



COURT FILE NUMBER 2201-02699

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA

DEFENDANTS BALANCED ENERGY OILFIELD SERVICES INC., BALANCED ENERGY OILFIELD SERVICES (USA) INC., BALANCED ENERGY HOLDINGS INC., MICHELLE THOMAS, NEIL SCHMEICHEL, DARREN MILLER, and CODY BELLAMY

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**  
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File Number: 1230496

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 30, 2022

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice J.T. Neilson

**LOCATION OF HEARING:** Edmonton, Alberta (by WebEx)

**UPON** the application of FTI Consulting Canada Inc. in its capacity as the receiver and manager (the “**Receiver**”) of all current and future assets, undertakings, and properties of every nature and kind whatsoever and wherever situate of Balanced Energy Oilfield Services Inc., Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”), and Balanced Energy Holdings Inc. (collectively, the “**Debtors**”) for an Order approving the sale transaction (the “**Transaction**”) contemplated by a binding term sheet between XDI Energy Solutions Inc. (the “**Purchaser**”) and the Receiver, dated March 21, 2022 (as amended, the “**Term Sheet**”), a copy of which is appended to the First Report of the Receiver, dated March 21, 2022 (including the Confidential Supplement

thereto, the “**First Report**”) as Appendix “B”, and vesting in the Purchaser all of the right, title, and interest of BUSA in and to the Purchased Assets (as that term is defined in the Term Sheet and as more particularly described in Schedule “C” hereto); **AND UPON** reviewing the Receivership Order of the Honourable Madam Justice A.D. Grosse, granted March 7, 2022 (the “**Receivership Order**”); **AND UPON** reviewing the First Report and the Affidavit of Dana Ades-Landy, sworn February 28, 2022; **AND UPON** hearing from counsel for the Receiver, counsel for the Purchaser, counsel to the Plaintiff, and any other interested party appearing at the application; **AND UPON** reviewing the Affidavit of Service of Elena Pratt, sworn March 22, 2022; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

### **APPROVAL OF TRANSACTION**

2. The Transaction is hereby approved and execution of the Term Sheet by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser.

### **VESTING OF PROPERTY**

3. Notwithstanding any other provisions in this Order: (a) this Order shall only be effective and come into force upon the filing of a Certificate by the Receiver (the “**Receiver’s SSP Certificate**”) substantially in the form attached as Schedule “B” to the Order (Approval of Sales Solicitation Process and Approval of Stalking Horse Term Sheet), granted concurrently to the within Order by this Honourable Court on March 30, 2022 (the “**SSP Order**”); and (b) this Order may be set aside by this Honourable Court on further application by the Receiver if the Receiver’s SSP Certificate is not filed as a result of one or more Superior Offers being received within the Sales Solicitation Process.

4. Upon the delivery of a Receiver's certificate to the Purchaser substantially in the form set out in Schedule "A" hereto (the "**Receiver's Certificate**"), subject only to the permitted encumbrances listed on Schedule "B" hereto (the "**Permitted Encumbrances**"), all of BUSA's right, title and interest in and to the Purchased Assets described in the Term Sheet and listed on Schedule "C" hereto, but specifically excluding BUSA's right, title and interest in and to the Excluded Assets described in the Term Sheet and listed on Schedule "D" hereto, shall vest absolutely in the name of the Purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta), *Garage Keepers' Lien Act* (Alberta), *Warehousemen's Lien Act* (Alberta), or any other builders', construction, or oil & gas lien legislation; and
- (d) those Claims listed on Schedule "E" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances); and

for greater certainty, this Court orders that all Claims and Encumbrances (other than Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

5. Upon delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including

those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Receiver’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser clear title to the Purchased Assets subject only to Permitted Encumbrances.

6. Without limiting the foregoing, the Registrar of the Alberta Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Purchased Assets.
7. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Term Sheet. Presentment of this Order and the Receiver’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
8. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Term Sheet.
9. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver’s Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person

having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

10. Except as expressly provided for in the Term Sheet, the Purchaser shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against any of the Debtors.
11. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.
13. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
14. The Receiver is directed to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser.

**MISCELLANEOUS MATTERS**

15. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “**BIA**”), in respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtors; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

18. Service of this Order shall be deemed good and sufficient by:
- (a) Serving the same on:
    - (i) the persons listed on the service list created in these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;
    - (iv) the Purchaser or the Purchaser's solicitors; and
  - (b) Posting a copy of this Order on the Receiver's website at:

<http://cfcanada.fticonsulting.com/balancedenergy/default.htm>

and service on any other person is hereby dispensed with.

19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

*James J. Neilson*

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE “A”**

COURT FILE NUMBER 2201-02699

COURT COURT OF QUEEN’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA

DEFENDANTS BALANCED ENERGY OILFIELD SERVICES INC., BALANCED ENERGY OILFIELD SERVICES (USA) INC., BALANCED ENERGY HOLDINGS INC., MICHELLE THOMAS, NEIL SCHMEICHEL, DARREN MILLER, and CODY BELLAMY

DOCUMENT **RECEIVER’S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**  
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 File Number: 1230496

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice A.D. Grosse of the Court of Queen’s Bench of Alberta (the “**Court**”), dated March 7, 2022, FTI Consulting Canada Inc. was appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Balanced Energy Oilfield Services Inc., Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”), and Balanced Energy Holdings Inc. (the “**Debtors**”).
- B. Pursuant to an Approval and Vesting Order granted by the Honourable Mr. J.T. Neilson on March 30, 2022 (the “**Order**”) the Court approved a binding term sheet between XDI Energy Solutions Inc. (the “**Purchaser**”) and the Receiver, dated March 21, 2022 (as amended, the “**Term Sheet**”), and vested in the Purchaser all of BUSA’s right, title, and interest in and to the Purchased Assets upon the filing of a Receiver’s Certificate. This Receiver’s Certificate is the certificate referred to in paragraph 4 of the Order.



- C. Capitalized terms not otherwise defined herein have the meanings given to those terms in the Term Sheet.

**THE RECEIVER CERTIFIES THE FOLLOWING:**

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable pursuant to the Term Sheet.
2. The conditions to Closing as set out in the Term Sheet have been satisfied or waived by the Receiver and the Purchaser.
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ on \_\_\_\_\_, 2022.

FTI Consulting Canada Inc., in its capacity as Receiver of the undertakings, property and assets of Balanced Energy Oilfield Services Inc., Balanced Energy Oilfield Services (USA) Inc., and Balanced Energy Holdings Inc., and not in its personal or corporate capacity.

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Name:

Title:

**SCHEDULE "B"**

**Permitted Encumbrances**

Nil.

**SCHEDULE “C”****Purchased Assets**

All of the BUSA’s right, title and interest in and to:

- (a) all prepaid charges and expenses, including all prepaid rent;
- (b) all inventory;
- (c) all equipment and other tangible assets, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;
- (d) all intellectual property;
- (e) all goodwill and intangibles;
- (f) all books and records;
- (g) all rights under insurance contracts and policies;
- (h) all telephone numbers, fax numbers and email addresses;
- (i) all prepaid taxes and tax credits;
- (j) all bank accounts; and
- (k) all other or additional assets, properties, privileges, rights and interests relating to the business of BUSA, excluding the US Excluded Assets (as defined in the Term Sheet).

**SCHEDULE “D”****Excluded Assets**

- (a) all of BUSA's cash and cash equivalents, including all cash collateral and deposits posted by or for the benefit of BUSA as security for any obligation;
- (b) all accounts receivable, notes receivable and negotiable instruments of BUSA;
- (c) all contracts of BUSA; and
- (d) such additional assets as may be identified by the Purchaser on or prior to Closing.

**SCHEDULE "E"**

**Encumbrances**

All pledges, liens, charges, security interest, mortgages, or adverse claims or encumbrances of any kind or character.