse Bid delivers the best possible result for all stakeholders.

#### **CLAIMS PROCEDURE**

17. In order to allow the Company to file a plan or plans of compromise or arrangement between the Company and its Creditors as part of the within proceedings, the Company has agreed to conduct a Claims Procedure as more particularly set forth in the draft order attached as Schedule "A" to the Claims Procedure Application.
18. As described in the First Affidavit, the Company has four secured creditors, while its other major creditors consist primarily of trade creditors and on-going obligations to its employees for wages and employer funded employee benefit programs.
19. Accordingly, the Company has a high level of confidence that all of its creditors and contracting counter-parties who fall within the ambit of the proposed Claims Procedure will receive notice of the same.

**STAY EXTENSION**

- 20. In the April 8<sup>th</sup> Application, the Company requested an extension of the stay of proceedings to and including May 10, 2012, or such later date as this Court sees fit.
- 21. However, in light of the Monitor's application seeking an Order approving the SISP, the Company is requesting an extension of the stay of proceedings to and including June 28, 2013 so as to allow for the implementation, conduct and carrying out of the SISP, should this Honourable Court grant its approval of the SISP.
- 22. The Company has been and continues to act diligently and in good faith in its efforts to achieve a successful restructuring for the benefit of all stakeholders.
- 23. The Company anticipates that the implementation, conduct and carrying out of the SISP will provide a greater benefit to those parties with an economic interest in the Company than would otherwise be received under a liquidation or bankruptcy. The implementation, conduct and carrying out of the SISP will provide certainty to the Company's creditors and customers, prevent further value erosion, preserve the Company's business as a going concern, preserve jobs and maximize value for the benefit of stakeholders.
- 24. I swear this Affidavit in support of the Claims Procedure Application and the Monitor's SISP Application.

SWORN BEFORE ME, at the City of )  
 Ann Arbor, Michigan this 10<sup>th</sup> day of )  
 April, 2013 )

Marsha Philbrook )

Howard Elliott )

A Notary Public in and for the State of )  
 Michigan, United States of America )

**HOWARD R. ELLIOTT**

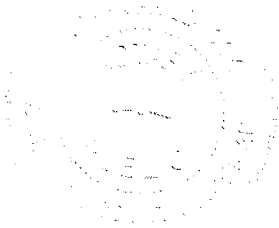
**MARSHA PHILBROOK**

Notary Public, Washtenaw County, MI  
 Acting in Washtenaw County  
 My Commission expires 10/23/2018

This is Exhibit "A" referred to in the Affidavit of Howard Elliott sworn before me on April 10<sup>th</sup>, 2013 at the City of Ann Arbor, Michigan.

Marsha Philbrook

A Notary Public in and for the State of  
Michigan, United States Of America



**MARSHA PHILBROOK**

Notary Public, Washtenaw County, MI  
Acting in Washtenaw County  
My Commission expires 10/23/2018

Schedule "[#]"

**SALE AND INVESTOR SOLICITATION PROCEDURES**

**Preamble**

On March 14, 2013, RS Technologies Inc. (the "**Company**") obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") from the Honourable Madam Justice J. Strekaf of the Alberta Court of Queen's Bench (the "**Court**").

On April 11, 2013, the Court granted an order (the "**SISP Approval Order**") approving the sale and investor solicitation procedures set forth herein together with the entering into of an asset and share purchase agreement (the "**Purchase Agreement**") between the Company, Werklund Capital Corporation ("**Werklund**") and Melbye Skandinavia AS ("**Melbye**") (collectively, Werklund and Melbye, or their permitted assigns under the Purchase Agreement, shall be referred to as the "**Stalking Horse Credit Bidders**"), to submit a bid to, subject to certain conditions: (a) offer to subscribe for and purchase Shares in the Company (a "**Share Bid**"), or (b) offer to purchase all of the undertaking, property and assets of the Company (an "**Asset Bid**") (collectively, the Share Bid and the Asset Bid shall be referred to as the "**Stalking Horse Credit Bid**", and the sale and investor solicitation procedures set forth herein shall be referred to as the "**SISP Procedures**").

The SISP Approval Order and these SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of all or substantially all of the assets of the Company, or the sale of the Shares in the Company, a refinancing or some hybrid combination thereof.

All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

**Defined Terms**

All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order. In addition, in these SISP Procedures:

"**ABCA**" the *Business Corporations Act* of Alberta, R.S.A. 2000, c. B-9, as amended.

"**Administration Charge**" means the super priority charge created by the Initial Order securing the payment of certain professional fees of the Company's counsel and the Monitor and its counsel.

"**Approval Hearing**" is defined in section 46.

"**Asset Bid**" is defined in the preamble.

"**Auction**" is defined in section 37.

"**Auction Bidders**" is defined in section 37.a.

"**Backup Bid**" is defined in section 42.

"**Backup Bid Expiration Date**" is defined in section 44.



**"Backup Bidder"** is defined in section 42.

**"Break Fee"** means an amount, in Canadian dollars, equal to [●]% of the Stalking Horse Credit Bid Price.

**"Business"** means the business being carried on by the Company.

**"Business Day"** means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Calgary.

**"CCAA"** is defined in the preamble.

**"CCAA Plan"** is defined in section 3.

**"CCAA Proceedings"** means proceedings commenced by the Company in the Court pursuant to the CCAA on March 12, 2013.

**"Claims and Interests"** is defined in section 7.

**"Company"** is defined in the preamble.

**"Confidentiality Agreement"** is defined in section 10.

**"Court"** is defined in the preamble.

**"CWB"** means The Canadian Western Bank.

**"Debenture Facility"** means the loan provided by Werklund and Melbye to the Company pursuant to a secured convertible debenture dated July 2011 (and executed on or about July 5, 2011) by the Borrower in favour of Werklund and Melbye.

**"Definitive Restructuring Agreement"** is defined in section 28.a.

**"Deposit"** is defined in section 27.k.

**"Guarantor Group"** means Brian Felesky, James Gray, Marjad Inc., Dwayne Hunka, Paul Gianella and David Williams, in their capacities as guarantors of the debt owing by the Company to CWB.

**"Hybrid Bid"** means a bid submitted pursuant to the terms and conditions of these SISP Procedures that is both a Restructuring Proposal and an Asset Bid.

**"Interim Financing Facility"** means the super priority secured interim financing credit facility provided by Werklund and Melbye to the Company to finance obligations of the Company incurred during the CCAA Proceedings, or any successor or replacement to Werklund and Melbye in providing such financing.

**"Interim Financing Agreement"** means the interim financing credit agreement among the Company (as borrowers), and Werklund and Melbye (as lenders), dated March 14, 2013, providing for the Interim Financing Facility, as amended, restated or supplemented from time to time, or a comparable agreement with any successor or replacement to Werklund and Melbye in providing such the Interim Financing Facility.

**"Initial Order"** is defined in the preamble.

**"KERP Charge"** means the super priority charge created by the Initial Order to secure certain amounts payable to key employees of the Company.

**"Known Potential Bidders"** is defined in section 8.

**"Leading Bid"** is defined in section 37.i.

**"Melbye"** is defined in the preamble.

**"Minimum Incremental Overbid"** is defined in section 37.i.

**"Monitor"** means FTI Consulting Canada Inc., in its capacity as Monitor of the Company pursuant to the Initial Order.

**"Non-Binding Indication of Interest"** is defined in section 19.

**"Non-Conflicted Stakeholders"** means any Person with a significant economic or legal interest in or claim against the Company, including any member of the Guarantor Group, Canadian Western Bank, Melbye or Werklund, who (a) is not participating, or who has ceased to participate, in these SISP Procedures as a Potential Bidder, a Qualified Phase 1 Bidder, a Qualified Phase 2 Bidder or an Auction Bidder, (b) has no direct or indirect interest in or obligation to any bidder in these SISP Procedures, and (c) has executed a written confidentiality agreement with the Company and the Monitor pursuant to which such Person agrees to hold in confidence, and not disclosure to any other Person whatsoever, any and all confidential information obtained from the Company and the Monitor in connection with these SISP Procedures, which confidentiality agreement will be in form and substance satisfactory to the Monitor, acting reasonably.

**"Obligations"** means any indebtedness, liabilities and obligations, whether present and future, direct and indirect, or liquidated and contingent, owed by the Company to any person.

**"Phase 1 Bid Deadline"** is defined in section 20.

**"Phase 2 Bid Deadline"** is defined in section 26.

**"Potential Bidder"** is defined in section 11.

**"Potential Bidder Deadline"** is defined in section 11.

**"Priority Payables"** means any Obligations of the Company secured by Security Interests that rank in priority to the Security Interests securing the Obligations of the Company under the Debenture Facility and/or the Interim Financing Facility.

**"Property"** means the undertaking, property and assets of the Company.

**"Purchase Agreement"** is defined in the preamble.

**"Purchase Price"** means the value of the total consideration to be provided by a bidder pursuant to an Asset Bid, Restructuring Proposal or Hybrid Bid, in Canadian dollars.

**"Qualified Asset Bid"** is defined in section 27.

**"Qualified Bidder"** is defined in section 30.

**"Qualified Bids"** is defined in section 30.

**"Qualified Hybrid Bid"** is defined in section 29.

**"Qualified Non-Binding Indication of Interest"** is defined in section 22.

**"Qualified Phase 1 Bidder"** is defined in section 12.

**"Qualified Phase 2 Bidder"** is defined in section 25.

**"Qualified Restructuring Proposal"** is defined in section 28.

**"Restructuring"** is defined in section 4.

**"Restructuring Proposal"** is defined in section 4.

**"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of any property.

**"Share Bid"** is defined in the preamble.

**"Shares"** means shares of any class in the capital of the Company created pursuant to a CCAA Plan and having the characteristics provided for therein.

**"SISP Approval Order"** is defined in the preamble.

**"SISP Procedures"** is defined in the preamble.

**"Solicitation Process"** is defined in section 2.

**"Stalking Horse Credit Bid"** is defined in the preamble.

**"Stalking Horse Credit Bidders"** is defined in the preamble.

**"Stalking Horse Credit Bid Price"** is defined in section 33.

**"Starting Bid"** means has the meaning as ascribed thereto in section 37.b.

**"Subsequent Bid"** is defined in section 37.i.

**"Successful Bid"** is defined in section 42.

**"Successful Bidder"** is defined in section 42.

**"Superior Offer"** means a credible, reasonably certain and financially viable third party offer for the acquisition of all of the Property of the Company and/or some or all of the Shares, the terms

of which offer are no less favourable and no more burdensome or conditional than the terms contained in the Purchase Agreement.

"Teaser Letter" is defined in section 8.

"Werklund" is defined in the preamble.

#### "Stalking Horse"

1. The Stalking Horse Credit Bid has been designated as the stalking horse bid under paragraph [•] of the SISP Approval Order.

#### Solicitation Process

2. These SISP Procedures describe, among other things, the Property available for sale, the opportunity for the acquisition of the Shares in the Company, and/or completing a reorganization transaction with the Company, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company and the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids, and the approval thereof by the Courts (collectively, the "**Solicitation Process**").
3. The Monitor shall conduct these SISP Procedures and the Solicitation Process as outlined herein. Certain stages of the SISP Procedures may be conducted by the Monitor simultaneous to the preparation, solicitation or confirmation of a CCAA plan of compromise and arrangement. In addition, the closing of any sale may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these SISP Procedures or the responsibilities of the Monitor hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or any interested party with a hearing on no less than three (3) Business Days' notice.

#### Sale Opportunity

4. A potential transaction with the Company may, at the option of a Successful Bidder, include one or more of the following:
  - (a) a restructuring, recapitalization or other form of reorganization of the business and affairs of the Company as a going concern, including but not limited to a Share Bid (a "**Restructuring Proposal**"), together with a plan of compromise or arrangement pursuant to the CCAA, which may also include proceedings under the ABCA (a "**CCAA Plan**"), which compromises some or all of the Claims and Interests set out therein and restructures Company and/or its the capital(a "**Restructuring**");
  - (b) an Asset Bid, including the sale of all or a portion of the Property to an acquisition entity; or
  - (c) a Hybrid Bid.

5. The structuring of such a transaction may take into account the use of certain tax attributes of the Company.

**"As Is, Where Is"**

6. Any transaction involving the sale of the Property, Business or the Shares will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Monitor, the Company, or any of their agents, estates, advisors, professionals or otherwise, except to the extent set forth in the relevant sale or investment agreement with the Successful Bidder.

**Free of Any and All Claims and Interests**

7. In the event of an Asset Sale or Hybrid Sale, all of the right, title and interest of the Company in and to all Property sold or transferred will, at the time of such sale or transfer, be sold or transferred free and clear of all Security Interests, claims, options, and interests therein 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 shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale or investment agreement with a Successful Bidder.

**Solicitation of Interest**

8. As soon as reasonably practicable after the granting of the SISP Approval Order, the Monitor, in consultation with the Company and its advisors, will prepare a list of potential bidders (the "**Known Potential Bidders**") for the Shares or the Business and Property. Such list will include both strategic and financial parties who, in the Monitor's reasonable business judgment, may be interested in acquiring the Shares or the Business and Property pursuant to an Asset Bid, Restructuring Proposal or a Hybrid Bid. Concurrently, the Monitor will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in making an Asset Bid, Restructuring Proposal or Hybrid Bid.
9. No later than five (5) Business Days after the issuance of the SISP Approval Order, the Monitor shall cause a notice of the Solicitation Process contemplated by these SISP Procedures and such other relevant information which the Monitor considers appropriate to be published in *The Globe & Mail (National Edition)* and *The National Post (National Edition)*. At the same time, the Monitor shall issue a press release providing the above notice and such other relevant information, with Canada Newswire and a United States equivalent newswire for dissemination in Canada and major financial centers in the United States, Europe and Asia Pacific.
10. No later than two (2) Business Days after the issuance of the SISP Approval Order, the Monitor shall distribute to the Known Potential Bidders the Teaser Letter, as well as a draft form of confidentiality agreement to which the Company, the Monitor and the potential bidder are party (the "**Confidentiality Agreement**") that is satisfactory to the

Monitor, acting reasonably, and which shall inure to the benefit of any purchaser under an Asset Bid, Restructuring Proposal or Hybrid Bid pursuant to the Solicitation Process.

### Participation Requirements

11. Unless otherwise ordered by the Court, in order to participate in the Solicitation Process, an interested party (a "**Potential Bidder**") must deliver the following to the Monitor so as to be received by the Monitor not later than 5:00 p.m. (Mountain time) on April 29, 2013, or such other date or time as the Monitor, acting reasonably, may determine (the "**Potential Bidder Deadline**"):
  - (a) an executed Confidentiality Agreement, in form and substance satisfactory to the Monitor, acting reasonably, which shall inure to the benefit of any purchaser pursuant to an Asset Bid, Restructuring Proposal or a Hybrid Bid;
  - (b) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Monitor and its legal advisors, to make, in their reasonable business or professional judgment, a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate an Asset Bid, Restructuring Proposal or a Hybrid Bid;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (d) an executed letter acknowledging receipt of a copy of the SISP Approval Order (including these SISP Procedures) and agreeing to accept and be bound by the provisions contained therein.
12. A Potential Bidder will be deemed a "**Qualified Phase 1 Bidder**" if: (i) such Potential Bidder has satisfied all of the requirements described in section 11 above; and (ii) such Potential Bidder's financial information and credit support or enhancement demonstrate to the satisfaction of the Monitor, in its reasonable business judgment, the financial capability of such Potential Bidder to consummate a transaction and that such Potential Bidder is likely (based on availability of financing, experience and other considerations) to consummate an Asset Bid, Restructuring Proposal or a Hybrid Bid.
13. The determination as to whether a Potential Bidder is a Qualified Phase 1 Bidder will be made as promptly as practicable but no later than five (5) Business Days after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Phase 1 Bidder, the Monitor will promptly notify the Potential Bidder that it is a Qualified Phase 1 Bidder.
14. If the Monitor, in accordance with section 11 above, after consultation with the Non-Conflicted Stakeholders, determines that there are no Qualified Phase 1 Bidders, the Monitor shall (a) forthwith terminate these SISP Procedures, (b) notify each Qualified Phase 1 Bidder (if any) that these SISP Procedures have been terminated, and (c) within three (3) Business of such termination, shall file an application with the Court seeking approval, after notice and hearings, to implement the Purchase Agreement.

### Due Diligence

15. The Monitor will provide a confidential information memorandum (prepared with the assistance of management of the Company) describing the opportunity to make an Asset Bid, Restructuring Proposal or a Hybrid Bid to each Qualified Phase 1 Bidder as soon as practicable after the determination that such party is a Qualified Phase 1 Bidder. A copy of the confidential information memorandum shall also be provided to the Company and Stalking Horse Credit Bidders.
16. Each Qualified Phase 1 Bidder shall have such due diligence access to materials and financial, tax and other information relating to the Shares, Property and the Business as the Monitor, in its reasonable business judgment, deems appropriate.
17. At the discretion of the Monitor, due diligence access may include presentations by the Monitor and management of the Company (as may be scheduled by the Monitor), access to physical and online data rooms, on-site inspections and such other matters as a Qualified Phase 1 Bidder or Qualified Phase 2 Bidder may reasonably request and as to which the Monitor, in its reasonable exercise of discretion, may agree. The Monitor shall not be obligated to furnish any due diligence information after the Phase 2 Bid Deadline.
18. The Company and the Monitor are not responsible for, and will have no liability with respect to, any information obtained by any Known Potential Bidder, Potential Bidder or Qualified Bidder in connection with the Business or Property. The Company, the Monitor and their respective advisors do not make any representations or warranties whatsoever as to the information or the materials provided, except, in the case of the Company, to the extent provided under any definitive sale or investment agreement executed and delivered by a Successful Bidder (or Backup Bidder, as the case may be) and the Company.

### PHASE 1

#### Seeking Non-Binding Indications of Interest by Qualified Phase I Bidders

19. From the date of the SISP Approval Order until the Phase 1 Bid Deadline, the Monitor, in accordance with the terms of the SISP Approval Order, will solicit non-binding indications of interest from Qualified Phase 1 Bidders to make an Asset Bid, Restructuring Proposal or a Hybrid Bid (each a "**Non-Binding Indication of Interest**").
20. In order to continue to participate in the Solicitation Process, a Qualified Phase 1 Bidder must deliver a Non-Binding Indication of Interest to the Monitor so as to be received by the Monitor not later than 5:00 p.m. (Mountain Time) on May 21, 2013 (the "**Phase 1 Bid Deadline**").

#### Non-Binding Indications of Interest by Qualified Phase 1 Bidders

21. A Non-Binding Indication of Interest will be considered a "**Qualified Non-Binding Indication of Interest**" only if it is submitted by a Qualified Phase 1 Bidder, received on or before the Phase 1 Bid Deadline, and contains the following information:

- (a) an indication of whether the Qualified Phase 1 Bidder wishes to tender (i) an Asset Bid; (ii) a Restructuring Proposal; or (iii) a Hybrid Bid;
- (b) in the case of an Asset Bid, it shall identify (i) the purchase price range (including liabilities to be assumed by the Qualified Phase 1 Bidder); (ii) the Property included, any of the Property expected to be excluded, and/or any additional assets desired to be included in the transaction; (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable); (iv) the proposed treatment of employees of the Company; (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vi) additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any; (vii) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose; and (viii) any other terms or conditions of the Asset Bid which the Qualified Phase 1 Bidder believes are material to the transaction;
- (c) in the case of a Restructuring Proposal, it shall identify: (i) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Qualified Phase 1 Bidder (including the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made in the Company; (ii) the underlying assumptions regarding the pro forma capital structure (including, the anticipated debt levels, debt service fees, interest and amortization); (iii) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Company and the proposed treatment of employees; (iv) the structure and financing of the transaction including all requisite financial assurance; (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals; (vi) additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any; (vii) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose; and (viii) any other terms or conditions of the Investment Proposal which the Qualified Phase I Bidder believes are material to the transaction;
- (d) in the case of a Hybrid Proposal, all of the information contained in subparagraphs (b) and (c) above, as applicable; and
- (e) such other information reasonably requested by the Monitor.

22. Notwithstanding section 21 hereof, the Monitor, acting reasonably, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Non-Binding Indication of Interest to be a **"Qualified Non-Binding Indication of Interest"**.



**Assessment of Qualified Non-Binding Indications of Interest**

23. The Monitor, in consultation with the Company and the Non-Conflicted Stakeholders, will assess any Qualified Non-Binding Indications of Interest received, and will determine whether there is a reasonable prospect that the Monitor will receive one or more Superior Offer(s) that is/are likely to be consummated. Such assessment will be made as promptly as practicable but no later than five (5) Business Days after the Phase 1 Bid Deadline.
24. If the Monitor, in accordance with section 23 above, determines that (a) no Qualified Non-Binding Indication of Interest was received, or (b) at least one Qualified Non-Binding Indication of Interest was received but there is no reasonable prospect that any such Qualified Non-Binding Indication of Interest will, individually or in the aggregate, result in one or more Superior Offer(s) that is/are likely to be consummated, the Monitor shall (i) forthwith terminate these SISP Procedures, (ii) notify each Qualified Phase 1 Bidder (if any) that these SISP Procedures have been terminated, and (iii) three (3) Business Days of such termination, shall file an application with the Court seeking approval, after notice and hearings, to implement the Purchase Agreement.
25. If the Monitor, in accordance with section 23 above, determines that (a) one or more Qualified Non-Binding Indications of Interest were received, or (b) there is a reasonable prospect that one or more of such Qualified Non-Binding Indications of Interest will, individually or in the aggregate, result in one or more Superior Offer(s) that is/are likely to be consummated, these SISP Procedures will continue and each Qualified Phase 1 Bidder who has submitted a Qualified Non-Binding Indication of Interest that has determined to likely be consummated, shall be deemed to be a **"Qualified Phase 2 Bidder"**.

**PHASE 2**

**Seeking Qualified Bids by Qualified Phase 2 Bidders**

26. In order to continue to participate in the Solicitation Process, a Qualified Phase 2 Bidder must deliver a Qualified Purchase Bid to the Monitor **so as to be received by the Monitor not later than 5:00 p.m. Mountain Time** on June 10, 2013 (the **"Phase 2 Bid Deadline"**).
- A. **Qualified Asset Bid**
27. An Asset Bid submitted by a Qualified Phase 2 Bidder will be considered a **"Qualified Asset Bid"** only if the Asset Bid complies with all of the following:
  - (a) it includes a letter stating that the Asset Bid is irrevocable until the earlier of (a) the approval by the Court, and (b) forty-five (45) days following the Phase 2 Bid Deadline; provided, however, that if such Asset Bid is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the closing of the Successful Bid or the Backup Bid, as the case may be;
  - (b) the aggregate cash consideration to be paid under the Asset Bid exceeds the aggregate of the Stalking Horse Credit Bid Price, plus the Break Fee;

- (c) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the Purchase Agreement, specifying the Purchase Price, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Phase 2 Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), as well as copies of such materials marked to show the amendments and modifications to the Purchase Agreement and such ancillary agreements and the proposed orders to approve the sale by the Court;
- (d) it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor to allow the Monitor to make a reasonable determination as to the bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Asset Bid;
- (f) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Asset Bid;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Asset Bid, including the identification of the bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the bidder will assume the obligations of the Company under the executory contracts and unexpired leases proposed to be assigned, contains full details of the bidder's proposal for the treatment of related cure costs; and it identifies with particularity any executory contract or unexpired leases the assumption and assignment of which is a condition to closing;
- (i) it includes an acknowledgement and representation that the bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Asset Proposal; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Monitor and the Company, or any of their respective advisors, except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Asset Bid; and (iv) has had the benefit of independent legal advice in connection with its Asset Bid;

- (j) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Asset Bid;
- (k) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of FTI Consulting Canada Inc., Monitor, in trust, in an amount equal to ten percent (10%) of the Purchase Price of, to be held and dealt with in accordance with these SISP Procedures;
- (l) it contains full details of the proposed number of employees of the Company who will become employees of the bidder and the proposed terms and conditions of employment to be offered to those employees;
- (m) if the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the Asset Bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor, that names the Company as third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (n) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (o) it includes evidence of the bidder's ability to comply with Section 11.3 of the CCAA, which includes providing satisfactory evidence of the bidder's ability to perform the contracts and leases proposed in its Asset Bid to be assumed by the bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;
- (p) it contains other information reasonably requested by the Monitor;
- (q) it is received by no later than the Phase 2 Bid Deadline; and
- (r) is determined by the Monitor to be a Superior Offer.

**B. Qualified Restructuring Proposal**

28. A Restructuring Proposal submitted by a Qualified Phase 2 Bidder will be considered a "**Qualified Restructuring Proposal**" only if the Investment Proposal complies with all of the following:

- (a) it includes definitive documentation, duly authorized and executed by the Qualified Phase 2 Bidder, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of debt if any, and details regarding the proposed equity and debt structure of the Company following completion of the proposed transaction (a "**Definitive Restructuring Agreement**");

- (b) the aggregate value of the consideration offered under the Restructuring Proposal exceeds the aggregate of the Stalking Horse Credit Bid Price, plus the Break Fee;
- (c) it includes a letter stating that the Restructuring Proposal is irrevocable until the earlier of (a) the approval by the Court, and (b) forty-five (45) days following the Phase 2 Bid Deadline; provided, however, that if such Restructuring Proposal is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the closing of the Successful Bid or the Backup Bid, as the case may be;
- (d) it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor to allow the Monitor to make a reasonable determination as to the bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Restructuring Proposal;
- (f) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Restructuring Proposal;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Restructuring Proposal, including the identification of the bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents, assets and liabilities of the Company in making its Restructuring Proposal; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Monitor and the Company, or any of their respective advisors, except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Asset Bid; and (iv) has had the benefit of independent legal advice in connection with its Asset Bid;
- (i) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Restructuring Proposal;

- (j) it is accompanied by a refundable Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of FTI Consulting Canada Inc., Monitor, in trust, in an amount equal to ten percent (10%) of the Purchase Price of, to be held and dealt with in accordance with these SISP Procedures;
- (k) if the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor, that names the Company as third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it contains other information reasonably requested by the Monitor;
- (n) it is received by no later than the Phase 2 Bid Deadline; and
- (o) is determined by the Monitor, in consultation with the Company and the Non-Conflicted Stakeholders, to be (individually or in the aggregate with other Qualified Purchase Bids) a Superior Offer.

**C. Qualified Hybrid Bids**

29. A Hybrid Bid submitted by a Qualified Phase 2 Bidder will be considered a "**Qualified Hybrid Bid**" only if the Hybrid Bid complies with all of the applicable portions of paragraphs 27 and 28, as determined by the Monitor acting reasonably.

**D. Qualified Bids**

30. Qualified Asset Bids, Qualified Restructuring Proposals and Qualified Hybrid Bids shall be collectively referred to as "**Qualified Bids**" and individually as a "**Qualified Bid**" and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Bidder**". The Stalking Horse Credit Bid shall be deemed to be a Qualified Bid and the Stalking Horse Credit Bidders shall be deemed to be Qualified Bidders for all purposes of these SISP Procedures including for the purposes of the Auction.
31. Notwithstanding sections 27 to 29 hereof, the Monitor may waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such noncompliant bids to be Qualified Bids.

**Stalking Horse Credit Bid**

32. No deposit is required in connection with the Stalking Horse Credit Bid.
33. The purchase price under the Stalking Horse Credit Bid will be equal to the aggregate amount of the Obligations outstanding under the Interim Financing Facility, the Debenture Facility, any outstanding amounts under the Administration Charge and the

KERP Charge, the amount of Priority Payables, and any unpaid payables incurred by the Company after the Initial Order and before closing (the "**Stalking Horse Credit Bid Price**"), which will be payable by way of set off of such Obligations as against the Bid Price, and payment of the liabilities under the Administration Charge and KERP Charge and the payment and/or assumption of Priority Payables and unpaid payables arising subsequent to the Initial Order.

#### No Qualified Bids

34. The Monitor will assess the Qualified Bids received, if any, and will determine, in consultation with the Company and the Non-Conflicted Stakeholders, whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable but no later than two (2) Business Days after the Phase 2 Bid Deadline.
35. If the Monitor, in accordance with section 34 above, determines that (a) no Qualified Bid was received, or (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, the Monitor shall (i) forthwith terminate these SISP Procedures, (ii) notify each Qualified Bidder (if any) that these SISP Procedures have been terminated, and (iii) within three (3) Business Days of such termination, file an application with the Court seeking approval, after notice and hearings, to implement the Purchase Agreement.
36. If the Monitor, in accordance with section 34 above, determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, these SISP Procedures will not be terminated, the Auction will be held, and the Monitor will promptly notify all Qualified Bidders that they are entitled to participate in the Auction.

#### Auction

37. If, in accordance with section 36 above, the Auction is to be held, the Monitor will conduct an auction (the "**Auction**"), at 9:30 a.m. (Mountain Time) on June 18, 2013 at the offices of FTI Consulting Canada Inc., 1000, 888 3rd Street SW, Bankers Hall, West Tower, Calgary, Alberta, T2P 5C5, or such other location as shall be communicated by the Monitor in a timely manner to all entities entitled to attend at the Auction, which Auction may be adjourned by the Monitor to another time and place selected by the Monitor (provided that notice thereof is sent to such entities). The Auction shall run in accordance with the following procedures:
  - (a) at least three (3) Business Days prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction (the Qualified Bidders who so inform the Monitor shall be referred to as the "**Auction Bidders**");
  - (b) at least two (2) Business Days prior to the Auction, the Monitor, in consultation with the Company and the Non-Conflicted Stakeholders, will provide copies of the Qualified Bid(s) which it believes is (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to all Auction Bidders;

- (c) only representatives of the Auction Bidders, the Company, the Monitor, Canadian Western Bank, the Guarantor Group, and the Stalking Horse Credit Bidders (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person;
- (d) 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 with respect to the bidding or any sale or investment;
- (e) only the Auction Bidders will be entitled to make any subsequent bids at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Auction Bidder's Qualified Bid, as applicable, shall nevertheless remain fully enforceable against such Auction Bidder if it is selected as the Successful Bid or the Backup Bid at the conclusion of the Auction;
- (f) 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;
- (g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (h) the Monitor, after consultation with the Non-Conflicted Stakeholders, 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, requirements 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 these SISP Procedures, general practice in CCAA proceedings, or any order of the Courts made in the CCAA proceedings, and (ii) disclosed to each Auction Bidder at the Auction;
- (i) 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 Monitor determines, after consultation with the Non-Conflicted Stakeholders, 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 RS of at least CDN \$100,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be; provided, however, that the Monitor shall retain the right to modify the increment requirements at the Auction, and provided, further that the Monitor, in determining the net value of any incremental bid to the Company, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in the "**Selection Criteria**" section of these SISP Procedures. After the first round of bidding and between each subsequent round of bidding, the Monitor shall, after consultation with the Non-Conflicted

Stakeholders, announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (j) to the extent not previously provided (which shall be determined by the Monitor), an Auction Bidder submitting a Subsequent Bid must submit, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Monitor), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid. For greater certainty, if the Stalking Horse Credit Bidder submits a Subsequent Bid, this paragraph shall only apply to the Stalking Horse Credit Bidder if the cash portion of the Purchase Price in such Subsequent Bid is in excess of any cash portion of the Purchase Price in the Stalking Horse Credit Bid;
- (k) the Monitor reserves the right, in its reasonable business judgment after consultation with the Non-Conflicted Stakeholders, to make one or more adjournments in the Auction of no more than 24 hours each, to among other things (i) facilitate discussions between the Monitor and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Monitor with such additional evidence as the Monitor, in its reasonable business judgment, may require, including that the Auction Bidder (including, as may be applicable, the Stalking Horse Credit Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
- (l) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these SISP Procedures. No other person is entitled to submit a stalking horse bid in whole or in part;
- (m) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed;
- (n) the Auction shall be closed within five (5) Business Days of the start of the Auction unless extended by the Monitor; and
- (o) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.

#### **Selection Criteria**

- 38. In selecting the Starting Bid, each Leading Bid, the Successful Bid and the Backup Bid, the Monitor will review each Qualified Bid.
- 39. Evaluation criteria with respect to an Asset Bid may include, but are not limited to items such as: (a) the purchase price and the net value (including assumed liabilities and 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 other bids; (c) the counterparties to the transaction; (d) the proposed revisions to the Purchase Agreement 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 Property; (g) the estimated number of employees of the Company 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 Company post-closing and any related restructuring costs; and (i) the likelihood and timing of consummating the transaction.

40. Evaluation criteria with respect to a Restructuring Proposal may include, but are not limited to items such as: (a) the amount of equity and debt investment and the proposed sources and uses of such capital; (b) the debt to equity structure post-closing; (c) the counterparties to the transaction; (d) the terms of the transaction documents; (e) other factors affecting the speed, certainty and value of the transaction; (f) planned treatment of stakeholders; and (g) the likelihood and timing of consummating the transaction.
41. Evaluation criteria with respect to a Hybrid Proposal may include, but are not limited to the items listed in each of paragraphs 38 and 39 above, as applicable.
42. Upon the conclusion of the bidding the Auction shall be closed, and the Monitor, in consultation with the Company and the Non-Conflicted Stakeholders, 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 Bidders(s) who made the Successful Bid is the "**Successful Bidder**" and the Qualified Bidder(s) who made the Backup Bid is the "**Backup Bidder**". The Monitor will notify the Qualified Bidders of the identities of the Successful Bidder and the Backup Bidder. If the Stalking Horse Credit Bidder's final Qualified Bid is deemed to be the highest and best at the conclusion of the Auction or the next highest and best offer at the conclusion of the Auction, the Stalking Horse Credit Bidder's final Qualified Bid will be the Successful Bid or the Backup Bid, as the case may be.
43. The Monitor will finalize a definitive agreement in respect of the Successful Bid and the Backup Bid, if any, conditional upon approval by the Court.
44. The Backup Bid shall remain open until the consummation of the transaction contemplated by the Successful Bid (the "**Backup Bid Expiration Date**").
45. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected on and as of the later of the date of approval of the Successful Bid and Backup Bid by the Court.

#### Approval Hearing

46. Within three (3) Business Days of the conclusion of the Auction, the Monitor shall seek a hearing to be held on a date to be scheduled by the Court (the "**Approval Hearing**") to authorize and direct the Company or the Monitor for and on behalf of the Company to enter into an agreement with respect to the Successful Bid, and in the event that the Successful Bid does not close for any reason, to enter into an agreement with respect to

the Backup Bid. The Approval Hearing may be adjourned or rescheduled by the Monitor, and without further notice, by an announcement of the adjourned date at the Approval Hearing.

47. If following approval of the Successful Bid transaction by the Court and 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 Monitor for and on behalf of the Company shall effectuate a transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

#### Deposits

48. All Deposits shall be retained by the Monitor and invested in an interest bearing trust account in a Schedule I Bank in Canada. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved pursuant to the Approval Hearing shall be released by the Monitor and applied to the purchase price to be paid by the Successful Bidder upon closing of the Successful Bid. The Deposit (plus accrued interest) paid by the Backup Bidder shall be retained by the Monitor until the Backup Bid Expiration Date or, if the Backup Bid becomes the Successful Bid, shall be released by the Monitor and applied to the purchase price to be paid or investment amount to be made by the Backup Bidder upon closing of the Backup Bid. The Deposits (plus applicable interest) of all Phase 2 Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders within five (5) Business Days of the later of the date upon which the Successful Bid and any Backup Bid is approved by the Court. If the Auction does not take place or these SISP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the bidders within five (5) Business Days of the date upon which it is determined that the Auction will not take place or these SISP Procedures are terminated, as applicable.
49. If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close subsequent to the Auction, it shall forfeit its Deposit to the Monitor for and on behalf of the Company; 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 Company has against such breaching entity.

#### Approvals

50. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA, the ABCA or any other statute or are otherwise required at law in order to implement a Successful Bid or Backup Bid, as the case may be.

#### Notice

51. The addresses used for delivering documents to the Monitor as prescribed by the terms and conditions of these SISP Procedures are set out in Schedule "A" hereto. A bid and all associated documentation shall be delivered to the Monitor by electronic mail, personal delivery or courier. Interested bidders requesting information about the qualification process, including a form of asset purchase agreement, and information in connection with their due diligence, should contact the Monitor at the contact information contained in Schedule "A".

**Reservation of Rights**

52. The Monitor, in consultation with the Company and the Non-Conflicted Stakeholders,; (a) may reject, at any time any bid (other than the Stalking Horse Credit Bid) that is (i) inadequate or insufficient, or (ii) not in conformity with the requirements of the CCAA, these SISP Procedures or any orders of the Court applicable to the Company; (b) in accordance with the terms hereof, including section 56, may impose additional terms and conditions and otherwise seek to modify the SISP Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these SISP Procedures to the extent that the Monitor determines, in its reasonable business judgment, that doing so would benefit the Company, their estates, and stakeholders.
53. The Monitor may extend the Potential Bidder Deadline, Phase 1 Bid Deadline, Phase 2 Bid Deadline and the date of the Auction, provided that the Phase 2 Bid Deadline shall not be extended beyond June 11, 2013 (being twenty-four (24) days after the scheduled Phase 2 Bid Deadline); provided, however, that if the Stalking Horse Credit Bidder submits the only Qualified Bid, the terms provided in this section 52 shall not be operative.
54. Prior to the conclusion of the Auction, the Monitor, in consultation with the Company and the Non-Conflicted Stakeholders, may impose such other terms and conditions, on notice to the relevant bidders, as the Monitor may determine to be in the best interests of the Company's estate and its stakeholders that are not inconsistent with any of the procedures in these SISP Procedures.
55. These SISP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between:
- (a) the Monitor and/or Company; and
  - (b) any Known Potential Bidder, Potential Bidder, Qualified Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Qualified Bidder, Auction Bidder, Successful Bidder or Backup Bidder,

other than as specifically set forth in definitive agreements that may be executed by the Company or by the Monitor for and on behalf of the Company.

**No Amendment**

56. There shall be no amendments to these SISP Procedures, including, for greater certainty the process and procedures set out herein, without the prior written consent of the Monitor, acting reasonably, unless otherwise ordered by the Court upon application and appropriate notice.

**Further Orders**

57. At any time during these SISP Procedures, the Monitor may apply to the Court for advice and directions with respect to the discharge of their powers and duties hereunder.

**Schedule "A"**

**Address for Notices and Deliveries**

To the Monitor:

F T I Consulting Canada Inc.  
1000, 888-3rd Street S.W.  
Bankers Hall, West Tower  
Calgary, AB T2P 5C5

Attention: Deryck Helkaa, Senior Managing Director  
Tel. No.: (403) 444-5372  
Facsimile No: (403) 444-6699  
E-mail: deryck.helkaa@fticonsulting.com

with a copy to:

McCarthy Tétrault LLP  
3300, 421-7th Avenue S.W.  
Calgary, AB T2P 4K9

Attention: Sean Collins  
Tel. No.: (403) 260-3531  
Facsimile No.: (403) 260-3501  
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