

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE *Madam* ) FRIDAY, THE 19TH  
JUSTICE *CONWAY* ) DAY OF FEBRUARY, 2016



IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.

**ORDER**

**THIS MOTION**, made by Richter Advisory Group Inc. (“**Richter**”) in its capacity as the Court-appointed Receiver (in such capacity, the **Receiver**”), without security, of all the assets, undertakings and properties (collectively, the **Property**”) of Elementa Group Inc. ( “**Elementa**”) for an order substantially in the form included in the Receiver’s Motion Record, amongst other things, approving a stalking horse agreement of purchase and sale and related bidding procedures and approving the First Report of the Receiver dated February 16 , 2016 (the “**First Report**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, and Bradam Canada Inc. (the “**Stalking Horse Bidder**”), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sanja Sopic sworn February 17, 2016, filed.

**1. THIS COURT ORDERS** that the time for service and filing of the Receiver’s Notice of Motion and the Motion Record is hereby abridged and service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Stalking Horse Agreement or the Bidding Procedures (as such terms are defined below), as the case may be.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to enter into an agreement to sell substantially all of the assets, property and undertakings of Elementa (collectively, the "**Purchased Assets**") to the Stalking Horse Bidder, substantially in the form of the agreement attached as Appendix "D " to the First Report (the "**Stalking Horse Bid**" or "**Stalking Horse Agreement**"), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Sales Process (as such term is defined below) in accordance with this Order and the Bidding Procedures (as such term is defined below).

4. **THIS COURT ORDERS** that the sales and bidding procedures described in the First Report and attached hereto as **Schedule "A"** (the "**Bidding Procedures**") and the sales process and auction described therein (collectively, the "**Stalking Horse Sales Process**") be and are hereby approved and the Receiver is hereby authorized and directed to conduct the Stalking Horse Sales Process.

5. **THIS COURT ORDERS** that to qualify as a Qualified Bid, a bid must be received on or before 5:00 p.m. (Toronto time) on March 21, 2016 (the "**Bid Deadline**") and must be considered by the Receiver, in its sole discretion, to be a Qualified Bid, as defined in the Bidding Procedures. The Stalking Horse Bid shall be considered a Qualified Bid.

6. **THIS COURT ORDERS** that in addition to the Bidding Procedures, the following Stalking Horse Sales Process with respect to the Property be and is hereby approved as follows:

- (a) the Receiver shall solicit potential purchasers to submit bids by:
  - (i) sending out an official offering summary (the "**Teaser Letter**") to parties who may be interested in purchasing the Property as identified by the Receiver (the "**Potential Bidders**"), to notify them of the existence of the Stalking Horse Sales Process and invite the Potential Bidders to make an

offer to acquire all or any part of the Property as soon as reasonably practicable after issuance of this Order;

- (ii) sending a form of confidentiality agreement (the “**Confidentiality Agreement**”) to Potential Bidders as identified by the Receiver, along with the Teaser Letter;
  - (iii) providing to any Potential Bidders who execute the Confidentiality Agreement on terms satisfactory to the Receiver: (1) access to an electronic data room established by the Receiver containing relevant information relating to Elementa and its Property, and (2) an electronic copy of the Stalking Horse Bid;
- (b) any interested purchaser shall submit a formal offer to purchase the Property in the form of the Stalking Horse Agreement (with a copy blacklined against the Stalking Horse Agreement), and an aggregate purchase price at least equal to the Stalking Horse Bid, plus an additional sum of \$150,000.00, and a deposit equal to at least 10% of the aggregate purchase price under the subject bid by way of Certified Cheque, Bank Draft or Wire Transfer payable to the Receiver in trust on or before the Bid Deadline;
- (c) the Receiver shall review any bids received by the Bid Deadline and determine if there are one or more Qualified Bids;
- (d) if there is no Qualified Bid other than the Stalking Horse Bid, the Receiver shall bring a motion as soon as reasonably possible after the Bid Deadline for approval of the Stalking Horse Agreement and an order to vest the right, title and interest of Elementa in the Purchased Assets in the Stalking Horse Bidder and proceed with closing the transaction forthwith;
- (e) if there are one or more Qualified Bids apart from the Stalking Horse Bid, the Receiver shall send out invitations on or before 3:00 p.m. (Toronto time) on March 23, 2016, or as reasonably practicable, to all persons who have submitted Qualified Bids and to the Stalking Horse Bidder (the “**Auction Notice**”), inviting

them to attend an auction (the “**Auction**”) to be conducted by the Receiver at 10:00 a.m. (Toronto time) on March 25, 2016, at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion. The Auction Notice shall include, amongst other things: (a) the date, time and location of the Auction; (b) a copy of the most favourable Qualified Bid (the “**Opening Bid**”) as determined in accordance with the Bidding Procedures; and (c) the procedures pursuant to which the Auction is to be conducted;

- (f) if the bidder of a Qualified Bid intends to participate in the Auction, it must advise the Receiver of such intention in writing at least one (1) Business Day prior to the Auction (a “**Participation Notice**”). If at least two (2) Participation Notices are received, the Auction will take place and shall be conducted in accordance with the procedures set out in the Bidding Procedures;
- (g) the Receiver may establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, which will not be inconsistent with the terms of this Order or the Bidding Procedures; and
- (h) the “**Winning Bidder**” shall be: (1) if there are no bids at the Auction, the bidder with the Opening Bid; or (2) the bidder with the highest bid received at the Auction as determined in accordance with the Bidding Procedures (the “**Winning Bid**”).

7. **THIS COURT ORDERS** that upon acceptance of the Winning Bid, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Receiver in accordance with the Bidding Procedures, and the following shall take place:

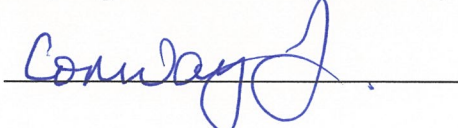
- (a) within seven (7) Business Days after the completion of the Auction, the Receiver shall make a motion to this Court for an order to approve the Winning Bid and to vest the right, title and interest of Elementa in the Property in the Winning Bidder, and proceed with closing the transaction forthwith; and
- (b) if the Winning Bidder fails to comply with the terms and conditions of the Winning Bid, or any of them, all deposits shall be forfeited to the Receiver on

account of liquidated damages, without prejudice to all other rights and remedies the Receiver may have under the Winning Bid or at law or in equity as a result of such failure to comply, and the Property subject to the Winning Bid may be resold by the Receiver. In that event, the Receiver may in its sole discretion accept the Back-Up Bid, as defined in the Bidding Procedures. Upon acceptance of the Back-Up Bid, there shall be a binding agreement of purchase and sale between the bidder of the Back-Up Bid and the Receiver in accordance with the Bidding Procedures, and if necessary the Receiver may in its sole discretion in such acceptance extend the Closing Date to a date no later than April 30, 2016. The Receiver shall make a motion to this Court, within seven (7) Business Days after its acceptance of the Back-Up Bid, for an order to approve the Back-Up Bid and to vest the right, title and interest of Elementa in the Property in the purchaser thereunder, and proceed with closing the transaction forthwith.

8. **THIS COURT ORDERS** that in connection with the Stalking Horse Sales Process and pursuant to clause 7(3) (c) of the *Personal Information Protection and Documents Act* (Canada), the Receiver may disclose personal information of identifiable individuals to Potential Bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each Potential Bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Receiver or in the alternative shall destroy all such information and certify such destruction to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Elementa, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

9. **THIS COURT ORDERS** that the Receiver and its counsel be and they hereby are authorized to serve or send, or cause to be served or sent, this Order (including any of the materials referred to in this Order and other materials relating to the Stalking Horse Sales Process), any other materials and orders in these proceedings, and any notices or correspondence,

by commercial electronic messages to electronic addresses, attaching true copies thereof, of Elementa's creditors and other interested parties (including prospective purchasers or bidders to the extent necessary or desirable to provide information and material with respect to the Stalking Horse Sales Process), and their advisers. For greater certainty, any such service or sending shall be deemed to be in satisfaction of a legal or judicial obligation, or the provision of notice of an existing or pending right, legal or juridical obligation or court order, within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DOS).

  
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 FEB 19 2016

## SCHEDULE "A"

### BIDDING PROCEDURES

#### Background

On December 21, 2015, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made an order (the "**Appointment Order**") appointing Richter Advisory Group Inc. ("**Richter**") receiver (the "**Receiver**") over the assets, undertakings and properties (the "**Property**") of Elementa Group Inc. ("**Elementa**" or the "**Company**") acquired for, or used in relation to the business carried on by Elementa, including all proceeds thereof.

On or about February 19, 2016, the Receiver will bring a motion for an order (the "**Sales Process Order**") with the Court seeking, among other things, approval of:

- (i) the Receiver's execution of an agreement of purchase and sale of substantially all assets of the Company (the "**Purchased Assets**") between the Receiver and Bradam Canada Inc. (the "**Stalking Horse Bidder**") dated February 12, 2016 (the "**Stalking Horse Agreement**") for total consideration of \$1,500,000.00 (the "**Stalking Horse Bid**") so as to set a minimum floor price in respect of the sale process for the Purchased Assets; and
- (ii) the process for the solicitation of offers or proposals for the acquisition of the Property or any parts thereof (each a "**Bid**", and each party who submits a Bid, a "**Bidder**"), including approval of the bidding procedures detailed herein (the "**Bidding Procedures**").

Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids that are superior to that contemplated by the Stalking Horse Agreement and the proposed sale of the Purchased Assets.

Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### Bidding Procedures

These Bidding Procedures provide for one phase of bidding in which to solicit binding offers to purchase all or part of the Property. In the event that the Receiver determines that the results of any Bids received satisfy the conditions for an auction, as set out below, the Receiver shall conduct an auction in accordance with the procedures set out in Section 9 below.

#### **1. Assets for Sale**

The Receiver is soliciting Bids for the Property, or any parts thereof, that are superior to that contemplated by the Stalking Horse Agreement. For the purposes of the Bidding Procedures, the Property shall collectively include substantially all of the assets, undertakings and properties of Elementa, which for clarity includes the shares of Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., acquired for or used in relation to Elementa's business.

#### **2. Solicitation**

The Receiver has prepared: (a) a list of potential bidders for the Assets (the "**Potential Bidders**"),

including both strategic and financial parties who may be interested in acquiring the Property; (b) an initial offering summary (the “**Teaser Letter**”) to notify Potential Bidders of the existence of this solicitation process and invite the Potential Bidders to make an offer to acquire all or any part of the Property; and (c) a form of confidentiality agreement (the “**Confidentiality Agreement**”).

The Receiver shall commence the solicitation process as soon as practical upon receipt of the Sales Process Order, by sending the Teaser Letter and the Confidentiality Agreement to the Potential Bidders.

### **3. Access to Due Diligence Materials**

Interested parties that execute and deliver to the Receiver the Confidentiality Agreement shall receive access to an electronic data room established by the Receiver to provide Potential Bidders with relevant information relating to the Company and its Property, and a copy of the Stalking Horse Agreement (the “**Due Diligence Access**”). Each party’s Due Diligence Access shall terminate upon the earliest of the following events to occur:

- (i) Such party does not submit a Bid by the Bid Deadline (as defined below);
- (ii) Such party submits a Bid by the Bid Deadline but the Receiver determines that such party does not constitute a Qualified Bidder (as defined below);
- (iii) Such party does not participate in the Auction (as defined below); or
- (iv) At the conclusion of the Auction.

Notwithstanding that a party’s Due Diligence Access may continue until the end of the Auction, the Receiver shall not be obligated to furnish any additional due diligence information after the Bid Deadline.

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with Section 3. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Property and does not make any representations or warranties as to the information or materials provided, except to the extent of any representations or warranties provided for in the relevant agreement(s) with the Winning Bidder(s) (as defined below).

### **4. Due Diligence from Bidders**

Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information could be the basis for the Receiver to determine that a Bidder is not a Qualified Bidder (as defined below).

### **5. As is, where is**

Any sale of the Property will be completed 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 the Company or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant agreement(s) with the Winning Bidder(s).



## 6. Bidding Deadlines

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are received by the Receiver no later than 12pm EST on March 21, 2016 (the “**Bid Deadline**”). A Bid received by the Receiver after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

Written copies of the Bids shall be delivered via e-mail or by personal delivery to the Receiver at:

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Adam Sherman  
E-mail: [asherman@richter.ca](mailto:asherman@richter.ca)

with a copy to the Receiver’s counsel at:

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Attention: Mario Forte  
E-mail: [forte@gsnh.com](mailto:forte@gsnh.com)

## 7. Bid Requirements

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, a Bidder must deliver a Bid to the Receiver by the Bid Deadline which satisfies each of the following conditions:

- (i) Identification: The Bid must identify the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- (ii) Form and Content. The Bid must be in the form of the Stalking Horse Agreement and executed by the Bidder (each, a “**Proposed Purchase Agreement**”). Any changes and modifications to the Stalking Horse Agreement are to be indicated on a blackline to the Stalking Horse Agreement (including, if applicable, any modifications made to reflect the Property or parts thereof sought to be purchased), which is to be submitted along with the executed version;
- (iii) Minimum Consideration. The aggregate consideration of a Bid that includes all of the Purchased Assets must provide a cash purchase price of at least \$1,650,000.00 (the “**Minimum Purchase Price**”). The Minimum Purchase Price is the aggregate of: (a) the Stalking Horse Bid; (b) the Break- Up Fee (as defined in the Stalking Horse Agreement) of \$50,000.00; and (c) \$100,000.00. In the event that the Bid is for less than all of the Purchased Assets, such Bid shall not be subject to the Minimum Purchase Price; provided, however, that such Bid must be

capable of being paired by the Receiver with one or more other Bids which in the aggregate provide for a cash purchase price of at least the Minimum Purchase Price;

- (iv) Good-Faith Deposit. The Bid must be accompanied by a cash deposit equal to at least ten percent (10%) of the total cash purchase price contemplated by the Bid (the “**Good Faith Deposit**”), and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures;
- (v) Financial Wherewithal. The Bid must include evidence satisfactory to the Receiver of the Bidder’s financial ability to close by the Closing Date (as defined below);
- (vi) Closing Date. The Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth in the Proposed Purchase Agreement as soon as practicable after satisfaction or waiver of all conditions; provided that such closing must take place by no later than April 30, 2016 (the “**Closing Date**”);
- (vii) Irrevocable. The Bid must be accompanied by a letter which confirms that the Bid may be accepted by the Receiver, by the Receiver countersigning the Proposed Purchase Agreement, and is irrevocable and capable of acceptance until the earlier of: (a) the day on which the Bidder is notified that the Bid is not a Qualified Bid (as defined below); (b) the day on which a Winning Bid or Winning Bids are selected, if the Bid is neither a Winning Bid nor a Back-Up Bid (as defined below) selected on such day; (c) if the Bid is the Back-Up Bid, then the day on which the Winning Bid(s) closes; and (d) April 30, 2016 (the “**Termination Date**”);
- (viii) No Representations and Warranties. A Bid shall include an “as is, where is” clause substantially on the same terms as the “as is, where is” clause set out in the Stalking Horse Agreement;
- (ix) Contingencies. The Bid may not be conditional on obtaining financing, or obtaining assignments on any leases or contracts of the Company or its affiliates, or any internal approval, or on the outcome or review of due diligence. Any other contingencies associated with the Bid may not, in the opinion of the Receiver, in the aggregate, be more burdensome or conditional than those set forth in the Stalking Horse Agreement;
- (x) No Fees Payable to Bidder. The Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- (xi) Other Information. A Bid shall contain such other information reasonably requested by the Receiver.

## 8. Designation as Qualified Bidder

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any such modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder’s Good-Faith Deposit.

After any clarifying discussions or negotiations, the Receiver shall review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its sole discretion, those Bidders, if any, that are qualified to participate in an auction (the “**Qualified Bidders**” and the Bid of each Qualified Bidder, a “**Qualified Bid**”). All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

Notwithstanding anything else in the Bidding Procedures, the Stalking Horse Bidder is deemed to be a Qualified Bidder and the Stalking Horse Bid is deemed to be a Qualified Bid for all purposes and at all times.

## 9. Auction

If the Receiver determines that there are no Qualified Bids (other than the Stalking Horse Agreement), then:

- (i) there will be no auction;
- (ii) the Stalking Horse Agreement shall be declared the Winning Bid (as defined below) for the Purchased Assets; and
- (iii) the Receiver shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Motion (as defined below).

If the Receiver determines that there is at least one Qualified Bid for all of the Purchased Assets (other than the Stalking Horse Bid) or a combination of non-overlapping Qualified Bids for less than all of the Purchased Assets (an “**Aggregated Bid**”), and such Qualified Bid or Aggregated Bid provides the Minimum Purchase Price, the Receiver shall conduct an auction to determine the highest and/or best Qualified Bid or Aggregated Bid (the “**Auction**”).

If the Auction is to take place, then within two (2) business days after the Bid Deadline, the Receiver shall send written notice to all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder and invite the Qualified Bidder to participate in the Auction (the “**Auction Notice**”). The Auction Notice shall include, amongst other things: (a) the date, time and location of the Auction; (b) a copy of the Opening Bid (as defined below); and (c) the procedures pursuant to which the Auction is to be conducted.

In all cases, the Receiver shall post notice of such facts on its website established in connection with the receivership of the Company, at: <http://www.richter.ca/en/folder/insolvency-cases/e/elementa-group-inc>

If a Qualified Bidder intends to participate in the Auction, it must advise the Receiver of such intention in writing at least one (1) business day prior to the Auction (a “**Participation Notice**”). If at least two (2) Participation Notices are received, the Auction will take place and shall be conducted in accordance with the following procedures:

- (i) Participation at the Auction. The Receiver and its professionals shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary

decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders and the Receiver shall be permitted to attend the Auction;

- (ii) Rounds. Bidding at the Auction shall be conducted in rounds. The Qualified Bid or Aggregated Bid with the highest and/or best value shall constitute the opening bid (the “**Opening Bid**”) for the first round of bidding. The highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. The Receiver, in its sole discretion, shall determine what constitutes the Opening Bid for each round. An Aggregated Bid may be an Opening Bid in the first round. A combination of non-overlapping Overbids (an “**Aggregated Overbid**”) may also be an Opening Bid in any subsequent round, if such Aggregated Overbid is determined by the Receiver, in its sole discretion, to be the highest and/or best Overbid. In each round, a Qualified Bidder may submit no more than one Overbid. The Receiver reserves the right to impose time limits for the submission of Overbids. For clarity, the Stalking Horse Bid or any Overbid made by the Stalking Horse Bidder may form part of an Aggregated Bid or Aggregated Overbid;
- (iii) Failure to Submit an Overbid. If, at the end of any round of bidding, a Qualified Bidder or Aggregated Bidder (other than the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) fails to submit an Overbid, then such Qualified Bidder may not participate in the next round of bidding at the Auction. Any Qualified Bidder or Aggregated Bidder that submits an Overbid or Aggregated Overbid during a round (including the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction;
- (iv) Overbids. All Bids made during the Auction shall be “Overbids”. Overbids will be submitted in a form to be determined by the Receiver, in its sole discretion, including further revised and executed Proposed Purchase Agreements. The identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Winning Bid(s) (as defined below) and the Back-Up Bid(s) (as defined below). To be considered an “Overbid”, a Bid made during the Auction must satisfy the following criteria:
  - (a) Minimum Consideration. The amount of purchase price consideration of any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus \$100,000.00 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the “**Minimum Overbid Increment**”); provided, however, that if an Overbid relates to less than all of the Purchased Assets then the purchase price consideration of such Overbid need only be the purchase price consideration of such Bidder’s prior Bid plus \$100,000.00 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction; and
  - (b) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 7 above; provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (vii) hereof). To the extent not previously

provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to the Receiver demonstrating such Qualified Bidder's ability (including financial ability) to close the transaction contemplated by its Overbid;

- (v) Announcing Highest Overbids. At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall: (a) immediately review each Overbid made in such round; (b) identify the highest and/or best Overbid or Aggregated Overbid; and (c) announce the terms of such highest and/or best Overbid or Aggregated Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid or Aggregated Overbid shall be the Opening Bid for the next round of the Auction;
- (vi) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (a) facilitate discussions between the Receiver and individual Qualified Bidders, including any discussion, negotiation or clarification of any Overbid; (b) allow individual Qualified Bidders to consider how they wish to proceed; (c) consider and determine the current highest and/or best Overbid or Aggregated Overbid at any given time during the Auction; (d) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (e) subject to such rules and guidelines as the Receiver may consider appropriate, facilitate any appropriate consultation by the Receiver and/or Qualified Bidders with third party stakeholders;
- (vii) Closing the Auction. If, in any round of bidding, no Overbid or Aggregated Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (a) declare the last Opening Bid as the winning Bid(s) (the "**Winning Bid(s)**") and the party or parties submitting such Winning Bid(s), the "**Winning Bidder(s)**"; (b) immediately review the other Overbids or Aggregated Overbids made in the previous round (or the Qualified Bids and Aggregated Bids if no Overbids were made at the Auction) and identify and record the next highest and/or best Overbid or Aggregated Overbid (or Qualified Bid or Aggregated Bid) (the "**Back-Up Bid(s)**") and the party or parties submitting such Back-Up Bid(s), the "**Back-Up Bidder(s)**"; and (c) advise the Winning Bidder(s) and the Back-Up Bidder(s) of such determinations and all other Qualified Bidders that they are not a Winning Bidder or a Back-Up Bidder.

To the extent not already provided, the Winning Bidder(s) and the Back-Up Bidder(s) shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal at least ten percent (10%) of the total cash purchase price contemplated by its Winning Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party's "Good Faith Deposit" in accordance with these Bidding Procedures. For greater certainty, the preceding sentence applies equally to the Stalking Horse Bidder if the Stalking Horse Bidder submits an Overbid which is determined to be a Winning Bid or Back-Up Bid;

- (viii) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in

connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's transaction documents, as applicable;

- (ix) Break-Up Fee. In the event that the Stalking Horse Bidder is not the Winning Bidder, the Break-Up Fee of \$50,000.00 shall be payable to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement from the proceeds received upon closing the Winning Bid or Back-Up Bid, as applicable; and
- (x) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids. The Receiver may permit discussions between Qualified Bidders at the Auction, subject to such rules and guidelines as the Receiver considers appropriate.

#### **10. Receiver's Reservation of Rights**

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids; provided that such non-compliance is not material in nature; (b) reject any or all Bids if, in the Receiver's reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction, provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court.

#### **11. Sale Motion**

The Receiver shall, within seven (7) business days of the conclusion of the Auction, or if there is no Auction, within seven (7) business days of the Bid Deadline, serve notice of a motion seeking approval of the Winning Bidder(s) and the sale of the applicable Property to the Winning Bidder(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Winning Bidder(s) (the "**Sale Motion**"). At the Sale Motion, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid(s) authorizing the Receiver to close the Back-Up Bid(s) if the Winning Bid(s) is/are not closed by the Closing Date.

#### **12. Closing the Winning Bid**

The Receiver and the Winning Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Winning Bid(s) as soon as possible after the Winning Bid(s) are approved by the Court. Notwithstanding the foregoing, in the event that there is more than one Winning Bid, the Receiver reserves the right to impose a condition in each Winning Bid that the obligation of the Receiver to complete the sale transaction contemplated by each Winning Bid is conditional upon the completion of the transaction(s) contemplated by each other Winning Bid. The Receiver will be deemed to have accepted the Winning Bid(s) only when the Winning Bid(s) has/have been approved by the Court. If the transaction(s) contemplated by the Winning Bid(s) has/have not closed by the Closing Date or the Winning Bid(s) is/are terminated for any reason prior to the Closing Date, the Receiver may elect, in its sole discretion to seek to complete the transaction(s) contemplated by the Back-Up Bid(s), and upon making such election, the Receiver will seek Court approval of the Back-Up Bid(s) (if such approval has

not already been obtained) and promptly seek to close the transaction(s) contemplated by the Back-Up Bid(s) after such Court approval. The Back-Up Bid(s) will be deemed to be the Winning Bid(s) and the Receiver will be deemed to have accepted the Back-Up Bid(s) only when the Back-Up Bid(s) has/have been approved by the Court and the Receiver has made such election.

**13. Return of Good Faith Deposit**

- (i) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this Section 13;
- (ii) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder;
- (iii) Good Faith Deposits of all Qualified Bidders other than the Winning Bidder(s) and the Back-Up Bidder(s) shall be returned to such Qualified Bidders two (2) business days after the day on which one or more Winning Bidders is selected;
- (iv) The Good Faith Deposit(s) of the Winning Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. If the Winning Bid(s) fail(s) to close by the Termination Date because of a breach or failure to perform on the part of the Winning Bidder(s), the Receiver shall be entitled to retain the Good Faith Deposit of the applicable Winning Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Winning Bidder(s). The Good Faith Deposit of the Winning Bidder(s) shall otherwise be returned to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s);
- (v) If the Back-Up Bid(s) has/have not been deemed to be a Winning Bid(s), the Good Faith Deposit(s) of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) as soon as practicable after the earlier of: (a) the closing of the transaction(s) contemplated by the Winning Bid(s); (b) the date on which the Receiver provides written notice to the Back-Up Bidder(s) that the Receiver will not elect to complete the transaction(s) contemplated by the Back-Up Bid(s); and (c) the Termination Date; and
- (vi) If a Back-Up Bid is deemed to be a Winning Bid, the Good Faith Deposit of such Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If a Back-Up Bid fails to close by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of such Back-Up Bidder as part of its damages resulting from the breach or failure to perform by such Back-Up Bidder. The Good Faith Deposit of a Back-Up Bidder shall otherwise be returned to the applicable Back-Up Bidder in accordance with the terms of its Back-Up Bid.

**IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.**

Commercial List File No. CV-15-11198-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at  
Toronto**

**ORDER  
(Stalking Horse and Sales Process)**

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Lawyers for Richter Advisory Group Inc., in its capacity as  
the Court appointed Receiver of Elementa Group Inc.



IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.

Commercial List File No. CV-15-11198-00CL

Feb 19/16

Feb 19/16 as per counsel slip.

OTG approving, among other things, the Reordering of  
the Stalking Horse Bid + approving  
the sales process. I note the relatively  
modest break fee in the SH Bid. I have  
also considered the time deadlines in  
the process, which are sensible given  
the timing issues in the SSM Project  
contracts for the construction of  
the SSM facility.

Conway J.

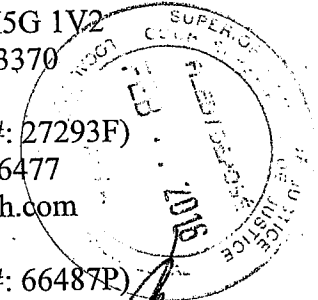
ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceedings commenced at  
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MOTION RECORD OF THE RECEIVER  
(Stalking Horse and Sales Process)

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