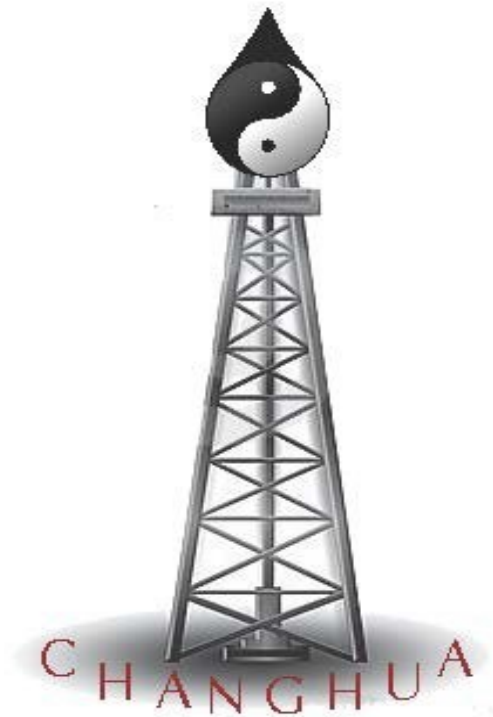




**FTI**™  
**CONSULTING**



**CONFIDENTIALITY AGREEMENT**

**Please send an executed Confidentiality Agreement to  
Sayer Energy Advisors at the address listed below:**

**FTI Consulting Canada Inc.  
in its capacity as court-appointed receiver of Changhua Energy Canada Ltd.,  
and not in its personal or corporate capacity  
c/o Sayer Energy Advisors  
Suite 1620, 540 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0M2  
Attention: Mr. Ben Rye  
Phone: 406.266.6133  
Fax: 403-266.4467  
Email: [brye@sayeradvisors.com](mailto:brye@sayeradvisors.com)**

\_\_\_\_\_, 20\_\_\_\_

**CONFIDENTIAL**

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, Province: \_\_\_\_\_

Postal Code: \_\_\_\_\_

**Attention:** \_\_\_\_\_

You have asked FTI Consulting Canada Inc., in its capacity as Court-appointed receiver (**FTI**, or the **Receiver**), of Changhua Energy Canada Ltd. (the **Debtor**), to provide you with certain operational, financial and other information relating to the Debtor, including confidential, proprietary or protected information not generally disclosed to the public. We understand that you intend to use this information solely for the purpose of considering a potential purchase transaction involving the sale the Assets of the Debtor (a **Potential Transaction**).

It is therefore in the interest of the Receiver, and the Debtor and its stakeholders, that certain confidential information be made available to you for the purpose of evaluating and implementing the Potential Transaction (the **Permitted Purpose**). Therefore, subject to the terms and conditions of this letter agreement, and to the extent the Receiver considers advisable in the circumstances, the Receiver agrees to provide Information (as defined below) to you and you agree to use such Information solely for the Permitted Purpose.

All information relating to the Debtor or its business, operations and assets (whether in written, electronic or other form and whether or not identified as confidential at the time of disclosure) given to you or your Representatives (as defined below) and all analyses, compilations, studies, forecasts and other written or electronic documents or materials prepared by, or for, you or any of your Representatives which contain, reflect or are based upon, or generated from, such information is referred to in this letter agreement as **Information**. In addition, for purposes of this letter agreement, (a) **Financial Intermediaries** means (i) rating agencies and services; and (ii) potential co-investors, hedge counterparties, re-insurers, financial intermediaries and liquidity or credit providers, (b) **Representatives** means any Financial Intermediaries and any directors, officers, employees, agents or other representatives or advisors, including, without limitation, lawyers, accountants, actuaries, consultants and financial advisors, and **person** shall be broadly interpreted to include, without limitation, any individual, corporation, group, partnership, trust, governmental or regulatory authority or other entity.

In consideration for the Receiver agreeing to provide you and your Representatives with Information, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**1 Capacity**

The Receiver enters into this agreement solely in its capacity as the court-appointed receiver of the Debtor, and not in its personal capacity.

## 2 **Information Requests**

- (a) Any requests for Information and any questions regarding process, procedures or other matters must be submitted in writing to Brett Wilson, Senior Director, Corporate Finance & Restructuring of FTI Consulting, [brett.wilson@fticonsulting.com](mailto:brett.wilson@fticonsulting.com) (or such other person as he designates) (the **Contact**).
- (b) You shall not, and shall direct your Representatives not to, contact any director, officer, employee, agent, consultant, advisor, customer or supplier of the Debtor, or of the Receiver (other than the Contact) with respect to a Potential Transaction, the Information or any other matter contemplated in this letter agreement.

## 3 **Transaction Non-Disclosure**

You shall not, and shall direct your Representatives not to, make any public comment, statement or communication or otherwise disclose to any person (a) that Information is being made available to you and your Representatives, (b) that discussions or negotiations are taking place concerning a Potential Transaction, or (c) any of the terms, conditions or other facts relating to a Potential Transaction, including the status of this letter agreement.

## 4 **Information Non-Disclosure**

You shall only give Information to those of your Representatives who need to know the Information for a Permitted Purpose. Such Information is to be kept strictly confidential and you shall not, and shall direct your Representatives not to, (a) make any public comment, statement or communication about, or otherwise disclose to any person in any manner whatsoever, in whole or in part, the Information, or (b) use, directly or indirectly, the Information for other than a Permitted Purpose. You shall inform each of your Representatives of the confidential nature of the Information and each of them shall agree, in writing, to (a) treat the Information as confidential in accordance with this letter agreement, and (b) be liable to the Receiver for any breach by it of the provisions of this letter agreement applicable to it. Notwithstanding that the Representatives may have personal liability, you shall be responsible for any breach of this letter agreement by your Representatives and you shall take all necessary and appropriate steps to preserve and protect the confidentiality of the Information and safeguard the Information from disclosure to any person other than as permitted in this letter agreement. Without limiting the generality of the foregoing, you hereby confirm that you have security controls, both electronic and physical, that meet or do not materially deviate from current industry standards for the prevention of any unauthorized access to information.

## 5 **Personal Information**

The Receiver may disclose Information about identifiable individuals (Personal Information) if (a) you specifically request such Personal Information, (b) such Personal Information is to be used for Permitted Purposes only and it will be disclosed only to Representatives who need to know the Personal Information in order to evaluate the Potential Transaction, and (c) you have signed a personal information protection agreement in form and substance satisfactory to the Receiver.

6 **Notice of Unauthorized Use**

You shall promptly report to the Receiver, in writing, any circumstances or facts which, on a reasonable basis, leads you to believe that unauthorized persons may have gained access to Information or materials of any kind or nature whatsoever relating to the Information.

7 **Return of Information**

You shall keep a record of the location of all Information and of each of your Representatives who has access, electronic or otherwise, to any of the Information. If you decide not to enter into a Potential Transaction, you shall promptly notify the Receiver in writing. In such case, or if for any reason the Receiver so requests, you shall promptly deliver to the Receiver or destroy or delete (at your option), all materials (including any in electronic format) constituting or containing Information and neither you nor any of your Representatives will retain copies of any such material. At the request of the Receiver, you shall also confirm the delivery, destruction or deletion of the Information by providing the Receiver with a certificate of one of your senior officers to that effect.

8 **Electronic Retention**

Notwithstanding Section 6, if electronic records containing Information are kept for the purposes of backup, recovery, contingency planning or business continuity planning (any such purpose, a **Recovery Purpose**) or are otherwise not accessible in the ordinary course of business, such records, to the extent not otherwise permanently deleted or overwritten in the ordinary course of business, may be retained but shall not be accessed except as required for a Recovery Purpose. If any such records are restored or otherwise made accessible, they must be immediately and permanently deleted.

9 **Exclusions**

The obligations imposed on you in this letter agreement do not apply to any Information which (a) is or becomes publicly available or disclosed other than as a result of disclosure by you or your Representatives in contravention of this letter agreement, (b) was known or becomes available to you on a non-confidential basis from a source other than the Receiver or its Representatives, provided that such source was not to your knowledge bound by a confidentiality agreement, or otherwise prohibited from giving the Information to you on a non-confidential basis, or (c) was independently developed by you or your Representatives without violation of this letter agreement.

10 **Property of the Debtor**

The Information is and will, at all times, remain the property of the Debtor and the Receiver may, at any time and from time to time, disclose such Information to other persons in connection with other possible transactions or for any other purpose. You agree that you and your Representatives have no right, title, interest or licence in or to any of the Information.

11 **No Representations or Warranties**

You understand and agree that (a) neither the Receiver nor any of its Representatives makes any representation or warranty, express or implied, on which you or your Representatives may rely as to the accuracy or completeness of the Information for your purposes, and (b) only those representations and warranties made by the Receiver in writing in a subsequent definitive agreement with you related to a Potential Transaction, if any, will have any legal effect. You agree that, other than as may be set out in such a definitive agreement, neither the Receiver nor

its Representatives will have any liability whatsoever to you or any of your Representatives, including in contract, tort or under applicable securities laws, relating to, or resulting from, the use of the Information or any errors therein or omissions therefrom, and you hereby waive, in advance, any claims (including fraud, tort, and breach of contract) you or your Representatives may have in connection with a Potential Transaction except those arising from a fully executed and delivered definitive agreement.

## 12 **Compelled Disclosure**

If you or any of your Representatives is required (by law or by subpoena, civil investigative demand or similar process having force of law) to disclose the existence of a Potential Transaction (or any element of it) or any of the Information, you shall give the Receiver prompt notice so that it can seek a protective order or other appropriate remedy. In addition, you shall cooperate with the Receiver, if necessary, in its efforts to obtain a protective order or other remedy. If no protective order or other remedy is obtained or if the Receiver waives compliance with the foregoing and disclosure is required, you and your Representatives shall provide only that portion of the transaction details or Information which is legally required and you shall use your best efforts to obtain written assurances that the Information and the details of the transaction will be treated confidentially.

## 13 **Indemnity**

You hereby indemnify and save harmless the Receiver and its Representatives from all losses, costs, damages and expenses whatsoever, including legal fees, that the Receiver, or any of its Representatives, may suffer or incur as a result of, or arising out of, a breach of the terms of this letter agreement by you or from the actions or omissions of your Representatives.

## 14 **Remedies**

You acknowledge that damages alone would not be an adequate remedy and that the Debtor and its stakeholders would be irreparably harmed if any of the provisions of this letter agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, you agree that the Receiver is entitled to injunctive relief (or a similar remedy) to prevent breaches of this letter agreement and to specifically enforce its provisions in addition to any other remedy available to it at law or in equity. In addition, you waive any requirement for deposit of security or posting of a bond in connection with an equitable remedy.

## 15 **No Waiver**

No failure or delay by the Receiver in exercising any right, power or privilege in this letter agreement operates as a waiver thereof nor will any single or partial exercise preclude any other or future exercise of any such right, power or privilege.

## 16 **No Agreement Concerning Potential Transaction**

Except as specifically set out in this letter agreement, no party is under any legal obligation with respect to a Potential Transaction (except with respect to the obligations contained herein) unless and until a definitive agreement between the parties has been executed and delivered.

## 17 **No Partnership**

Nothing in this letter agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute a party the agent of the other, nor authorize a party to make or enter into any commitments for or on behalf of the other party.

18 **Term**

Except for the provisions of Section 7 which continue indefinitely or as otherwise specifically set out in this letter agreement, the confidentiality and other obligations described in this letter agreement continue in full force and effect for a period of two years from this date.

19 **Notices**

Except as otherwise specifically set out in this letter agreement, notices authorized or required by this letter agreement shall be in writing and given by delivering it or sending it by email, addressed:

(a) to the Receiver at:

FTI Consulting Canada Inc., in its capacity as court-appointed Receiver of Changua Energy Canada Ltd., c/o

Brett Wilson, Senior Director, Corporate Finance & Restructuring,  
[brett.wilson@fticonsulting.com](mailto:brett.wilson@fticonsulting.com)

with a copy to the Receiver’s counsel,

Howard A. Gorman | Gunnar Benediktsson, Norton Rose Fulbright Canada,  
[howard.gorman@nortonrosefulbright.com](mailto:howard.gorman@nortonrosefulbright.com) | [gunnar.benediktsson@nortonrosefulbright.com](mailto:gunnar.benediktsson@nortonrosefulbright.com)

or

(b) to you at:

Address: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

with a copy to your counsel,

Name of Counsel: \_\_\_\_\_

Counsel Address: \_\_\_\_\_

20 **Successors and Assignees**

You may not assign this letter agreement or any rights under this letter agreement without the prior written consent of the Receiver. Any purported assignment without such consent shall be void and unenforceable. This letter agreement shall be binding on your successors and assignees.

21 **Entire Agreement**

This letter agreement contains the entire agreement between the parties concerning the matters set out in it, and no amendment to this letter agreement or waiver of its terms is binding upon the parties unless approved in writing by each of them.

22 **Severability**

If any provision of this letter agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this letter agreement and the remaining provisions will continue in full force and effect, without amendment.

23 **Governing Law**

This letter agreement is governed by and is to be interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each of the parties irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Alberta.

24 **Legal Privileges**

Nothing in this letter agreement nor the disclosure of any Information shall constitute, result in or be deemed to be, a waiver of legal privilege or any similar protections and privileges in favour of you or any other person. You further acknowledge and agree that access to any privileged information is being provided to you with a view to furthering the common interest (the "**Common Interest**") in facilitating the Permitted Purpose. At any time the Receiver may seek guidance from its legal counsel that disclosure will not derogate from any claim it may have to legal privilege or similar rights and may, in its discretion, choose not to share Information which its counsel considers may result in a waiver of any such right.

Please confirm your agreement by signing and returning one copy of this letter to the Receiver. An executed copy of the letter may be transmitted by facsimile or other electronic means and the transmission of a signature by such means constitutes effective delivery.

Yours very truly,

FTI Consulting Canada Inc., in its capacity as  
court-appointed Receiver of Changhua Energy  
Canada Ltd

By:

\_\_\_\_\_  
Authorized Signing Officer

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
**NAME OF PURCHASER**

By:

\_\_\_\_\_  
Authorized Signing Officer

**CONFIDENTIAL INFORMATION DELIVERY OPTIONS: (please check one)**

**Electronic**    or     **Hard copy (binder)**

\_\_\_\_\_  
NAME OF CONTACT PERSON TO FORWARD INFORMATION

\_\_\_\_\_  
CONTACT ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

Option to Attach Business Card Here: