

## SALES AND INVESTMENT SOLICITATION PROCESS

### INTRODUCTION

1. Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as receiver and manager (the “**Receiver**”) of the Property pursuant to an Order issued by the Court of Queen’s Bench of Alberta (the “**Court**”) on February 3, 2017 (the “**Receivership Order**”). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Receivership Order.
2. Deloitte was also appointed as receiver over specific equipment and real property (the “**Specific Assets**”) pursuant to a separate Order of the Court dated January 24, 2017 (the “**Specific Assets Order**”). The Specific Assets form part of the Property and are described more particularly in Schedule 1 to the Specific Assets Order. The Receiver is authorized and empowered to transact in respect of the Specific Assets pursuant to and in accordance with this sales and investment solicitation process (the “**SISP**”).
3. On July 5, 2017, the Court issued an Order (the “**Approval Order**”) which, *inter alia*, approved this SISP involving the Property, the Debtors and the business conducted by the Debtors involving the Property (the “**Business**”). This SISP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Debtors, the Property and the Business, how bids involving the Debtors, the Property or the Business will be submitted to and dealt with by the Receiver and how Court approval will be obtained in respect of a transaction involving the Debtors, the Property or the Business.
4. As described below, the various deadlines herein may be extended by and at the discretion of the Receiver. The Receiver will consider extending the various deadlines herein, and in particular the deadlines occurring after the LOI Deadline (as defined herein) in the event that the Receiver determines that such an extension will generally benefit creditors and the Debtors’ stakeholders.

### “AS IS, WHERE IS” BASIS

5. Any transaction involving the Debtors, the Property or the Business 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, the Debtors, or any of their agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).

### THE SISP PROCESS

#### **A. Initial Solicitation of Interest**

6. The Receiver may contact any Persons to solicit non-binding indications of interest in the Debtors, the Property or the Business either before or after the commencement of this SISP.

7. As soon as reasonably practicable following Court approval on July 5, 2017, the Receiver will cause a notice regarding this SISP, in a form satisfactory to and previously approved by the Receiver, to be published in (a) the *Globe and Mail*, and (b) any other publication that the Receiver determines notice of this SISP should be published in.
8. As soon as reasonably practicable after the granting of the Approval Order, the Receiver will prepare a list of potential bidders (the “**Known Potential Bidders**”) who may have interest in a transaction involving the Debtors, the Property or the Business. Such list will include both strategic and financial parties who, in the Receiver’s reasonable business judgment, may be interested in acquiring an interest in the Debtors, the Property or the Business pursuant to an asset purchase transaction (an “**Asset Bid**”), a restructuring of the debt, share or capital structure of the Debtors (a “**Restructuring Bid**”) or some combination of a of an Asset Bid and a Restructuring Bid (such combination bid, a “**Hybrid Bid**”). Concurrently, the Receiver will prepare an initial offering summary (the “**Teaser Letter**”) notifying Known Potential Bidders of the SISP and inviting the Known Potential Bidders to express their interest in making an Asset Bid, Restructuring Bid or Hybrid Bid.
9. The Receiver shall distribute to the Known Potential Bidders and any other interested Persons the Teaser Letter, as well as a draft form of confidentiality agreement (the “**Confidentiality Agreement**”) which shall inure to the benefit of the Person or Persons who make the Winning Bid (as defined herein) pursuant to this SISP.
10. Any Person who (a) executes a Confidentiality Agreement, in form and substance satisfactory to the Receiver, acting reasonably, and (b) demonstrates that it has the financial capabilities and technical expertise to make a viable Asset Bid, Restructuring Bid or Hybrid Bid, in form and substance satisfactory to the Receiver, acting reasonably, shall be deemed to be a potential bidder (each such Person so deemed, a “**Potential Bidder**”).

## **B. Due Diligence**

11. The Receiver will provide a confidential information memorandum (“**CIM**”) describing the opportunity to make an Asset Bid, Restructuring Bid or a Hybrid Bid to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SISP.
12. The Receiver shall provide the Potential Bidder with information, including access to an electronic data room established by the Receiver, that the Receiver in its sole discretion determines necessary for the Potential Bidder to evaluate a transaction involving an Asset Bid, a Restructuring Bid or a Hybrid Bid.

## **C. Qualified LOI Process**

13. Any Potential Bidder who wishes to submit an Asset Bid, a Restructuring Bid or a Hybrid Bid must deliver a written, non-binding letter of intent in respect of the Property, the Debtors and / or the Business (each, an “**LOI**”) to the Receiver at the address specified in and in accordance with Schedule “**A** so as to be received by the Receiver not later than 5:00 p.m. (Mountain time) on **August 25, 2017**, or such other date or time as the Receiver, acting reasonably, may determine (the “**LOI Deadline**”). An LOI shall be a qualified LOI (each, a “**Qualified LOI**”) provided that it contains:

- (a) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Receiver and its legal advisors, to make, in their reasonable business or professional judgment, a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate an Asset Bid, Restructuring Bid or a Hybrid Bid;
- (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
- (c) an indication of whether the Potential Bidder wishes to tender (i) an Asset Bid; (ii) a Restructuring Bid; or (iii) a Hybrid Bid;
- (d) in the case of an Asset Bid, it identifies:
  - (i) the purchase price range (including liabilities to be assumed by the Potential Bidder);
  - (ii) the Property included, any of the Property expected to be excluded, and/or any additional assets desired to be included in the transaction;
  - (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable);
  - (iv) the proposed treatment of employees of the Debtors;
  - (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vi) any additional due diligence required or desired to be conducted by the Potential Bidder, if any;
  - (vii) any conditions to closing that the Potential Bidder may wish to impose; and
  - (viii) any other terms or conditions of the Asset Bid which the Potential Bidder believes are material to the transaction;
- (e) in the case of a Restructuring Bid, it identifies:
  - (i) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Potential Bidder (including the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain

- the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made in the Debtors;
- (ii) the underlying assumptions regarding the pro forma capital structure (including, the anticipated debt levels, debt service fees, interest and amortization);
  - (iii) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Debtors and the proposed treatment of employees;
  - (iv) the structure and financing of the transaction including all requisite financial assurance;
  - (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vi) any additional due diligence required or desired to be conducted by the Potential Bidder, if any;
  - (vii) any conditions to closing that the Potential Bidder may wish to impose; and
  - (viii) any other terms or conditions of the Restructuring Bid which the Potential Bidder believes are material to the transaction;
- (f) in the case of a Hybrid Bid, all of the information contained in subparagraphs (d) and (e) above, as applicable; and
  - (g) such other information reasonably requested by the Receiver.
14. The Receiver may waive the strict compliance of one or more of the requirements specified above and deem any LOI to be a Qualified LOI, notwithstanding any non-compliance with the terms and conditions of this SISP. In the event that no Person submits an LOI, or that no LOI's qualify as or are deemed to qualify as Qualified LOI's, or are not deemed commercially reasonable to the Receiver, this SISP shall terminate.
15. Any Potential Bidder who submits a Qualified LOI on or before the LOI Deadline shall be designated a "**Qualified Bidder**".

#### **D. Final Bid Process**

16. The Receiver may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the electronic data room, arrange for inspections and site visits at the mine site in Grande Cache and head office in Calgary, Alberta, as determined by the Receiver acting reasonably.
17. Any Qualified Bidder may submit an Asset Bid, a Restructuring Bid or a Hybrid Bid (each, a "**Final Bid**") to the Receiver at the address specified in Schedule "**A**" hereto on or

before 5:00 pm (Calgary Time) on **September 15, 2017**, or such later time and date that the Receiver may determine (the “**Final Bid Deadline**”).

18. A Final Bid submitted as an Asset Bid shall be a “**Qualified Asset Bid**” the event that:
- (a) it includes a letter stating that the Asset Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) forty five (45) days following the Final Bid Deadline; provided, however, that if such Asset Bid is selected as the Winning Bid or the Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
  - (b) it includes a duly authorized and executed purchase and sale agreement specifying the all consideration payable, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Receiver to allow the Receiver to make a reasonable determination as to the Qualified Bidders (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Asset Bid;
  - (e) it is not conditional on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Asset Bid;
  - (f) it fully discloses the identity of each Person that is bidding or otherwise that will be sponsoring or participating in the Asset Bid, including the identification of the bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
  - (g) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Receiver), in an amount equal to ten percent (10%) of the consideration be paid in respect of the Asset Bid, to be held and dealt with in accordance with this SISP;
  - (h) it contains other information reasonably requested by the Receiver; and
  - (i) it is received by no later than the Final Bid Deadline.
19. A Final Bid submitted as a Restructuring Bid shall be a “**Qualified Restructuring Bid**” the event that:
- (a) it includes definitive documentation, duly authorized and executed by the Qualified Bidder, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of

debt if any, and details regarding the proposed equity and debt structure of the Debtors following completion of the proposed transaction;

- (b) it includes a letter stating that the Restructuring Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) forty five (45) days following the Final Bid Deadline; provided, however, that if such Restructuring Bid is selected as the Winning Bid or the Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Receiver to allow the Receiver to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Restructuring Bid;
  - (e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Restructuring Bid;
  - (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Restructuring Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
  - (g) it is accompanied by a refundable Deposit in the form of a wire transfer (payable to a trust account specified by the Receiver) in an amount equal to ten percent (10%) of the consideration to be paid pursuant to the Restructuring Bid, to be held and dealt with in accordance with this SISP;
  - (h) it contains other information reasonably requested by the Receiver; and
  - (i) it is received by no later than the Final Bid Deadline.
20. A Hybrid Bid submitted by the Final Bid Deadline will be considered a "**Qualified Hybrid Bid**" if it is in substantial compliance with the portions of paragraphs 18 and 19 of this SISP, as determined by the Receiver acting reasonably.
21. All Qualified Asset Bids, Qualified Restructuring Bids and Qualified Hybrid Bids shall constitute "**Qualified Final Bids**". The Receiver may waive the strict compliance of one or more of the requirements specified above and deem any Final Bid to be a Qualified Final Bid and notwithstanding any non-compliance with the terms and conditions of this SISP.

## E. Selection of Winning Bid

22. The Receiver shall review all Qualified Final Bids and may, but shall have no obligation to, enter into an agreement or agreement with the Person or Persons who submitted the highest, best or otherwise most favourable Qualified Final Bid (a “**Final Agreement**”) on or before **October 6, 2017** (the “**Final Agreement Deadline**”). In the event that the Receiver enters into a Final Agreement, the Qualified Bid so selected shall be the “**Winning Bid**” and the next highest, best or otherwise most favourable Qualified Bid received, as determined by the Receiver, shall be the “**Backup Bid**”. The Qualified Bidders(s) who made the Winning Bid shall be the “**Successful Bidder**” and the Qualified Bidder(s) who made the Backup Bid shall be the “**Backup Bidder**”. The Receiver will notify each of the Successful Bidder and the Backup Bidder of the Final Agreement and the Backup Bid shall remain open until the consummation of the transaction contemplated by the Winning Bid (and, for greater certainty, the Receiver shall be entitled to continue to hold the Deposit in respect of the Backup Bid until such time as the transaction contemplated by the Winning Bid is consummated).
23. In the event that no Qualified Bidder submits or is deemed to have submitted a Qualified Final Bid, that the Receiver determines that none of the Qualified Final Bids should be accepted, or that a Final Agreement is not entered into before the Final Agreement Deadline, this SISP shall terminate.
24. The highest Qualified Final Bid may not necessarily be accepted by the Receiver. The Receiver reserves its right not to accept any Qualified Final Bid, to vary the terms of or to otherwise terminate the SISP. The Receiver further reserves the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified Final Bid or Qualified Final Bids for some or all of the Property, the Debtors or the Business, to accept multiple Qualified Final Bids and enter into multiple Final Agreements.

## APPROVAL ORDER

25. In the event that the Receiver enters into a Final Agreement, the Receiver shall apply for an order from the Court approving the transaction contemplated by the Winning Bid and any necessary related relief required to consummate the transaction contemplated by the Winning Bid, subject to the terms of the Final Agreement. The Receiver may also concurrently obtain relief approving the transaction contemplated by the Backup Bid and any necessary related relief required to consummate the transaction contemplated by the Backup Bid.

## DEPOSITS

26. All Deposits paid pursuant to this SISP shall be held in trust by the Receiver. The Receiver shall hold Deposits paid by each of the Winning Bidder and the Backup Bidder in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Receiver elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such deposit, the Receiver shall return the deposit and any interest accrued thereon to that Person. In the event that either of the Successful Bidder or the Backup Bidder default in the payment or performance of any obligations owed to the Receiver or the Debtors pursuant to any Final Agreement the Deposit paid by the Winning Bidder or the Backup Bidder, as applicable, shall be forfeited to the Receiver as liquidated damages and not as a penalty.

## **SCHEDULE "A"**

### **Addresses for Deliveries**

Any delivery made to the Receiver pursuant to this SISP shall be made to:

Deloitte Restructuring Inc.  
700, 850 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R8

Attention: Robert Taylor / Huey Lee  
Email: bobbaylor@deloitte.ca / huelee@deloitte.ca

Deliveries pursuant to this SISP by email or by facsimile shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the relevant address, as identified above.