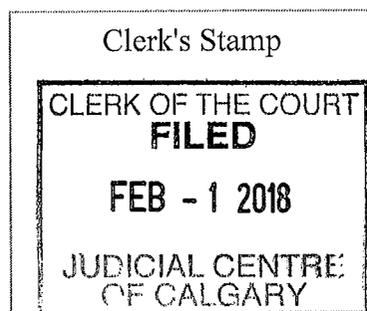


**Form 27**  
[Rules 6.3 and 10.52(1)]



COURT FILE NUMBER 1701-12253

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF **ACMO S.À.R.L.**

DEFENDANTS **US OIL SANDS INC. and US OIL SANDS (UTAH) INC.**

DOCUMENT **APPLICATION BY RECEIVER:  
Approval of Stalking Horse & Sales Solicitation Process**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard  
Telephone No.: 403-298-4485  
Fax No.: 403-265-7219  
Client File No.: 76142.5

**NOTICE TO RESPONDENT**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date Friday, February 16, 2018  
Time 3:00 p.m.

Where                    The Calgary Courts Centre, 601 – 5<sup>th</sup> Street S.W., Calgary Alberta  
Before Whom        The Honourable Madam Justice G. A. Campbell

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 Applicant, FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager of (the "**Receiver**") of US Oil Sands Inc. and US Oil Sands (Utah) Inc. (collectively "**US Oil Sands**"), seek an Order, substantially in the form attached hereto as **Schedule "A"** for the following relief:

- (a)        Declaring service of this Application good and sufficient, and abridging the time for notice of this Application to the time actually given, if necessary;
- (b)        amending paragraph 19 of the Receivership Order granted herein on November 15, 2017 (the "**Receivership Order**") by deleting the figure "\$1,000,000" and replacing it with the figure "\$1,500,000";
- (c)        approving the actions, activities and conduct of the Receiver up to the date of the Receiver's First Report of the Receiver, being filed concurrently with this Application (the "**First Report**"), as summarized in the First Report;
- (d)        Approving the Sales Solicitation Process (the "**SSP**") described and attached as **Appendix "A"** to the First Report, including but not limited to the approval of the engagement by the Receiver of FTI Capital Advisors – Canada ULC ("**FTICA**") to assist with the execution of the SSP, as described therein; and
- (e)        Approving the terms of the Stalking Horse Agreement between the Receiver and USO (Utah) LLC ("**USO**"), to sell all of the assets, undertaking and property of US Oil Sands (the "**Purchased Assets**"), dated January 22, 2018 (the "**Stalking Horse APA**"), to be attached to a Supplemental Report of the Receiver, but excluding the Excluded Assets as defined in the Stalking Horse APA; and

2.        Such further and other relief as Counsel may advise and this Honourable Court permits.

3. Capitalized terms used but not defined herein are intended to bear their meanings as defined in the SSP or the Stalking Horse APA.

**Grounds for making this application:**

**Background**

4. The Receiver was appointed as receiver and manager of US Oil Sands pursuant to an Order of this Honourable Court dated September 14, 2017 (the "**Receivership Order**").

5. Prior to the Receivership Order, US Oil Sands was engaged in the business of oilsands production and extraction. US Oil Sands holds mineral rights in two major oilsand project areas in Utah. In addition, US Oil Sands has an oilsand processing plant located in Utah and a smaller test pilot oilsand processing plant located in Grande Prairie, Alberta.

6. ACMO S.À.R.L. ("**ACMO**") is the largest shareholder of US Oil Sands Inc., holding approximately 31.3% of the issued and outstanding share equity of US Oil Sands Inc. Additionally, ACMO holds outstanding convertible instruments which, if exercised, could result in ACMO holding as much as a 74.3% stake in the share equity of US Oil Sands Inc. ACMO is also the primary secured creditor of US Oil Sands Inc.

7. In addition to its equity interests, ACMO has additionally loaned US \$10,000,000 to US Oil Sands Inc. and holds security over all the assets of US Oil Sands Inc. to secure repayment of that loan. US Oil Sands (Utah) Inc. has guaranteed that loan and provided security to ACMO over all its assets, to secure its obligations under the guarantee (the secured debt owed by US Oil Sands to ACMO, whether as principal or guarantor and including all interest, costs and expenses related thereto is referred to hereinafter as the "**ACMO Debt**").

8. The Receiver's Canadian and US counsel have completed opinions confirming that, subject to customary qualifications and assumptions, ACMO's security against US Oil Sands Inc. and US Oil Sands (Utah) Inc. are valid and enforceable.

9. ACMO has assigned the ACMO Debt and the security therefor to USO.

### **Stalking Horse APA & Sales Process**

10. Pursuant to the Receivership Order, the Receiver is authorized to sell, convey, transfer, lease or assign US Oil Sands's property, including the Purchased Assets.

11. The Receiver has entered into the Stalking Horse APA with USO, which contemplates that the Receiver will conduct a sales and solicitation process to market the Purchased Assets for sale through the SSP.

12. The purchase price pursuant to the Stalking Horse APA is to be paid by USO by way of a non-cash credit in reduction of the ACOMO Debt in the amount of US \$9,000,000 plus a payment in cash in the amount necessary to pay the cost to wind down the Receivership Proceedings and the Chapter 15 Proceedings and to pay the Receivership and Other Priority Charges as at the Closing Date (all as defined in, and subject to the terms and conditions of, the Stalking Horse APA), subject to the adjustments set forth in the Stalking Horse APA. Additionally, the purchase price is exclusive of all Transfer and Ad Valorem Property Taxes (each as defined in the Stalking Horse APA) and USO shall be solely liable for such costs.

13. In the Receiver's view, the terms of the Stalking Horse APA and the SSP are in the best interests of US Oil Sands and its stakeholders, and are fair, reasonable and necessary to maximize value for the stakeholders.

14. At the conclusion of the SSP, the Receiver will seek the Approval and Vesting Orders, transferring the Purchased Assets to USO (or to the Successful Bidder, in the event there is an Auction), free and clear of all Encumbrances, other than Permitted Encumbrances and the Stubbs Claim.

15. FTICA has the expertise, experience

16. The Receiver's Borrowings Charge granted in paragraph 19 of the Receivership Order has a limit of \$1,000,000, or such greater amount as this Honourable Court subsequently ordered. The Receiver has determined that additional funding may be required to complete the process contemplated in the SSP and therefore requests an increase in the Receiver's Borrowings Charge from \$1,000,000 to \$1,500,000.

**Material or evidence to be relied on:**

17. The Receiver's First Report and a Supplemental Report, to be filed.
18. The pleadings previously filed in these proceedings.

**Applicable rules:**

19. *Alberta Rules of Court*, AR 124/2010, and in particular Rules 1.3, 6.3, 11.27, 11.29 and 13.5.
20. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6 and 11.
21. Such further and other rules as Counsel may advise and this Honourable Court permits.

**Applicable Acts and regulations:**

22. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular Part XI thereof.
23. Such further and other acts and regulations as Counsel may advise and this Honourable Court permit.

**Any irregularity complained of or objection relied on:**

24. None.

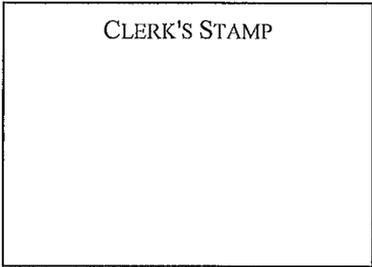
**How the application is proposed to be heard or considered:**

25. In person, before the Honourable Madam Justice B.E.C. Romaine, with some or all of the parties present.

**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.

Schedule "A"



COURT FILE NUMBER 1701-12253

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF **ACMO S.À.R.L.**

DEFENDANTS **US OIL SANDS INC. and US OIL SANDS (UTAH) INC.**

DOCUMENT **ORDER: Sales Process, Stalking Horse Agreement**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Bennett Jones LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R3

Attention: Chris Simard  
Telephone No.: 403-298- 4485  
Fax No.: 403-265-7219  
Client File No. 76142.5

**DATE ON WHICH ORDER WAS PRONOUNCED:** **Friday, February 16, 2018**

**LOCATION WHERE ORDER WAS PRONOUNCED:** **Calgary, Alberta**

**NAME OF JUSTICE WHO MADE THIS ORDER:** **The Honourable Madam Justice G. A. Campbell**

UPON the Application of FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager of (the "**Receiver**") of US Oil Sands Inc. and US Oil Sands (Utah) Inc. (collectively "**US Oil Sands**"), for an Order approving a sales solicitation process respecting US Oil Sands; AND UPON having read the Application, the First Report of the Receiver, filed (the "**First Report**"), and the pleadings and proceedings previously filed herein;

AND UPON hearing counsel for the Receiver and any other interested party appearing at the Application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**Service**

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

**Approval of Solicitation Sales Process & Stalking Horse APA**

2. The sales solicitation process ("SSP") attached hereto as **Schedule "A"**, is hereby approved, including but not limited to the approval of the engagement by the Receiver of FTI Capital Advisors – Canada ULC ("FTICA") to assist with the execution of the SSP, as described therein. The Receiver is hereby authorized and directed to implement the SSP and do all things, including but not limited to, utilizing the services of its affiliate FTI Capital Advisors Canada ULC, as are reasonably necessary to conduct and give full effect to the SSP and carry out its obligations thereunder, including seeking approval of this Court as soon as reasonably practicable following the selection of a Successful Bid under the SSP.

3. The Asset Purchase and Sale Agreement between the Receiver, as vendor, on behalf of US Oil Sands and USO (Utah) LLC, as purchaser, dated January 22, 2018 (the "**Stalking Horse APA**"), is declared to be commercially reasonable and in the best interests of US Oil Sands and their stakeholders. The Stalking Horse APA is hereby approved and the execution of the Stalking Horse APA by the Receiver is hereby authorized and approved, and the Receiver is authorized and directed to take such additional steps and execute such additional documents and make sure minor amendments to the Stalking Horse APA as may be necessary or desirable for the completion of the terms of the Stalking Horse APA.

4. The Receiver is hereby authorized and directed to perform or cause to be performed the covenants of the Stalking Horse APA substantially in accordance with its terms, subject to such amendments as the Receiver and USO may approve which do not materially and adversely affect the terms therein or the SSP.

5. The Receiver shall be at liberty to apply for an Order vesting title to the Purchased Assets (as defined in the Stalking Horse APA) in the Successful Bidder in accordance with, and as defined in, the SSP.

#### **Miscellaneous**

6. Paragraph 19 of the Receivership Order granted herein on November 15, 2017 (the "**Receivership Order**") is hereby amended by deleting the figure "\$1,000,000" and replacing it with the figure "\$1,500,000".

7. The Receiver's actions, activities and conduct up to the date of the Receiver's First Report, being filed concurrently with this Application (the "**First Report**"), as summarized in the First Report, are hereby approved.

8. Service of this Order shall be deemed good and sufficient by serving same on the persons listed on the Service List and by posting a copy of this Order on the Receiver's website established in respect of these proceedings.

9. No other persons are entitled to be served with a copy of this Order. Service of this Order shall be deemed good and sufficient regardless of whether service is effected by PDF copy attached to an email, facsimile, courier, personal delivery or ordinary mail.

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Justice of the Court of Queen's Bench of Alberta

**Schedule "A"**  
**Sales Solicitation Process**

### Sales Solicitation Process

1. On September 14, 2017, the Alberta Court of Queen's Bench (the "**Alberta Court**") made an order (the "**Receivership Order**") appointing FTI Consulting Canada Inc. ("**FTI**") as Receiver and Manager (the "**Receiver**") of the property, assets and undertakings of US Oil Sands Inc. and US Oil Sands (Utah) Inc. (collectively "**US Oil Sands**"). On November 16, 2017, the Receiver obtained an Order in respect of US Oil Sands, granting the Receiver's Petition for Recognition as a Foreign Main Proceeding and recognizing the Receiver as the Foreign Representative in the United States Bankruptcy Court, District of Utah, Central Division (the "**US Court**") in Case Nos. 17-29716 and 17-29717.

2. The Receiver is requesting the Alberta Court's approval of the sale solicitation process (the "**Sales Process**") set forth herein at a court application scheduled on February 16, 2018. The Receiver will apply for an Order of the US Court recognizing the Alberta Court's Order approving this sales process procedure at an application in the US Court.

3. Set forth below are the procedures (the "**Sales Process Procedure**") to be followed with respect to the Sale Process to be undertaken to seek a Successful Bid, and if there is a Successful Bid, to complete the transactions contemplated by the Successful Bid. The Receiver intends to utilize the services of its affiliate, FTI Capital Advisors – Canada ULC ("**FTICA**") in executing on the Sale Process. FTICA is the Special Situations investment banking business of FTI.

### Defined Terms

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

"**ACMO**" means ACMÓ S.À.R.L.;

"**ACMO Debt**" means all secured debt of US Oil Sands owing to ACMO, including without limitation, all principal, interest, cost and expenses related thereto;

"**Business**" means Business as defined in the Stalking Horse APA;

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

"**Courts**" means the Alberta Court and the US Court;

"**Purchaser**" means USO (Utah) Ltd., or its nominee or assignee;

"**Purchased Assets**" means the Purchased Assets as defined in the Stalking Horse APA;

"**Receivership and Other Priority Charges**" means the charges created by the Receivership Order and any other Encumbrances that rank in priority to the security securing the ACMO Debt, as defined in the Stalking Horse APA;

"**Receivership Obligations**" means the indebtedness, liabilities and obligations secured by the Receivership Charges;

"**Stalking Horse APA**" means the Asset Purchase and Sale Agreement between the Receiver and the Purchaser, dated January 22, 2017;

"**Superior Offer**" means a credible, reasonably certain and financially viable third party offer for the acquisition of the Purchased Assets, the terms of which offer are no less favourable and no more burdensome or conditional than the terms contained in the Stalking Horse APA, and which at a minimum includes a payment in cash of the Purchase Price under Stalking Horse APA, plus one Minimum Incremental Overbid as at the closing of such transaction;

#### **Stalking Horse APA**

5. The Receiver has entered into the Stalking Horse APA with the Purchaser, pursuant to which, if there is no Successful Bid (as defined below) from a party other than the Purchaser, the Purchaser will acquire the Purchased Assets. ACMO has assigned ACMO Debt to the Purchaser.
6. The Stalking Horse APA is attached hereto as **Schedule "A"**.

#### **Sales Process Procedure**

7. The Sales Process Procedure set forth herein describes, among other things, the Purchased Assets available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Purchased Assets and the Business, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the Courts' approval and recognition thereof. The Receiver, with the assistance of FTICA, shall administer the Sales Process Procedure. In the event that there is disagreement as to the interpretation or application of this Sales Process Procedure, the Alberta Court will have jurisdiction to hear and resolve such dispute.

8. The Receiver and FTICA will use their reasonable efforts to complete the Sales Process Procedure in accordance with the timelines as set out herein. The Receiver shall be permitted to make such adjustments to the timeline that it determines are reasonably necessary.

### **Purchase Opportunity**

9. A non-confidential teaser letter prepared by FTICA (the "**Teaser**") describing the opportunity to acquire the Purchased Assets will be made available by the Receiver and FTICA to prospective purchasers and will be posted on the Receiver's website as soon as practicable following the issuance of the Alberta Courts approval of the Sales Process.

10. A Confidential Information Memorandum describing the opportunity to acquire the Purchased Assets will be made available by the Receiver and FTICA to prospective purchasers that have executed a non-disclosure agreement with the Receiver, in a form satisfactory to the Receiver and FTICA.

11. The Receiver and FTICA will also populate an electronic data room with detailed information regarding the Business and the Purchased Assets including, but not limited to, listings, photographs, financial information, technical specifications and other information required for prospective purchasers to perform due diligence on the Purchased Assets and the Business.

### **"As Is, Where Is"**

12. The sale of the Purchased Assets 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 Receiver or FTICA or any of their agents, except to the extent set forth in the relevant final sale agreement with a Successful Bidder. The representations, warranties, covenants or indemnities shall not be materially more favourable than those set out in the Stalking Horse APA except to the extent additional tangible monetary value of an equivalent amount is provided by a Successful Bidder other than the Purchaser for such representations, warranties, covenants or indemnities.

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

13. In the event of a sale, all of the rights, title and interests of the US Oil Sands in and to the Purchased Assets to be acquired will be sold free and clear of all pledges, liens, security interests,

encumbrances, claims, charges, options and interests thereon and there against (collectively the "**Claims and Interests**"), other than the Stubbs Claims (as defined in the Stalking Horse APA), such Claims and Interests to attach to the net proceeds of the sale of such Purchased Assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), pursuant to an approval and vesting order made by the Alberta Court and recognized by the US Court, upon the application of the Receiver, except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder. The vesting out of Claims and Interests by a Successful Bidder other than the Purchaser shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse APA except to the extent additional tangible monetary value of an equivalent amount is provided for the vesting out of such Claims and Interests.

#### **Publication of Notice and Teaser**

14. As soon as reasonably practicable after the approval of this Sales Process by the Alberta Court, the Receiver and FTICA shall cause a notice of the Sales Process contemplated by these Sale Process Procedures, and such other relevant information which the Receiver and FTICA consider appropriate, to be published in *The Globe and Mail (National Edition)*, *The Daily Oil Bulletin* and *the Salt Lake Tribune*. At the same time, the Receiver and FTICA shall issue a press release setting out the notice and such other relevant information in form and substance satisfactory to the Receiver and FTICA with Canada Newswire, designating dissemination in Canada and major financial centers in the United States, and shall invite, pursuant to the Teaser, bids from interested parties.

#### **Participation Requirements**

15. In order to participate in the Sale Process, each person interested in bidding on the Purchased Assets (a "**Potential Bidder**") must deliver to FTICA at the address specified in **Schedule "B"** hereto (the "**Notice Schedule**") (including by email transmission), and prior to the distribution of any confidential information by the Receiver and FTICA to a Potential Bidder (including the Confidential Information Memorandum), an executed non-disclosure agreement in form and substance satisfactory to the Receiver and FTICA, which shall inure to the benefit of any purchaser of the Purchased Assets.

16. A Potential Bidder that has executed a non-disclosure agreement, as described above and who the Receiver and FTICA in their sole discretion determine has a reasonable prospect of completing a transaction contemplated herein, will be deemed a "**Qualified Bidder**" and will be promptly notified of such classification by the Receiver and FTICA.

#### **Due Diligence**

17. The Receiver and FTICA shall provide any person deemed to be a Qualified Bidder with a copy of the Confidential Information Memorandum and access to the electronic data room and the Receiver and FTICA shall provide to Qualified Bidders further access to such reasonably required due diligence materials and information relating to the Purchased Assets and the Business as the Receiver and FTICA deem appropriate, including on-site presentations by the Receiver and FTICA and access to further information in the electronic data room. The Receiver and FTICA make no representation or warranty as to the information contained in the Confidential Information Memorandum or the information to be provided through the due diligence process or otherwise, regardless of whether such information is provided in written, oral or any other form, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder executed and delivered by the Receiver and approved by the Alberta Court and recognized by the US Court.

#### **Seeking Qualified Bids from Qualified Bidders**

18. A Qualified Bidder that desires to make a bid for the Purchased Assets must deliver written copies of a final, binding proposal (the "**Final Bid**") in the form of a fully executed purchase and sale agreement to FTICA at the address specified in **Schedule "C"** hereto (including by email transmission) so as to be received by it not later than 12:00 p.m. Calgary time on April 6, 2018 (the "**Final Bid Deadline**")

#### **Qualified Bids**

19. A Final Bid will be considered a Qualified Bid only if it is submitted by a Qualified Bidder and the Final Bid complies with, among other things, the following (a "**Qualified Bid**"):

- (a) it contains

- (i) a duly executed purchase and sale agreement; and
  - (ii) a blackline of the executed purchase and sale agreement to the Stalking Horse APA;
- (b) it includes a letter stating that the Final Bid is irrevocable until there is a Selected Superior Offer (as defined below), provided that if such Qualified Bidder is selected as the Successful Bidder, its Final Bid shall remain an irrevocable offer until the earlier of (i) the completion of the sale to the Successful Bidder and (ii) the outside date stipulated in the Successful Bid;
- (c) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
- (d) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (e) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver and FTICA), or such other form of payment acceptable to the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 10% of the total consideration in the Qualified Bid to be held and dealt with in accordance with these Sale Process Procedures;
- (f) the aggregate consideration, as calculated and determined by the Receiver and FTICA in their sole discretion, to be paid in cash by the Qualified Bidder under the Qualified Bid exceeds the aggregate of the Purchase Price under the Stalking Horse APA and one Minimum Incremental Overbid, upon completion of the transaction contemplated by the Stalking Horse APA;
- (g) it is not conditional upon:
  - (i) the outcome of unperformed due diligence by the Qualified Bidder, and/or
  - (ii) obtaining financing;

- (h) it contains evidence of authorization and approval from the Qualified Bidder's board of directors ( or comparable governing body);
- (i) it is received by the Final Bid Deadline.

### **Stalking Horse APA**

20. No deposit is required in connection with the Stalking Horse APA.
21. The purchase price for the Purchased Assets identified in the Stalking Horse APA includes:
- (i) a non-cash credit bid in the amount of USD \$9,000,000, resulting in that portion of the ACMO Debt being satisfied in exchange for the acquisition of the Purchased Assets on behalf of the Purchaser; and
  - (ii) a payment in cash in the amount necessary to pay the cost to wind down the Receivership Proceedings and the Chapter 15 Proceedings and to pay the Receivership and Other Priority Charges as at the Closing Date (all as defined in, and subject to the terms and conditions of, the Stalking Horse APA), subject to the adjustments set forth in the Stalking Horse APA.

### **No Qualified Bids**

22. If none of the Qualified Bids received by the Receiver and FTICA constitute a Superior Offer, the Receiver shall promptly apply to the Alberta Court for an order approving the Stalking Horse APA and vesting title to the Purchased Assets in the name of the Purchaser, pursuant to the Stalking Horse APA and to the US Court for an Order recognizing such Order.

### **If a Superior Offer is Received**

23. If the Receiver and FTICA determine in their reasonable discretion that one or more of the Qualified Bids constitutes a Superior Offer, the Receiver and FTICA shall provide the parties making Superior Offers and the Purchaser the opportunity to make further bids through the auction process set out below (the "**Auction**").

### **Auction**

24. If the Auction is to be held, the Receiver will conduct an Auction commencing at 10:00 a.m. (Calgary time) on April 13, 2018 at the offices of the Receiver's legal counsel, Bennett Jones

LLP, Suite 4500 Bankers Hall East, 855 – 2<sup>nd</sup> Street SW, Calgary Alberta, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver. The Auction shall run in accordance with the following procedures:

- (a) prior to 5:00 p.m. Calgary time on April 9, 2018, the Receiver will provide unredacted copies of the Qualified Bid(s) which the Receiver and FTICA believe is (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to the Purchaser and to all Qualified Bidders that have made a Superior Offer;
- (b) prior to 12:00 p.m. Calgary time on April 11, 2018, each Qualified Bidder that has made a Superior Offer and the Purchaser, must inform the Receiver whether it intends to participate in the Auction (the parties who so inform the Receiver that they intend to participate are hereinafter referred to as the "**Auction Bidders**");
- (c) prior to the Auction, the Receiver and FTICA shall develop a financial comparison model (the "**Comparison Model**") which will be used to compare the Starting Bid and all Subsequent Bids submitted during the Auction, if applicable;
- (d) during the afternoon of April 12, 2018, the Receiver and FTICA shall make themselves available to meet with each of the Auction Bidders to review the procedures for the Auction, the mechanics of the Comparison Model, and the manner by which Subsequent Bids shall be evaluated during the Auction;
- (e) only representatives of the Auction Bidders, the Receiver, FTICA, and such other persons as permitted by the Receiver (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person (and the Receiver shall have the discretion to allow such persons to attend by teleconference);
- (f) the Receiver shall arrange to have a court reporter attend at the Auction

- (g) 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;
- (h) only the Auction Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Qualified Bidder's Qualified Bid, shall nevertheless remain fully enforceable against such Qualified Bidder if it is selected as the Winning Bid (as defined below);
- (i) 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 identify 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;
- (j) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (k) the Receiver 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 Sale Process Procedures, general practice in insolvency proceedings, or the Receivership Order and (ii) disclosed to each Auction Bidder at the Auction;
- (l) 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 Receiver, utilizing the Comparison Model, determines is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or

otherwise better offer than the Leading Bid (as defined below); in each case by at least the Minimum Incremental Overbid (as defined below). Each bid at the Auction shall provide cash (or a non-cash equivalent) value of at least USD \$250,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be. After the first round of bidding and between each subsequent round of bidding, the Receiver shall 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;

- (m) to the extent not previously provided (which shall be determined by the Receiver), an Auction Bidder submitting a Subsequent Bid must submit, at the Receiver's discretion, 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 Receiver), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid. For greater certainty, if the Purchaser submits a Subsequent Bid, this paragraph shall only apply to the Purchaser if the cash portion of the Purchase Price in the Purchaser's Subsequent Bid is in excess of the cash portion of the Purchase Price in the Stalking Horse APA;
- (n) the Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction of not more than 24 hours each, to among other things (i) facilitate discussions between the Receiver, FTICA 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 Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require that that Auction Bidder (including, as may be applicable, the Purchaser) 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;

- (o) the Purchaser shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Process Procedures;
- (p) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed;
- (q) the Auction shall be closed within 5 Business Days of the start of the Auction unless extended by the Receiver; and
- (r) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.

25. At the end of the Auction, the Receiver and FTICA shall select the winning bid (the "**Winning Bid**"). Once a definitive agreement has been negotiated and settled in respect of the Winning Bid as selected by the Receiver and FTICA (the "**Selected Superior Offer**") in accordance with the provisions hereof, the Selected Superior Offer shall be the "**Successful Bid**" hereunder and the person(s) who made the Selected Superior Offer shall be the "Successful Bidder" hereunder.

#### **Alberta Court Approval Motion and US Court Recognition Motion**

26. The Receiver shall apply to the Alberta Court (the "**Approval Motion**") for an order (the "**Sale Approval and Vesting Order**") approving the Successful Bid and authorizing the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder, as well as an order vesting title to the Purchased Assets in the name of the Successful Bidder.

27. The Approval Motion will be held on a date to be scheduled by the Alberta Court upon application by the Receiver. The Approval Motion may be adjourned or rescheduled by the Receiver without further notice by an announcement of the adjourned date at the Approval Motion.

28. The Receiver shall forthwith apply to the US Court for an Order recognizing the Sale Approval and Vesting Order.

29. All Qualified Bids and Subsequent Bids (other than the Successful Bid) shall be deemed rejected on and as of the date and of approval and recognition of the Successful Bid by the Courts, but not before, and shall remain open for acceptance until that time.

#### **Deposits**

30. All Deposits shall be retained by the Receiver and invested in an interest-bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within five (5) Business Days of the date upon which the Sale Approval and Vesting Order is recognized by the US Court. If there is no Successful Bid, all Deposits shall be returned to the bidders within five (5) Business Days of the date upon which the Sale Process is terminated in accordance with these procedures.

#### **Approvals**

31. 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 applicable law in order to implement a Successful Bid.

#### **No Amendment**

32. Subject to 8 above, there shall be no amendments to these Sale Process Procedures, including, for greater certainty the process and procedures set out herein, without the consent of the Receiver and FTICA.

#### **Further Orders**

33. At any time during the Sales Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

**SCHEDULE "A"**

**STALKING HORSE APA**