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as Receiver for US Oil Sands Inc. and US Oil Sands (Utah) Inc.*

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

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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

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**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**

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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. (the “**Canadian Debtor**”) and US Oil Sands (Utah) Inc. (the “**Utah Debtor**,” and together with the Canadian Debtor, the “**Chapter 15 Debtors**”), under the Canadian Bankruptcy and Insolvency Act (the “**CBIA**”) 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, hereby files this motion requesting that the Court enter an order, in the form attached hereto as **Exhibit A** (the "**Proposed 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 (this "**Motion**"). In support of this Motion, the Receiver states to the Court as follows:

**I.**  
**SUMMARY OF RELIEF REQUESTED**

1. The Receiver hereby seeks an order (1) recognizing and giving full force and effect to an order of the Canadian Court anticipated to be entered by that court on February 16, 2018, authorizing the Chapter 15 Debtors to obtain additional secured credit, (2) approving liens on assets located in the territorial jurisdiction of the United States, and (3) granting adequate protection to pre-petition secured parties.

**II.**  
**JURISDICTION**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and (b), and 11 U.S.C. § 1501. Venue is proper in this district pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (D).

**III.**  
**BACKGROUND**

**A. General.**

3. Headquartered in Calgary, Alberta, Canada, the Chapter 15 Debtors' business focused on environmentally sustainable heavy oil (bitumen) production of oil sands. The Chapter 15 Debtors' business focused on pursuing oil sand production by using a unique, patented, and

environmentally friendly extraction process. The Chapter 15 Debtors' initial commercial project is located in Uintah and Grand Counties, Utah, where they have a 100% interest in bitumen leases covering approximately 32,000 acres of land, the largest commercial oil sands position in the United States. The processing facility was completed in 2016, at which time limited mining operations began. While some amount of bitumen has been mined, no oil has yet been sold. The Chapter 15 Debtors expected first-oil during 2017, however, after experiencing cash flow challenges, they ceased all mining operations more than a month before the filing of these Chapter 15 cases.

**B. The Canadian Financing Request.**

4. Prior to the filing of this Chapter 15 case, and pursuant to the Receivership Order, the Receiver obtained authority from the Canadian Court to borrow up to \$1,000,000 of secured debt, which was ultimately funded by ACOMO (as defined below) and then later assigned to USO (Utah) LLC ("USO"), which is the only current secured creditor of the Chapter 15 Debtors. *See* Receivership Order, at Para. 20. As set forth in the *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.* filed with the Canadian Court on February 1, 2018 (the "**First Report of the Receiver**"), a copy of which is attached as **Exhibit B**, the Receiver has determined that it is in the best interests of the Chapter 15 Debtors to obtain authorization to borrow, as necessary, up to an additional \$500,000 in secured debt (for a total authorization of up to \$1,500,000) at the prime commercial rate of interest from USO and to grant first-priority liens on the Chapter 15 Debtors' assets to secure such indebtedness (the "**Additional Financing**"). *See* First Report of the Receiver, at Para. 23.

5. Accordingly, on February 1, 2018, together with the First Report of the Receiver, the Receiver filed a motion in the Canadian Proceeding (the "**Canadian Financing Motion**"), a

copy of which is attached as **Exhibit C**, requesting, among other things, an order from the Canadian Court (the “**Canadian Financing Order**”) approving an amendment to the Receivership Order authorizing the Additional Financing. See Canadian Financing Motion, at Para. 1(b).

6. As noted below, USO is the Chapter 15 Debtors’ only secured creditor (other than applicable taxing authorities, if any, holding statutory liens), as set forth in the Loan Documents (as defined below).

7. A hearing on the Canadian Financing Motion is set for February 16, 2018. By the time the hearing on this Motion is held, the Receiver expects the Canadian Court will have entered an order thereon approving the Additional Financing. As soon as the Canadian Court enters such order, the Receiver will file a notice with this Court attaching a copy thereof.

**C. Secured Loan Obligations of the Chapter 15 Debtors.**

8. The Chapter 15 Debtors are parties to the following loan documents (collectively, the “**Loan Documents**”):

- a. *Senior Secured Loan Agreement* dated January 12, 2017, by and between the Canadian Debtor and ACMO S.Á R.L., as the secured lender (“**ACMO**”);
- b. *Senior Secured Loan Agreement First Amending Agreement* dated June 30, 2017, by and among the Canadian Debtor, ACMO, and the Utah Debtor;
- c. *Security Agreement* dated January 12, 2017, by and between the Canadian Debtor and ACMO;
- d. *Stock Pledge Agreement* dated January 12, 2017, by and between the Canadian Debtor and ACMO;
- e. *All Personal Property Assets Security Agreement* dated January 12, 2017, by and between the Utah Debtor and ACMO;
- f. *Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Production* dated January 12, 2017, executed by the Utah Debtor in favor of First American Title Insurance Company, as the trustee for the benefit of ACMO, with regard to real property assets of the Utah Debtor located in Uintah County, Utah;

- g. *Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Production* dated January 12, 2017, executed by the Utah Debtor in favor of First American Title Insurance Company, as the trustee for the benefit of ACMO, with regard to real property assets of the Utah Debtor located in Grand County, Utah; and
- h. *Confirmation of Guarantee and Security* dated January 12, 2017, executed by the Utah Debtor.

9. Pursuant to the Loan Documents, each of the Chapter 15 Debtors has pledged all of its assets as collateral under the Loan Documents.

10. In addition to the Loan Documents, a UCC financing statement listing the Utah Debtor as the debtor, ACMO as the secured party, and covering all assets of the Utah Debtor was filed of record with the Utah Department of Commerce on January 12, 2017, as Filing No. 509349201743.

11. To the knowledge of the Receiver, the Chapter 15 Debtors do not have any other secured creditors.

12. All of ACMO's rights and interests in, to, and under the Loan Documents have been assigned to USO.

#### **IV. BASIS FOR RELIEF REQUESTED**

13. By this Motion, and pursuant to Sections 1521(a), 1507(a), 1501(a), 361, 363(b), 364, and 105 of the Bankruptcy Code, the Receiver seeks entry of the Proposed Order that, among other things, (a) recognizes and gives full force and effect to both the Canadian Financing Order with request to the Additional Financing, (b) authorizes the Chapter 15 Debtors to grant liens on their assets located in the territorial jurisdiction of the United States, and (c) grants related relief.

#### **A. This Court Should Grant Comity to the Canadian Financing Order.**

14. Pursuant to that certain order entered on November 16, 2017, this Court found that that the Canadian Proceeding is a foreign main proceeding. Upon recognition of a foreign

proceeding under Section 1517 of the Bankruptcy Code, a United States court must grant comity or cooperation to the foreign representative. *See* Bankruptcy Code, Section 1509(b)(3). This requirement is subject to any limitations that the court may impose consistent with the policy of Chapter 15. *See* Bankruptcy Code, at Section 1509(b) and 1506. Consistent with Section 1501 of the Bankruptcy Code, cooperation with a foreign court or a foreign representative, either directly or through a trustee, is necessary and appropriate. *See* Bankruptcy Code, Section 1525(a). Accordingly, the Receiver seeks this Court’s recognition of the Canadian Financing Order.

15. A central tenet of Chapter 15 is the importance of comity in cross-border insolvency proceedings. *See Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CVJ)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The United States Supreme Court defined comity over a century ago as follows:

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

*Hilton v. Guyot*, 159 U.S. 113, 143 (1895); *see also Vitro*, 701 F.3d at 1043-44.

16. The exceptions to comity are construed especially narrowly when the foreign jurisdiction is like Canada, a sister common law jurisdiction with procedures akin to those in the United States. *See Clarkson Co. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (holding that not recognizing the Canadian judgment at issue would contravene the public policy of New York); *In re Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) (“Courts in the United States uniformly grant comity to Canadian proceedings . . . consistent with the treatment accorded by federal courts to foreign proceedings in ‘sister common law jurisdictions.’”).

17. The extension of comity to Canadian orders has continued since the 2005 enactment of Chapter 15. *See Raymond Chabot, Inc. v. Serge Cote Family Trust*, No. 6:14-cv- 03392, 2014 U.S. Dist. LEXIS 117128, at \*6 (D.S.C. Aug. 22, 2014) (entering temporary restraining order assisting Canadian bankruptcy receiver and noting “the widely-accepted view that Canadian judgments are entitled to recognition and enforcement here”).

18. Considering this authority, granting comity to the Canadian Financing Order is consistent with the regular practice of courts in the United States and this Court’s authority under Sections 1509 and 105(a) of the Bankruptcy Code. Accordingly, the Receiver requests that this Court grant comity to the Canadian Financing Order, thereby giving full force and effect to the Canadian Financing Order and the Additional Financing approved therein.

**C. Approval of Additional Financing and Authorization to Grant Liens.**

19. Section 1501(a) provides that the purpose of Chapter 15 of the Bankruptcy Code includes, but is not limited to, (a) the “fair and efficient administration of cross-border insolvencies that protects the interest of all creditors, and the other interested entities, including the debtor[.]” (b) “greater legal certainty for trade and investment[.]” and (c) the “protection and maximization of the value of the debtor’s assets[.]” 11 U.S.C. § 1501(a)(2), (3), and (4).

20. In furtherance of Section 1501(a), Section 1521(a)(7) of the Bankruptcy Code provides that ([u]pon recognition of a foreign proceeding, . . . where necessary to effectuate the purpose of this chapter to protect the assets of the debtor or the interest of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including . . . granting any additional relief that may be available to a trustee . . . ,” with certain exceptions that are not applicable here. 11 U.S.C. § 1521(a)(7). Section 1521(a)(7) therefore authorizes the Court to grant relief under Section 364 of the Bankruptcy Code, which permits a trustee to incur post-petition indebtedness, including on a secured basis.

21. In accordance with Sections 1501(a), 1521(a), and 364 of the Bankruptcy Code, the Receiver and the Chapter 15 Debtors respectfully seek this Court's specific recognition of the Additional Financing requested in the Canadian Financing Motion.

22. The Receiver also respectfully requests pursuant to Sections 361, 363(b), and 364(d) Bankruptcy Code that the Court – in conjunction with recognition of the financing requested in the Canadian Financing Motion – approve the Receiver's request that USO, as the post-petition lender, be granted a first-priority lien with regard to such financing on all of the Chapter 15 Debtors' assets located in the territorial jurisdiction of the United States.

23. Specifically, as USO holds a perfected security interest in all of the Chapter 15 Debtors' assets, the Receiver is requesting that USO, as the post-petition lender, be given a priming lien with regard to the Additional Financing. Pursuant to Section 364(d), a debtor may incur debt secured by a priming lien if “(A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.”

24. Here, the original financing approved in the Receivership Order occurred almost two months before this case was filed. The Additional Financing is an extension of that original financing. Because the original financing was previously approved by the Canadian Court in the Receivership Order and this Court has granted comity to the Receivership Order, approval of the Additional Financing is appropriate.

25. In this case, the Chapter 15 Debtors have no other credit alternatives other than the Additional Financing. Further, USO, who is the stalking horse credit bidder under a separately filed motion seeking approving of bid and auction procedures, is adequately protected both by the value of the Chapter 15 Debtors' assets and its credit bid right in the pending sale procedures



motion before the Court. Finally, the terms of the Additional Financing were negotiated in good faith and are fair and reasonable.

26. The Court should therefore authorize on a final basis the Chapter 15 Debtors to obtain the Additional Financing and to provide first-priority, priming liens on all of their assets in the United States.

**V.**  
**CONCLUSION**

WHEREFORE, the Receiver respectfully requests that this Court enter the Proposed Order attached as **Exhibit A** hereto.

Dated: February 12, 2018

Respectfully submitted,

/s/ Bruce H. White

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*Attorneys for the Receiver*

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing *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* were forwarded (1) to the parties receiving ECF notifications in this case and (2) via first-class United States mail on February 12, 2018, to the parties-in-interest set forth on the attached Service List.

/s/ Bryan L. Elwood

Bryan L. Elwood

**SERVICE LIST**

**GOVERNMENTAL ENTITIES**

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Centralized Insolvency Operation  
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Sterling Backcheck  
Newark Post Office  
P.O. Box 36482  
Newark, NJ 07193-6482

Strata Networks  
211 E. 200 N.  
P.O. Box 400  
Roosevelt, UT 84066



Stubbs & Stubbs Oilfield Construction  
5127 S. 5400 E.  
P.O. Box 32  
Vernal, UT 84078

Tarpon Energy Services LLC  
A PTW Company  
Dept. CH 19870  
Palatine, IL 60095-9870

Tech-Flow  
P.O. Box 219  
Layton, UT 84101

Thatcher Company, Inc.  
1905 Fortune Road  
Salt Lake City, UT 84104

The Goodrich Mud Company Inc.  
3211 E. Hwy. 40  
Vernal, UT 84078

Thomas Petroleum, LLC  
P.O. Box 677289  
Dallas, TX 75267-7289

TownePlace Suites  
1219 W. Hwy. 40  
Vernal, UT 84078

ULINE  
Attn: Accounts Receivable  
P.O. BOX 88741  
Chicago, IL 60680-1741

United Rentals  
P.O. Box 840514  
Dallas, TX 75284-0514

Utah Mining Association  
136 S. Main #709  
Salt Lake City, UT 84101

Vernal Area Chamber of Commerce  
134 W. Main Street  
Vernal, UT 84078

Vernal Fire Extinguisher  
525 N. 2500 W.  
Vernal, UT 84078

Victory Energy  
10701 E. 126th Street North  
Collinsville, OK 74021

Virginia Lab Supply Corporation  
P.O. Box 9870  
Richmond, VA 23228-9870

Watts Steam Store  
1982 Floral Avenue  
Twin Falls, ID 83301

West End Cleaners  
933 US-40  
Vernal, UT 84078

Wex Fleet Universal  
WEX Bank  
P.O. Box 6293  
Carol Stream, IL 60197-6293

Wilkins Bus Lines Inc.  
343 S. Vernal Avenue #C  
Vernal, UT 84078

Winn-Marion Companies  
7084 S. Revere Parkway, Unit A  
Centennial, CO 80112

**MISCELLANEOUS**

Kirton McConkie  
2600 West Executive Parkway, Suite #400  
Lehi, Utah 84043

**Exhibit A**

**Proposed Order**

[See attached.]

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

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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. 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. 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).

7. 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**

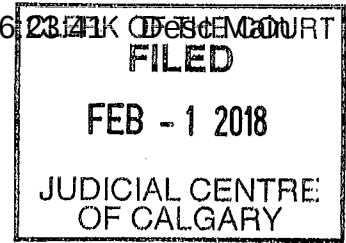
**Canadian Financing Order**

[To be provided upon entry by the Canadian Court.]

**Exhibit B**

**First Report of the Receiver**

[See attached.]



COURT FILE NUMBER 1701-12253  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT A.C.M.O. S.À R.L.  
RESPONDENTS US OIL SANDS INC. and US OIL SANDS (UTAH) INC.  
DOCUMENT **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.**

**February 1, 2018**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**RECEIVER**

FTI Consulting Canada Inc.  
Suite 720, 440 – 2<sup>nd</sup> Avenue S.W.  
Calgary, AB T2P 5E9  
Deryck Helkaa / Dustin Olver  
Telephone: (403) 454-6031 / (403) 454-6032  
Fax: (403) 232-6116  
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dustin.olver@fticonsulting.com

**COUNSEL**

Bennett Jones LLP  
4500, 855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4K7  
Chris Simard  
Telephone: (403) 298-4485  
Fax: (403) 265-7219  
Email: simardc@bennettjones.com

## INTRODUCTION

1. On September 14, 2017 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Assets**”) of US Oil Sands Inc. and US Oil Sands (Utah) Inc. (collectively, “**US Oil Sands**” or the “**Company**”) pursuant to an Order of the Honourable Mr. Justice J.T. Eamon (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the business of the Company, to market any or all of the Assets including advertising and soliciting offers to purchase the Assets, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The Receiver’s reports and other publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/usoilsands> (the “**Receiver’s Website**”).
4. The purpose of this report (“**First Report**”) is to inform the Court of the following:
  - (a) the activities of the Receiver since the Date of Appointment;
  - (b) the Receiver’s comments and recommendations on the process to utilize the services of its affiliate to market and solicit offers to purchase the Company’s operations or its Assets;
  - (c) the Receiver’s comments and recommendations with respect to a proposed sale solicitation process (the “**Sale Process**”). The procedures for the Sales Process (“**Sale Process Procedures**”) provide details outlining timelines and participation requirements for interested parties to participate in the Sales Process and are attached as Appendix A; and

- (d) the Receiver's comments and recommendations with respect to an asset purchase and sale agreement between USO (UTAH) LLC ("**USO Utah**") as purchaser and the Receiver as seller, dated January 22, 2018 ("**Stalking Horse APA**"). The Stalking Horse APA is proposed to stand as a stalking horse bid within the Sales Process. The Stalking Horse APA will be attached to a supplemental report.
5. All capitalized terms that are used but not defined herein are intended to bear their meanings as defined in the Receivership Order, the Stalking Horse APA or the Sale Process.
6. The Receiver is requesting the following relief from this Honourable Court:
- (a) approval of the activities of the Receiver since the Date of Appointment;
  - (b) approval of the engagement of the Receiver's affiliate, FTI Capital Advisors ULC ("**FTICA**") in executing the Sales Process;
  - (c) approval of the proposed Sales Process and Sales Process Procedures;
  - (d) approval of the Stalking Horse APA; and
  - (e) increase to the Receiver's borrowing powers.

#### **TERMS OF REFERENCE**

7. In preparing this First Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
8. Except as described in this First Report:

- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
- 9. Future oriented financial information reported or relied on in preparing this First Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
- 10. The Receiver has prepared this First Report in connection with the Receiver's Application dated February 16, 2018. This First Report should not be relied on for other purposes.
- 11. Information and advice described in this First Report that has been provided to the Receiver by its legal counsel, Bennett Jones LLP (the "**Receiver's Counsel**"), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
- 12. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars.

## CURRENT STATUS OF THE RECEIVERSHIP PROCEEDINGS

### Background

13. US Oil Sands Inc. is a public corporation incorporated under the laws of the Province of Alberta with its registered office in Calgary, Alberta. US Oil Sands (Utah) Inc. is a wholly owned subsidiary of US Oil Sands Inc. with an office in Vernal, Utah and an oil sands mining and processing facility located in Utah approximately 85 miles from Vernal. The oil sands extraction facility and bitumen leases as further described below are held in US Oils Sands (Utah) Inc.
14. The shares of US Oil Sands were previously listed for trading on the Toronto Stock Exchange Venture Exchange (the “**TSX-V**”) under the symbol “**USO**”.
15. The Company’s operations and Assets comprise the following:
  - (a) An oil sands extraction mine facility (the “**PR Springs Mine**”) and associated bitumen leases located in the Uinta Basin in Utah. The extraction methods utilized are environmentally friendly and include patented processes;
  - (b) office locations in:
    - (i) Calgary, Alberta – which comprises the Company’s head office and houses the Company’s Management (as defined below);
    - (ii) Grand Prairie, Alberta - which houses a demonstration facility; and
    - (iii) Vernal, Utah - which houses administrative staff related to the PR Springs Mine (“**Vernal Office**”); and
  - (c) one granted, four filed and one provisional patent.

16. At the Date of Appointment, the PR Springs Mine was well advanced in the final development/testing phase but not fully operational. The PR Springs Mine employed 19 employees (“**US Employees**”) at the Date of Appointment. All but one of the US Employees have been terminated as discussed in further detail below.
17. Before the Date of Appointment, the Company experienced various operational setbacks in its attempts to reach first oil and was unsuccessful in completing further cash raises to fund the continued build of the PR Springs Mine, which resulted in certain events of default under its loan agreement with its senior secured lender ACMO S.À R.L. (“**ACMO**”).
18. As at June 30, 2017, US Oil Sands’ unaudited consolidated financial statements indicated the following (amounts in Canadian dollars):
  - (a) book value of Assets of \$80.0 million;
  - (b) liabilities of \$20.6 million including the following amounts:
    - (i) accounts payable and accrued liabilities of \$6.2 million; and
    - (ii) Senior secured indebtedness owing to ACMO of \$12.9 million (the “**ACMO Debt**”).
19. According to information provided by ACMO, as of September 14, 2017, the total indebtedness owing to ACMO is approximately \$10.0 million (\$12.9 million CAD) with interest accruing thereafter and all legal and other costs and expenses incurred by ACMO.



20. On September 13, 2017, ACMO issued a demand for payment and a notice of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”) as described in the Affidavit of Stephen Lehner sworn September 14, 2017.

### **Custody and Control**

21. On the Date of Appointment, the Receiver attended the Company’s leased premises at 1600, 521 – 3<sup>rd</sup> Avenue SW, Calgary, Alberta to meet with its management, employees and consultants to advise of the Receivership Order and to take possession of the Company’s Assets in accordance with the terms of the Receivership Order. The Receiver indicated its intent to facilitate an orderly sale of the operations or the Assets to maximize the return for all of the Company’s stakeholders.
22. Shortly following the Date of Appointment, the Receiver traveled to Vernal, Utah to meet with the Company’s Utah employees to advise them that the Receivership Order had been granted and to take possession of the PR Springs Mine and Vernal Office.
23. The Receiver, with the assistance of the Company’s executive team and management (collectively, “**Management**”), prepared a cash flow statement to determine the immediate liquidity needs of the Company. In connection with the foregoing the Receiver determined the Company had sufficient liquidity with the ability to draw on the Receiver’s Certificates (authorized up to \$1.0 million) to fund the Receivership Proceedings to the end of March 2018. However, given the Company does not have any revenue or incoming cash flow additional funding may be required to allow the Receiver to complete the Sales Process outlined below. Accordingly, the Receiver is requesting this Court’s approval to increase its borrowing powers by \$500,000 up to \$1.5 million.

24. On or around the Date of Appointment, the Receiver also completed the following administrative tasks:
- (a) prepared the notice and statement of the receiver as required under section 245 and 246 of the BIA, mailed the notice to all known creditors, and posted all relevant documents to the Receiver's Website;
  - (b) investigated the status of and extended the Company's insurance coverage;
  - (c) contacted the Company's landlord to facilitate discussions surrounding the Company's occupied leased office premises; and
  - (d) communicated with numerous creditors and stakeholders regarding the Receivership Proceedings.

### **Employees**

25. On the Date of Appointment, the Company had 29 employees (the "**Employees**"), 9 located in Calgary, one located in Grand Prairie, Alberta (collectively, the "**Canadian Employees**") and 19 located in Utah (the "**US Employees**").
26. After conducting meetings with all of the Canadian Employees and reviewing the staffing requirements for the Receivership Proceedings, the Receiver terminated 4 of the Canadian Employees, including the Company's Chief Executive Officer and its President and Chief Financial Officer.
27. The Receiver determined the remaining Canadian Employees (the "**Remaining Canadian Employees**") would be necessary to prepare information for and execute the Sales Process due to their previous knowledge and interaction with potentially interested parties and experience and familiarity with the Assets.
28. The Receiver determined that initially all the US Employees would be necessary to assist in executing a hibernation plan for the PR Springs Mine per discussion below.

### Operations in Utah

29. At the Date of Appointment, the PR Springs Mine was well advanced in the development/testing phase however was not fully operational.
30. The Receiver, with the assistance of Management, reviewed the status of the PR Springs Mine and based on the current non-producing status of the PR Springs Mine and the significant cash flow requirements associated with continued operations, the Receiver implemented a hibernation plan (the "**Hibernation Plan**") to shut-in the PR Springs Mine and cease the Company's Utah operations for the remainder of the Receivership Proceedings.
31. At the date of this Report, the Hibernation Plan has been completed and the PR Springs Mine is in a dormant state. Upon completion of the Hibernation Plan the Receiver terminated all but one US Employee. The remaining one US Employee ("**Remaining US Employee**") periodically visits and maintains the integrity of the PR Springs Mine.
32. The Receiver has retained the services of the Remaining Canadian Employees and Remaining US Employee whose services were deemed necessary to assist the Receiver through the Receivership Proceedings. The Remaining Canadian Employees were retained on terms and conditions substantially the same as prior to the Date of Appointment, while the Remaining US Employee was retained on a reduced salary basis (collectively, the "**Retained Employees**").

### U.S. Chapter 15 Proceedings

33. 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.

### **Statutory Compliance**

34. On September 14, 2017, the Receiver established the Receiver's Website, where it has posted all filed pleadings and materials and will continue to post periodic updates on the progress of the Receivership Proceedings, materials filed in connection with the Receivership Proceedings and other relevant information for the Company's stakeholders.
35. The Receiver has notified Canada Revenue Agency ("CRA") of the Receiver's appointment and to establish new remittance accounts for the goods and sales services tax and employee-related obligations arising subsequent to the Date of Appointment.
36. On September 22, 2017, the Receiver mailed the notice and statement of receiver in accordance with subsection 245(1) and 246(1) of the BIA to the Superintendent of Bankruptcy and to all known creditors of the Company.

### **Insurance**

37. On September 18, 2017, Management advised the Receiver that the Company has existing insurance policies which expire on October 1, 2017 ("**Property Policy**") and October 15, 2017 ("**Additional Policies**"). The Receiver contacted US Oil Sands insurance provider, Iridium Risk Services Inc., and was advised that the policies are in good standing until the expiry dates.
38. The Receiver has extended both the Company's Property Policy and Additional Policies until March 31, 2018 and has made payment for the policy extensions. The Receiver also requested to be identified as the loss payee under US Oil Sands' insurance policies.

## SUMMARY OF RECEIPTS AND DISBURSEMENT

39. Receipts and Disbursements from the Date of Appointment to January 26, 2018 are summarized as follows:

<b>Schedule of Receipts and Disbursements</b>	
As of January 26, 2018	<i>(000's USD)</i>
<b>Receipts</b>	
Initial Cash on Hand	715,636
Receiver's Borrowings	600,000
Other Receipts	45,279
Net Bank Interest/ (Charges)	477
<b>Total - Receipts</b>	<b>1,361,393</b>
<b>Disbursements</b>	
Employee Costs	364,660
Operating Expenses	160,718
Rent and Utilities	100,353
Insurance	94,656
Net Taxes	15,938
Patent Expenses	14,466
Outside Consulting	6,405
Property Taxes	4,013
Legal Fees	142,083
Receiver's Fees	176,561
FX Gain/ (Loss)	(8,524)
<b>Total - Disbursements</b>	<b>1,071,328</b>
<b>Net Cash on Hand</b>	<b>290,065</b>

- (a) Initial cash on hand – represents the Company’s cash on hand on the Date of Appointment;
- (b) Receiver’s Borrowings – amounts borrowed to date under terms of the Receivership Order;
- (c) Other Receipts – miscellaneous credits on account returned by vendors;

- (d) Net Bank Interest (Charges) – interest accrued and fees charged on amounts held in estate bank accounts;
- (e) Employee Costs – amounts disbursed by the Receiver relating to payroll and employee deductions and consultants;
- (f) Operating Expenses – amounts disbursed in respect of the Company’s operations in Grand Prairie and Utah;
- (g) Rent and Utilities – amounts disbursed relating to occupation rent and operational site utilities;
- (h) Insurance – insurance costs including operator’s insurance and general liability;
- (i) Net Taxes – net GST amounts paid and received through operational transactions;
- (j) Patent Expenses – amounts paid with respect of the Company’s patent filings and renewals;
- (k) Outside Consulting – amounts paid to outside consultants for services provided. This includes amounts paid to former CEO Ken Moen;
- (l) Property Taxes – yearly tax amounts paid with respect to the Company’s oil and gas properties in Utah;
- (m) Legal Fees – Receiver’s Canadian and US Counsel’s fees and disbursements in respect of the Receivership Proceedings
- (n) Receiver’s Fees – Receiver’s fees and disbursements in respect of the Receivership Proceedings; and

- (o) FX Gain/ (Loss) – change in cash due to changes in USD and CAD exchange rate.
40. Cash on Hand – at January 29, 2018, the Receiver currently holds \$290,065 in funds.

## **PROPOSED SALE SOLICITATION PROCESS**

### **Background of Sales Process**

41. The Receiver has determined that the best way to maximize the value of the Assets was to engage in a broad sales process. To assist in formulating and executing the Sale Process, the Receiver intends to utilize the services of its affiliate, FTICA, as well as the Retained Employees.
42. Shortly after the Date of Appointment, the Receiver has been working with management of the Company to prepare a teaser, a confidential information memorandum and populate a virtual data room in preparation for a sales process.

43. Appendix A contains the details for Sale Process Procedures that set out the timelines and parameters pursuant to which FTICA, on behalf of, and in consultation with the Receiver, will market and solicit offers to purchase the Assets. The Sale Process was developed in consultation with the Receiver, FTICA, and the Receiver's Counsel. During the formulation of the Sale Process, the Company's senior secured lender, ACMO, expressed interested in bidding a portion of their debt as a stalking horse bid. After discussions and negotiations with ACMO, the Receiver entered into the Stalking Horse APA (subject to Court approval). The purchaser in the Stalking Horse APA, USO Utah, is an affiliate of ACMO. In the Receiver's view, the Stalking Horse APA is appropriate and will assist in maximizing value to the estate as it sets a floor price for the Assets which will provide clarity to bidders on the minimum value and provides assurance the government regulators, lease holders and employees that there will be a purchaser for the Assets.

#### *Stalking Horse APA*

44. ACMO has assigned the ACMO Debt to USO Utah. The assigned ACMO Debt becomes the basis of the purchase price as described below.
45. The following summarizes the major terms of the Stalking Horse APA.

#### Purchase Price

46. The purchase price for the Assets includes:
- (a) a non-cash credit bid in the amount \$9.0 million ("**Credit Bid**") which represents a portion of the ACMO Debt being satisfied in the exchange for the acquisition of the Assets on behalf of USO Utah; and
  - (b) a payment in cash ("**Cash Payment**") 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.



47. The Credit Bid and the Cash payment together make up the total purchase price (“**Purchase Price**”). The Purchase Price excludes all transfer and Ad Valorem Property taxes. No deposit is required in connection with the Stalking Horse APA.

Conditions

48. The major conditions include:
- (a) approval by the Alberta Court and the US Court;
  - (b) Certain material permits listed in the Stalking Horse APA must be pre-approved by Government Authorities to be assigned to USO Utah;
  - (c) Certain Bitumen Leases listed in the Stalking Horse APA must be pre-approved by Government Authorities to be assigned to USO Utah;
  - (d) The Water Rights Quit Claim Deed and Assignment shall have been completed, signed and notarized by USO Utah and the Receiver; and
  - (e) A Large Mine Reclamation Contract shall have been signed and completed by the USO Utah.
49. The Receiver is of the view that the major conditions listed above are reasonable and appropriate in the circumstances and are likely to be satisfied to allow for a closing of the purchase and sale. The Receiver understands that USO Utah will work to clear these conditions by the Final Bid Deadline, as defined below.

### **Security Review**

50. Given the Stalking Horse APA contemplates bidding a portion of the ACMO Debt as satisfaction of the Purchase Price the Receiver instructed its Canadian counsel Bennett Jones LLP and its United States counsel, Parsons Behle & Latimer LLP (“PBL”) to review the security agreements giving rise to the ACMO Debt in order to determine the validity and enforceability as against US Oil Sands (Utah) Inc.’s personal and real property (“Pre-Filing Security”).
51. Bennett Jones LLP and PBL have opined that the Pre-Filing Security is valid and enforceable, subject to customary assumptions and qualifications.

### **Overview of Sales Process**

52. Generally, the Sale Process contemplates 7 weeks from formal launch to binding bids and an additional one week to coordinate and complete an auction if necessary, for an overall 8-week process. The following summarizes the proposed timeline for the major steps contemplated in the Sales Process:
  - (a) February 19, 2018 – Formally launch sales process, targeted phone calls, e-mail blast, post teaser, open virtual data room;
  - (b) February 19, 2018 to April 6, 2018 – work with interested parties towards submitting bids, complete management presentations, field questions from interested parties;
  - (c) April 6, 2018 – bid deadline for binding proposals. A template asset purchase and sale agreement will be provided to all bidders in the data room;
  - (d) April 13, 2018 – auction to be held (if necessary); and
  - (e) seek Court approval and close transaction thereafter.

53. The Receiver believes that the proposed Sale Process timeline is sufficient to fully market the Assets of US Oil Sands for the purposes of a sale and is consistent with other sales processes implemented in insolvency proceedings in Canada in the U.S.

*Marketing and Advertising*

54. The Sale Process contemplates that as soon as reasonably practicable after obtaining Court approval FTICA shall formally launch the Sale Process by:
- (a) posting marketing materials on the Receiver's and FTICA's websites;
  - (b) distributing a teaser by way of e-mail blast to FTICA's data base of potential interested parties;
  - (c) posting advertisements in the Daily Oil Bulletin, The Globe and Mail (National Edition) and the Salt Lake Tribune;
  - (d) initiating targeted phone calls;
  - (e) issuing a press release; and
  - (f) establishing a confidential virtual data room ("VDR") describing the opportunity that will be made available by FTICA to prospective purchasers that have executed a non-disclosure agreement with the Receiver. The VDR will be available by February 19, 2018.

*Participation Requirements*

55. In order to participate in the Sale Process, each potential bidder must deliver to FTICA an executed non-disclosure agreement in form and substance satisfactory to the Receiver and FTICA, at which time the potential bidder shall be deemed a qualified bidder ("**Qualified Bidder**").

56. FTICA shall provide any person deemed to be a Qualified Bidder with access to the VDR.

*Qualified Bids*

57. A Qualified Bidder wishing to submit a bid, will deliver written copies of a final, binding proposal (the “**Final Bid**”) in the form of a duly executed purchase and sale agreement to FTICA by no later than 12:00 p.m. (Mountain Standard Time) on April 6, 2018 (the “**Final Bid Deadline**”);
58. 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 cash consideration required in a superior offer ("**Superior Offer**"), as calculated and determined by the Receiver and FTICA in their sole discretion, to be paid by the Qualified Bidder under the Qualified Bid must exceed the aggregate of the Purchase Price under the Stalking Horse APA and one minimum incremental overbid of \$250,000 ("**Minimum Incremental Overbid**");
- (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); and
- (i) it is received by the Final Bid Deadline.

59. The Receiver, in consultation with FTICA, may, following the receipt of any Final Bid, seek clarification with respect to any of the terms or conditions of such Final Bid and/or request and negotiate one or more amendments to such Final Bid.

*No Qualified Bids*

60. If none of the Final 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 Assets in the name of USO Utah, pursuant to the Stalking Horse APA and to the US Court for an Order recognizing such Alberta Court Order.

*If a Superior Offer is Received*

61. 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 the Superior Offers and USO Utah an opportunity to make further bids through the auction process set out below (the “**Auction**”).

*Auction*

62. If the Auction is to be held, the Receiver will conduct an Auction commencing at 10:00 am (Mountain Standard Time) on April 13, 2018 at the offices of the Receiver’s Counsel, Bennett Jones LLP, Suite 4500 Bankers Hall Est, 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.
63. The Auction will include the following procedures:
- (a) Each party that submitted a Superior Offer and USO Utah will receive a copy of the Qualified Bid(s) by 5:00 pm (Mountain Standard Time) on April 9, 2018 and the highest or otherwise best Qualified Bid(s) will be used as the starting bid (the “**Starting Bid**”);
  - (b) each party that submitted a Superior Offer and USO Utah must inform the Receiver whether it intends to participate in the Auction by 12:00 pm (Mountain Standard Time) on April 11, 2018. Those parties intending to participate are hereinafter referred to as “**Auction Bidders**”;

- (c) the Receiver, FTICA, Auction bidders, and such other persons permitted by the Receiver are the only parties able to attend the Auction;
  - (d) the Receiver shall arrange to have a court reporter attend the Auction;
  - (e) each incremental bid shall provide additional cash value of at least \$250,000; and
  - (f) at the end of the Auction the Receiver shall select the highest bid (the **“Winning Bid”**).
64. 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”**.

*Alberta Court Approval Motion and US Court Recognition Motion*

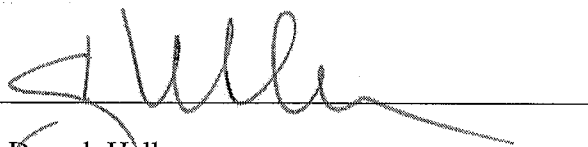
65. The Receiver shall apply to Alberta Court (the **“Approval Motion”**) for an order (the **“Sale Approval and Vesting Order”**) approving the Successful Bid and authorizing the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder.
66. The Approval Motion will be held on a date to be scheduled by the Alberta Court upon application by the Receiver.
67. The Receiver shall forthwith apply to the US Court for an Order recognizing the Sale Approval and Vesting Order.

## RECOMMENDATIONS

68. The Receiver respectfully requests that this Honourable Court grant the following relief:
- (a) approving the Receiver's actions, conduct and activities since the Date of Appointment including the schedule of receipts and disbursements;
  - (b) approving the engagement of FTICA in executing the Sales Process;
  - (c) approving the proposed Sales Process and Sales Process Procedures;
  - (d) approving the Stalking Horse APA; and
  - (e) approval to increase the Receiver's Borrowing powers by \$500,000.

All of which is respectfully submitted this 1<sup>st</sup> day of February 2018.

FTI Consulting Canada Inc.,  
in its capacity as receiver and manager  
of the assets, undertakings and properties of  
US Oil Sands Inc. and US Oil Sands (Utah) Inc.



Deryck Holkaa  
Senior Managing Director, CA, CPA, CIRP



Dustin Olver  
Managing Director, CA, CPA



# **Appendix A**

## **Sales Process Procedures**

**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 – 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**

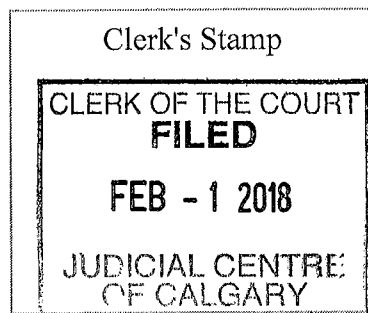
33. At any time during the Sales Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

**Exhibit C**

**Canadian Financing Motion**

[See attached.]

**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 ACMO 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:**

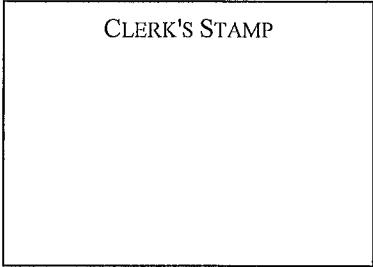
24. None.

**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.



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**