

This order is **SIGNED**.

Dated: February 27, 2018



R. KIMBALL MOSIER
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

US OIL SANDS INC., *et al.*,

Debtors in a Foreign Proceeding.

Case No. 17-29716

Jointly Administered

Chapter 15

Judge R. Kimball Mosier

ORDER MOTION FOR ENTRY OF AN ORDER (1) RECOGNIZING AND GIVING FULL FORCE AND EFFECT TO AN ORDER OF THE CANADIAN COURT AUTHORIZING THE CHAPTER 15 DEBTORS TO INCREASE BORROWING OF POST-PETITION FUNDS, (2) APPROVING LIENS ON ASSETS LOCATED IN THE TERRITORIAL JURISDICTION OF THE UNITED STATES, AND (3) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES

Upon consideration of the *Motion for Entry of an Order (1) Recognizing and Giving Full Force and Effect to an Order of the Canadian Court Authorizing the Chapter 15 Debtors to Increase Borrowing of Post-Petition Funds, (2) Approving Liens on Assets Located in the Territorial Jurisdiction of the United States, and (3) Granting Adequate Protection to Pre-Petition Secured Parties* (the “**Motion**”) filed by FTI Consulting Canada Inc., solely in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, properties, and undertakings of US

Oil Sands Inc. and US Oil Sands (Utah) Inc. (collectively, the “**Chapter 15 Debtors**”), under the Canadian Bankruptcy and Insolvency Act based upon the *Receivership Order* dated September 14, 2017 (the “**Receivership Order**”), entered by the Court of Queen’s Bench of Alberta (the “**Canadian Court**”) in a proceeding brought before it (the “**Canadian Proceeding**”), and the authorized foreign representative of the Chapter 15 Debtors pursuant to the Receivership Order and this Court’s *Order Granting Recognition as Foreign Main Proceeding* entered in this case on November 16, 2017, as Docket No. 14 (the “**Recognition Order**”), and based on all of the evidence and argument of the parties, and after due deliberation and consideration of this Court’s powers and discretion under 11 U.S.C. §§ 105, 1507, 1515, 1517, 1520, and 1521, and sufficient cause appearing therefore, including for the reasons set forth on the record of this case, arguments of counsel, the court’s findings of fact and conclusions of law, and the arguments presented on the record at the hearing held on the Motion, the Court finds and concludes as follows:

A. This court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), and 1334(a) and 11 U.S.C. § 1501.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O).

C. Venue is proper in this district and in this Court pursuant to 28 U.S.C. § 1410.

D. This Court has constitutional authority to enter final orders on this matter under *Stern v. Marshall*, 564 U.S. 2 (2011), or, in the alternative, by consent of the parties. *See Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014).

E. Pursuant to the Recognition Order, this Court (a) recognized the Canadian Proceeding as a foreign main proceeding with respect to each of the Chapter 15 Debtors, (b) granted the Receiver authority to administer the Chapter 15 Debtors’ assets and affairs in the United States, and (c) granted relief under Sections 1520 and 1521 of the Bankruptcy Code.

F. Pursuant to the Receivership Order, the Chapter 15 Debtors were authorized to obtain up to \$1,000,000 in secured financing.

G. On February 1, 2018, the Receiver filed its *First Report of FTI Consulting Canada Inc., in its Capacity as Court Appointed Receiver and Manager of US Oil Sands Inc. and US Oil Sands (Utah) Inc.* with the Canadian Court pursuant to which the Receiver stated that it had determined that it is in the best interests of the Chapter 15 Debtors to obtain authorization to borrow, as necessary, an additional \$500,000 in secured debt (for a total authorization of \$1,500,000) from USO (the “**Additional Financing**”). See First Report of the Receiver, at Para. 23.

H. Also on February 1, 2018, the Receiver filed a motion in the Canadian Proceeding requesting, among other things, an order from the Canadian Court (the “**Canadian Financing Order**”) authorizing the Receiver to obtain the Additional Financing.

I. A hearing was held in the Canadian Court on February 16, 2018, and, thereafter, the Canadian Court entered the Canadian Financing Order, a copy of which is attached hereto as **Exhibit 1**.

J. Notice of the Motion, the relief sought in the Motion, and an opportunity to be heard was provided to all creditors and parties-in-interest. Such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion, or the relief sought in the Motion, is required.

K. The Chapter 15 Debtors would have been unable to obtain financing on terms as favorable as the Additional Financing.

L. The Chapter 15 Debtors’ obtaining the Additional Financing is warranted under the circumstances, is in the best interests of the Chapter 15 Debtors, and is a sound exercise of the Chapter 15 Debtors’ business judgment.

M. The relief requested by the Motion is not contrary to the public policy of the United States.

N. It is appropriate to extend comity to the Canadian Financing Order, approve the Additional Financing, and authorize the Chapter 15 Debtors to grant liens on their assets located in the United States.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is granted on a final basis.
2. The Canadian Financing Order is hereby (a) granted comity, and (b) recognized and given full force and effect in the United States with regard to the Additional Financing requested.
3. The Chapter 15 Debtors are authorized to use their assets located in the territorial jurisdiction of the United States as collateral under the Additional Financing on the terms set forth in the Canadian Financing Motion.
4. The Receiver is authorized to take any and all actions it deems necessary or appropriate to effectuate the Additional Financing, insofar as such relate to or involve the Chapter 15 Debtors or the assets of the Chapter 15 Debtors that are located in the territorial jurisdiction of the United States.
5. Except as set forth in Paragraph 6 below, USO is hereby granted a fully perfected and first-priority, priming lien and security interest under 11 U.S.C. § 364(d) in all assets of the Chapter 15 Debtors located in the territorial jurisdiction of the United States; provided, however, all ad valorem tax liens currently held by any applicable taxing authorities shall neither be primed by nor subordinated to any liens granted herein.

6. Notwithstanding anything in this Order to the contrary, the liens granted pursuant to this Order shall not and do not apply to and are not granted with respect to that certain 2014 Ford truck, VIN 1FTFW1ET8EKF24624 (the “Truck”), owned by the Chapter 15 Debtors, which Truck is the subject of a first-priority lien held by ZB, N.A., dba Zions First National Bank.

7. This Order shall be immediately effective and enforceable upon its entry to avoid immediate and irreparable harm to the Chapter 15 Debtors. This order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

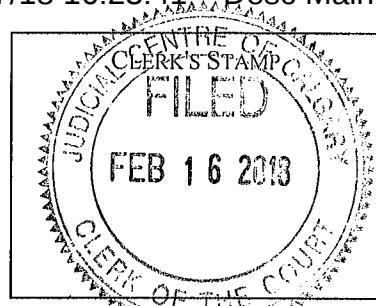
8. This Court shall retain jurisdiction to interpret, implement, and enforce the terms and provisions of this order, and to adjudicate, if necessary, any and all disputes concerning or relating to this order.

End of Document

Exhibit 1

Canadian Financing Order

[See attached.]



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 – 2nd Street SW
 Calgary, AB T2P 0R3

I hereby certify this to be a true copy
 the original Order
 dated this 16 day of Feb 2018

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

for Clerk of the Court

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, and the Supplemental Report to such report, both filed (collectively, 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 FTICA, 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 ("USO"), dated February 5, 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 20 of the Receivership Order granted herein on September 14, 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, 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.

"G. A. CAMPBELL"

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 ACMO 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 – 2nd 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.