

140629 - Administration Terms and Conditions

General

- 1.1** Unless otherwise set out in an EOI, both in respect of the EOI Administrative Terms and Conditions and the EOI referencing these Administrative Terms and Conditions, headings are used for convenience only, and they do not affect the meaning or interpretation of the clauses.
- 1.2** Words in the singular include the plural and *vice versa*.
- 1.3** All references to legislation include (i) any regulation promulgated thereunder, (ii) amendments, (iii) successor legislation, and (iv) legislation dealing with the same or similar subject matter.
- 1.4** The word "including," when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

1.5 EOI Terminology

Throughout the Expression of Interest, and to the extent reasonable to continue beyond, but only to the extent a term is not alternatively defined a resulting Contract, the following terminology shall be apply to the Expression of Interest:

"**Alberta Time**" means Mountain Standard Time or Daylight Saving Time as provided for in the *Daylight Saving Time Act*, R.S.A. 2000, c. D-5 of Alberta.

"**BAFO**" and "**Best and Final Offer**" means the process found herein at section 2.22.

"**Business Day**" means 08:30 to 16:30, Alberta Time, Monday to Friday, excluding holidays observed by the Seller.

"**Business Hours**" means 08:30 to 16:30 Alberta Time on Business Days.

"**CNDA**" means the document provided herewith as Appendix "A".

"**Consortium**" means two or more parties who together submit a response to the EOI.

"**Contract**" means the written agreement between the successful interested buyer and the Seller as is contemplated by the EOI paragraph 7(7).

"**Expression of Interest**" and "**EOI**" means the Expression of Interest and includes all subsequent stages related to the Request for Expressions of Interest Digital Billboard Sign Network (Edmonton) (e.g. the RFP, evaluation, BAFO, etc.)

"**EOI Contact**" has the meaning provided at section 2.2.1 herein.

"**Evaluation Team**" means the principals of the Seller who will evaluate the Proposals.

"Fixed Price" means a definite and predetermined price.

"FOIP" intentionally deleted

"interested buyer" in addition to the definition in the EOI means an individual, organization or a Consortium responding (or taking part in a response) to the EOI with a Proposal.

"Materials" means all the working papers, surveys, notes, plans, designs, reports, records, studies, drawings, examinations, assessments, procedures, specifications, evaluations, results, conclusions, interpretations, calculations, analyses, systems, software, source code, documents, writings, programs, hardware, devices, data or any components of these, regardless of how they are represented, stored, produced, or acquired.

"Modified EOI Process" means the process found herein at section 2.21.

"must", "mandatory", "required", "shall" means a requirement that must be met in a substantially unaltered form in order for the Proposal to receive consideration. The determination of what is substantially unaltered shall be made by the Seller in its exclusive discretion.

"optional" means a requirement not considered essential, but for which preference may be given.

"Personal Information" means recorded information about an identifiable individual, including:

- (i) the individual's name, home or business address or home or business telephone number;
 - (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;
 - (iii) the individual's age, sex, marital status or family status;
 - (iv) an identifying number, symbol or other particular assigned to the individual;
 - (v) the individual's fingerprints, blood type or inheritable characteristics;
 - (vi) information about the individual's health and health care history including information about a physical or mental disability;
 - (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;
 - (viii) anyone else's opinions about the individual; and
 - (ix) the individual's personal views or opinions, except if they are about someone else.
- (x) But despite (i) through (ix) above, "Personal Information" shall not include information generally known to the broader public.

"PIPA" has the meaning provided at section 2.4.1(a) herein.

"Prime interested buyer" means the successful buyer in a Consortium that is responsible for the provision of all Services and Materials and is accountable for all terms and conditions of the Contract.

"Proposal" means the interested buyer's response to the EOI and includes all the interested buyer's related attachments and presentation materials (see EOI paragraph 7(5)).

"Seller" means Icewerx Media Inc. who, for the purposes of this EOI is represented by Bill Katz, J.D.

"Services" for an interested buyer means the functions, duties, tasks and responsibilities to be provided by the interested buyer as described in the EOI. For the successful buyer, this includes the forgoing and the services and the goods described as "Services" in the resulting Contract.

"should", "desirable", "may" means a provision having a significant degree of importance to the objectives of the EOI.

"successful buyer" means the interested buyer selected by the Seller.

2.0 General

2.1 EOI Availability

The interested buyer should, when submitting an Expression of Interest or a Proposal, obtain all necessary documents directly from the Seller's representative to facilitate receiving any updates/amendments issued. Proposals that do not comply with the EOI requirements, including subsequent requirements if the EOI has been updated/amended, may be rejected at the sole discretion of the Seller.

2.2 Interested Buyer Questions and Communications

2.2.1 All questions and any form of communications with the Seller regarding the EOI must be in writing and only be directed to the EOI Contact (as specified in the EOI). The Seller may disqualify any interested buyer who fails to comply with this provision.

The Seller and its representative are not responsible or liable for statements or representations made by any other person(s) in relation to this EOI. Inquiries to, and responses of, the EOI Contact will be recorded. The EOI Contact will respond in writing to the enquiring interested buyer and, unless otherwise requested by the interested buyer and agreed to by the Seller, this response will be distributed to all interested buyers via written note, which may be by e-mail alone (see 2.2.5 below for greater detail).

2.2.2 The interested buyer has the responsibility to notify the EOI Contact in writing, of any ambiguity, divergence, error, omission, oversight, contradiction, or item subject to more than one interpretation in the EOI, immediately when it is discovered, and to request any instruction, decision, or direction in respect of the same from the EOI Contact. Failure to do so in respect of any ambiguity, divergence, error, omission, oversight, contradiction, or item subject to more than one interpretation shall render the successful interested buyer's Proposal subject to the interpretation most favourable to the Seller, as determined exclusively by the Seller.

2.2.3 The interested buyer acknowledges and agrees that the principles of *contra proferentum* shall not apply to interpretation of the EOI and any agreement resulting from this EOI (including the Contract).

2.2.4 In order for EOI Contact to deal effectively with interested buyer questions or concerns about any term(s), condition(s) or requirement(s) of the EOI including the Contract provisions, such questions or concerns must be communicated in writing to the EOI

Contact in the manner set out in the EOI but, unless the EOI states different, in no event later than seven (7) Business Days prior to the EOI's closing date. Questions received after this time may be answered at the Seller's exclusive option.

2.2.5 Despite any reference to the contrary in this document or the EOI, verbal responses to enquiries are not binding on the Seller. Amendments to the EOI (inclusive of amendments to these EOI Administrative Terms and Conditions) shall be provided in writing (e-mail shall be deemed sufficient) to all interested buyers to have effect ("**Amendments**"). Despite any term to the contrary, Amendments shall take precedence to conflicting terms in the EOI or these EOI Administrative Terms and Conditions.

2.3 Confidentiality and Security of Information

2.3.1 The interested buyer (and successful buyer), the interested buyers and successful buyer's employees, subcontractors, partners and agents shall:

- (a) keep strictly confidential all information not generally available to the public at large concerning the Seller or related third parties (e.g. landlords), and any of the business or activities of the Seller or related third parties acquired as a result of participation in the EOI;
- (b) only use, copy or disclose such information as necessary for the purpose of submitting a Proposal or upon written authorization of the Seller;
- (c) maintain security standards, including control of access to data and other information, consistent with the highest standards of business practice in media sales and billboard industries.

2.3.2 In the event an interested buyer requests additional information not made available via the EOI directly, but related to the EOI and sale or lease of the Seller's interest, such information shall be deemed to be provided on the terms of the Confidentiality Non-Disclosure Agreement appended hereto at Appendix "A". Unless otherwise agreed to by the interested buyer and the Seller in writing prior to the disclosure of such information, by making a request for such information, the interested buyer shall be deemed to have accepted the terms of Appendix "A" without modification and without requirement of physical execution.

2.4 Freedom of Information and Protection of Privacy

2.4.1 The interested buyer acknowledges that:

(a) The *Personal Information Protection Act*, SA 2003, c P-6.5 ("**PIPA**") and other legislation, both in Canada and abroad, may apply to information and records relating to, obtained, generated, created, collected or provided in relation to the EOI or Contract and which are in the custody or control of the Seller. It is accepted by all parties that such legislation may allow any person a potential right of access to records in the Seller's custody or control, subject to limited and specific exceptions as set out in the respective legislation;

(b) The Interested buyer shall protect the confidentiality and privacy of any individual's Personal Information accessible to the interested buyer or collected by the interested buyer relating to the EOI or the Contract;

(c) The interested buyer, if it considers portions of its Proposal to be confidential, shall identify those parts of its Proposal to the Seller considered to be confidential and identify what harm could reasonably be expected from disclosure. The Seller does not warrant that the interested buyer's identification will preclude disclosure under PIPA;

(d) Materials, data, information or records produced or acquired by the interested buyer in connection with or pursuant to the EOI or the resulting Contract, which are the property of the Seller (including those which are made property of the Seller pursuant to the EOI or the Contract), could be subject to legislative control even before delivery to the Seller. As such, the interested buyer must conduct itself to a standard consistent with such legislation in relation to such materials, data, information or records.

(e) Without limiting other sections herein or in the EOI, for the records and information obtained or possessed by the interested buyer in connection with the EOI, the interested buyer must conduct itself to a standard consistent with PIPA when performing duties or taking actions related to the EOI.

2.4.2 Intentionally deleted

2.4.3 Intentionally deleted

2.5 Agreement on Internal Trade

Intentionally deleted

2.6 Software Commercialization Agreement

To the extent applicable, subject to the party's agreement, in respect of the technology used by the Seller for its digital displays, the Seller may enter into a software commercialization agreement with the successful buyer.

2.7 Conflict of Interest

Interested buyers must fully disclose, in writing to the EOI Contact on or before the closing date of the EOI, the circumstances of any possible conflict of interest or what could be perceived as a possible conflict of interest if the interested buyer were to become a contracting party pursuant to the EOI. The Seller shall review any submissions by interested buyers under this provision and may reject any Proposals where, in the reasonable opinion of the seller, the interested buyer could be in a conflict of interest or could be perceived to be in a possible conflict of interest position if the Interested buyer were to become a contracting party pursuant to the EOI.

2.8 Interested Buyer Expenses

The interested buyer is responsible for all costs of preparing and presenting an EOI, its Proposal, undertaking in the Modified EOI Process, the Best and Final Offer Process, and, if applicable, Contract finalization.

2.9 Period of Commitment

Subject to section 2.13 below and subject to any contrary terms contained in the EOI, Proposals (inclusive of pricing) shall be final and binding on the interested buyer for 60 days following the EOI closing date and time.

2.10 Multiple Proposals

If multiple Proposals are offered, the interested buyer must submit each Proposal separately in the same format as required by the EOI (inclusive of these EOI Administrative Terms and Conditions). Proposals must meet the fundamental intent of the EOI. The acceptability of each Proposal will be decided exclusively by the Seller.

2.11 Pricing

Prices quoted shall be in Canadian dollars and exclusive of the Goods and Services Tax, Provincial Sales Tax or the Harmonized Sales Tax.

If a price extension is incorrect, the unit price will apply. Thereafter, in the event of any inconsistency between words and numbers, the inconsistency resulting in terms most favourable to the Seller (as determined exclusively by the Seller) shall govern.

2.12 Waiver

Interested buyers shall not have any claim for compensation of any kind as a result of participating in this EOI's process, and by submitting a Proposal an interested buyer shall be deemed to have waived its right to make a claim.

2.13 Irrevocability of Proposals

Interested buyers may amend or rescind their Proposal prior to the EOI closing date and time by submitting a clear and detailed written notice to the Seller in accordance with section 2.15(d). Subject to the limitation in section 2.9 above, all Proposals become irrevocable after the EOI specified closing date and time.

In either of the following circumstances:

(a) the interested buyer has rescinded a Proposal prior to the EOI closing date and time; or
(b) the Seller has received the Proposal after the EOI closing date and time;
such Proposal will, at the interested buyer's choice, either be returned to the interested buyer at the interested buyer's expense after the EOI closing date and time, or destroyed by the Seller after the EOI closing date and time. If no notice is received by the Seller within 5-days following the close of the EOI, the Seller shall be permitted, at its option, to destroy the Proposal.

2.14 The Seller reserves the right to withdraw this EOI at any time and shall not be liable for any expenses, costs, losses or damages incurred or suffered by any interested buyer as a result of such withdrawal.

2.15 Proposal Submissions

Subject to alternative requirements in the EOI, interested buyers must e-mail their Proposals to bill_co_inc@hotmail.com. Paper, facsimile or digital Proposals in any form (e.g. diskette files, disk files, tape files, e-mailed files) may, at the sole discretion of the Seller, be accepted as the interested buyer's Proposal.

Proposals may be delivered by hand, courier or mail or e-mail. E-mail is the Seller's preference.

If by hand, mail or courier, interested buyers shall deliver their Proposal to Bill Katz c/o bill_co_inc@hotmail.com or 1456 Richland Rd. NE, Calgary, Alberta T2E 5M6. Interested buyers should consider the above when choosing the method of delivery for their Proposal as it is the interested buyer's responsibility to ensure its Proposal is received before the EOI closing date and time, to the person specified and at the location specified in the EOI.

In responding to this EOI, interested buyer attention is drawn to the following:

- (a) The Proposal Submission Letter to the extent contained in the EOI, or a similar representation of the same information, must be completed, signed by an authorized representative of the interested buyer and included with the Proposal.
- (b) Proposals received unsigned or after the EOI's closing date and time will be rejected.
- (c) Ambiguous, unclear or unreadable Proposals may, at the exclusive discretion of the Seller, be cause for rejection.

2.16 Consent to Use of Information

The interested buyer consents, and has obtained the written consent from any individuals identified in the Proposal, to the use of their Records in the Proposal by the Seller, the Seller's employees, subcontractors and agents, to enable the Seller to evaluate the Proposal and for other program purposes of the Seller. The interested buyer shall promptly provide such consents to the Seller for confirmation and review upon the Seller's request.

2.17 Proposal Public Opening

Unless the contrary is specified in an EOI, Proposals will be not be opened publicly.

2.18 Recapitulation of Proposals

While it is not the present intention of the Seller to do so, the Seller reserves the right to publish the names of responding interested buyers and any summary cost information where and when deemed appropriate by the Seller.

2.19 Proposal Return

Subject to section 2.13, Proposals and accompanying documentation, upon receipt by Seller, will become the property of and will be retained by the Seller.

2.20 Proposal Irregularity or Non-Compliance

The Seller reserves the right to waive an irregularity or non-compliance with the requirements of the EOI where the irregularity or non-compliance is minor or inconsequential. The determination of what is or is not a minor or inconsequential irregularity or non-compliance, and the determination of whether to waive or not to waive the irregularity or non-compliance shall be at the Seller's exclusive discretion.

2.21 Modified EOI Process

In the event no compliant Proposals are submitted in response to the EOI, the Seller reserves the right to undertake a Modified EOI Process in order to facilitate the selection of a successful interested buyer. The Modified EOI Process, if employed, will be conducted as follows:

- All interested buyers submitting non-compliant Proposals will be requested to prepare a "Modified EOI Process Proposal". The necessity, scope and the timing of such a Modified EOI Process will be at the Seller's discretion;
- Details regarding the manner and form of the Modified EOI Process and the expected deliverables to be included therein will be provided in advance to all interested buyers who submitted a noncompliant Proposal;
- Modified EOI Process Proposals and accompanying documentation, upon receipt by the Seller, will become the property of and be retained by the Seller;
- Interested buyers submitting Modified EOI Process Proposals must meet the fundamental intent of the requirements identified in the Modified EOI Process. The acceptability of any proposed alternative will be exclusively determined by the Evaluation Team; and
- At the conclusion of the Modified EOI Process, following the interested buyers' submission of the Modified EOI Process Proposals, the Evaluation Team will evaluate these proposals in accordance with an evaluation plan developed for the Modified EOI Process Proposal and may select a preferred interested buyer, if any.

2.22 Best and Final Offer

Following the short-listing, shortlisted interested buyers (as exclusively selected by the Seller) may be invited to participate in a Best and Final Offer process. The determination to proceed with the Best and Final Offer process (including the scope and the timing of the Best and Final Offer process) will be at the exclusive discretion of the Seller. If undertaken, this process will be conducted as follows:

- Details regarding the manner and form of the "Best and Final Offer" process, including materials expected to be produced therein, will be provided to those interested buyers selected to submit a "Best and Final Offer";
- The Seller will provide interested buyers a specified period of time during which such interested buyers will carry out activities including: a) confirming assumptions under which their Proposals were developed, b) conducting any reasonable due diligence as requested by the Seller, c) clarifying the interested buyer's Proposal in areas identified by the Seller, and d) providing modifications to the Proposal based on the results of these activities;
- Any and all modifications to approaches, prices or commitments contained in the interested buyer's original Proposal and/or short-list presentation, if any, must be clearly presented in the interested buyer's Best and Final Offer and must be justified on the basis of new or additional information or requirements secured during this process. The Seller reserves the right to judge the acceptability of such proposed modifications; and
- The Seller may select the preferred interested buyer, if any, after the Best and Final Offers have been evaluated.

Best and Final Offers and accompanying documentation, upon receipt by the Seller, will become the property of and will be retained by the Seller.

2.23 Proposal Rejection

The Seller may reject the lowest cost Proposal, or any or all Proposals or any part of a Proposal.

2.24 Interested Buyer Debriefing

There shall be no interested buyer debrief.

3.0 Proposal Evaluation

3.1 Evaluation Sequence and Process

3.1.1 Evaluation Process

The Seller will evaluate Proposals in the sequence identified below.

During the evaluation process, at the request of the Seller, interested buyers must be prepared (i.e. required) to provide additional information to clarify statements made in their Proposals.

Unless otherwise set out in the EOI, each Proposal shall be evaluated separately against the EOI's requirements.

3.1.2 Evaluation Sequence

(a) Mandatory EOI Requirements

Interested buyers must provide sufficient detail in their Proposal to substantiate compliance with the EOI's mandatory requirements. In addition, Interested buyers must provide cross references to any parts of the Proposal that contain information that they wish to be considered in the evaluation of any given requirement.

(b) Rated Criteria

The Evaluation Team will further evaluate Proposals against the evaluation criteria in the EOI.

Subject to any applicable legislation (e.g. PIPA or FOIP), such ratings shall be confidential, and no totals or scores of such ratings shall be released to any party.

(c) Shortlisting

A shortlist of interested buyers may be established. Shortlisted interested buyers may be requested to make formal presentations regarding their Proposal to the Seller. Key interested buyer management and technical personnel will be expected to participate in presentations. These presentations will be made at no cost to the Seller.

3.1.3 Acceptance of Proposal

No act of the Seller other than a notice in writing signed by one or more of the Seller's (i) President, (ii) Vice President, or (iii) director, shall constitute an acceptance of a Proposal. Such acceptance shall bind the successful interested buyer to execute the Contract in the manner required by the EOI or, in the absence of same, a manner satisfactory to the Seller's legal counsel.

3.2 Intentionally deleted

4.0 Contract

By submitting a Proposal, the interested buyer is deemed to agree that:

1. the Proposal is submitted in response to the respective EOI, including any addenda, appendices, exhibits and schedules;
2. all of the terms and conditions of the EOI (inclusive of these administrative terms) govern the EOI;
3. Except where permitted in the EOI or these EOI Administrative Terms and Conditions, any provisions in the Interested buyer Proposal inconsistent with these EOI Administrative Terms and Conditions or the EOI will be as if not written and do not exist;
4. they have carefully read and examined the EOI, including the administrative section(s), and have conducted such other investigations as were prudent and reasonable in preparing their Proposal;
5. the Interested buyer, its employees, subcontractors and agents agree to be bound by statements and representations made in the Proposal; and,
6. notwithstanding any provision in an interested buyer's Proposal to the contrary, the Contract to be entered into shall contain the terms and conditions mandatory in the EOI and, where included and deemed mandatory in the EOI, shall be in the form of Contract contained within or appended to the EOI.

4.1 Contract Finalization

If, in the opinion of the Seller, it appears that a Contract may not be finalized with the selected interested buyer within ten business (10) days following the successful Interested buyer selection, the Seller may contract with other interested buyers submitting responsive Proposals and seek damages from the selected interested buyer.

4.2 Order of Precedence

Subject to EOI terms, and despite any provision in an interested buyer's Proposal to the contrary, the EOI and the Proposal shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the EOI, the Proposal, and the Contract, including in each respect the documents and amendments thereto, shall take precedence and govern in the following order:

- (a) the main body of the Contract;
- (b) the EOI; and then
- (c) the Proposal.

4.3 Contractual Warranties

Notwithstanding any provision in an interested buyer's Proposal to the contrary, claims made in the Proposal shall constitute contractual warranties. For reference purposes, any provisions in the Proposal may be included in the main body of the Contract. However, to the extent the parties do not include a Proposal provision directly into the Contract, the provision shall still remain a contractual warranty on the part of the Interested buyer for no less than the period of the Contract and any Warranty Period following.

4.4 Standards of Care

The Interested buyer shall perform their duties with reasonable skill, care and diligence and in accordance with the standard of care practiced by leading national and international media companies selling billboard advertising.

4.5 Consortium Proposals

In the case of Consortium Proposals the Prime Interested buyer is responsible for all acts, omissions, errors and performance under the Proposal and (if awarded) the Contract.

4.6 Proposals with Subcontractors

In the case of a Proposal providing a service being wholly or in part provided by subcontractors, agents or partners, the Interested buyer is responsible for all acts, omissions, errors and performance under the Proposal (and if awarded) the Contract.

4.7 Duty

Unless otherwise permitted in the EOI and clearly demarked in the interested buyer Proposal, the Seller will not be responsible for any customs, work permit, work visa, or duty charges; these charges shall be the sole responsibility of the Interested buyer. For greater certainty, all customs, duty, work permit, work visa and similar charges shall be deemed included in all pricing.

4.8 Gifts and Donations

Interested buyers, inclusive of their subcontractors, partners and agents, will not offer entertainment, gifts, gratuities, discounts, or special services, regardless of value, to any employee, agent or contractor of the Seller having input in respect of the subject EOI.

5.0 Intentionally deleted

6.0 Law

The law applicable to this EOI shall be the law in effect in the Province of Alberta. No action in respect to this EOI shall be brought or maintained in any court other than in a court (or where permitted in the EOI, before an arbiter) of the appropriate jurisdiction of the Province of Alberta.

6.1 Acts and Regulation

The Interested buyer shall comply with all requirements of those federal, provincial, municipal or other government bodies, agencies, tribunals or authorities having jurisdiction and lawfully empowered in the applicable jurisdiction to make and impose laws, by-laws, rules, orders or regulations with respect to the interested buyer's obligations hereunder.

6.2 Permits, Licenses, and Taxes

Except where otherwise stated in the EOI, the successful interested buyer shall obtain and pay for all permits and licenses together with any taxes required either by the Province of Alberta or any other authority authorized to enable the interested buyer to do all things necessary to perform the Contract according to the provisions in the Contract. The successful interested buyer shall provide proof of all required permits and licenses promptly upon request by the Seller.

7.0 Payment

The Seller's policies as well as applicable Federal and Provincial law govern method of payment. Unless otherwise specified in the EOI, payment will only be made in Canadian funds.

8.0 Intentionally Deleted

9.0 Time is of the Essence

Time is of the essence for this EOI.

Appendix "A" to the Seller's EOI Administrative Terms and Conditions

These additional CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("CNDA") terms are made effective upon the submission by an interested buyer of an Expression of Interest.

The parties to this CNDA are the Seller and the interested buyer.

WHEREAS:

- A. The interested buyer is contemplating providing a Proposal to an EOI issued by the Seller;
- B. The EOI is governed, *inter alia*, by the EOI Administrative Terms and Conditions;
- C. The interested buyer will receive confidential, proprietary information from the seller; and
- D. A requirement of the EOI is that the Parties enter into an additional Confidentiality and Non-Disclosure Agreement (in addition to the requirements set out in the EOI Administrative Terms and Conditions) in order to protect the disclosure of this additional information by the Seller to the interested buyer.

NOW THEREFORE, in consideration of the mutual premises and the covenants and agreements set forth in this CNDA and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1- DEFINITIONS AND INTERPRETATION

1.01 Definitions

In this CNDA, unless the context otherwise requires:

- (a) "**CNDA**" means this Confidentiality and Non-Disclosure Agreement, the recitals and all schedules attached to and forming part of this CNDA, as supplemented or amended from time to time;

- (b) "**Disclosing Party**" means the Seller;
- (c) "**Parties**" means the parties to this CNDA and "**Party**" means any one of them;
- (d) "**Person**" includes an individual, a partnership, a corporation, a company, a trust, an unincorporated association, the government of any country or political subdivision thereof and any agency or division of such government, and any other entity or association;
- (e) "**Receiving Party**" means the interested buyer;
- (f) "**Representatives**" means each Party's directors, officers, employees, affiliates, subcontractors, agents, consultants and advisors; and
- (g) "**EOI Terms**" includes the additional terms and conditions associated with the EOI that is referencing these EOI Administrative Terms and Conditions and, to the extent there is no conflict, shall be deemed to include the terms and conditions contained herein.

1.02 Interpretation

For all purposes of this CNDA, except as otherwise expressly provided or unless the context otherwise requires:

- (a) all references in this CNDA to designated sections, paragraphs or other subdivisions are to the designated sections, paragraphs or other subdivisions of this CNDA;
- (b) within the CNDA the words "herein," "hereof" and "hereunder" and other words of similar import refer to this CNDA as a whole and not to any particular section, paragraph or other subdivision;
- (c) the headings used herein are for convenience only and do not form a part of this CNDA, nor are they intended to interpret, define or limit the scope, extent or intent of this CNDA or any of its provisions;
- (d) the word "including," when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to any entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity; and
- (f) words importing gender include all genders and words importing the singular include the plural and vice versa.

ARTICLE 2- CONFIDENTIAL INFORMATION

2.01 Confidential Information

"**Confidential Information**" means, subject to section 2.02 below, in respect of an EOI all information provided to the Receiving Party and any additional information requested by the interested buyer and provided by the Seller pursuant to section 2.3.2 of the EOI Administrative Terms and Conditions.

2.02 Not Confidential Information

The following shall not, for the purposes of this CNDA, constitute Confidential Information:

- (a) information relating to the Disclosing Party that is obtained or was previously obtained by the Receiving Party from a third Person who, insofar as is known to the Receiving Party after reasonable inquiry, is not obligated to keep such information confidential;
- (b) information already known to the Receiving Party at the time of disclosure, as shown by prior written evidence or other evidence satisfactory to the Disclosing Party;

- (c) information that is or becomes generally available to the public other than as a result of disclosure by the Receiving Party's violation of this CNDA; and
- (d) information that the Disclosing Party authorizes the Receiving Party to disclose.

2.03 Kept in Confidence

The Receiving Party agrees to use the same degree of care to prevent disclosure of the Confidential Information received by it as the Receiving Party uses to prevent disclosure of its own confidential information, but in no case less than a reasonable degree of care. In addition, except as set forth in section 2.06, without the prior written consent of the Disclosing Party, neither the Receiving Party nor its Representatives will disclose to any other Person the fact that Confidential Information has been made available to the Receiving Party by the Disclosing Party, or any of the terms, conditions or other facts relating to the EOI Terms or the Parties' business relationship.

2.04 No Benefit, Restricted Use

The Receiving Party shall not, in any manner, derive any benefit, directly or indirectly, from the Confidential Information or the use of such Confidential Information, for any purpose other than to evaluate the opportunity provided by the EOI. The Receiving Party agrees not to appropriate for his or her own use or exploit in any way whatsoever any of the Confidential Information disclosed to it by the Disclosing Party.

2.05 No Disclosure

Except as set forth in section 2.06, the Receiving Party shall not disclose any of the Confidential Information or other facts directly related to the Confidential Information to any Person other than its Representatives who have a need to know such Confidential Information and who have been informed of the confidential nature of the Confidential Information. The Receiving Party will also ensure that its Representatives comply with the terms of this CNDA.

2.06 Disclosure Required by Law

The Receiving Party will not disclose to any Person the Confidential Information or other facts directly related to the Confidential Information unless, in the reasonable opinion of the Receiving Party's legal counsel, disclosure is required by legal process or regulatory demands, in which event the Receiving Party will, prior to such disclosure, promptly provide the Disclosing Party with written notice of the intended disclosure so that the Disclosing Party may seek a protective order or other appropriate protection.

2.07 Return of Confidential Information

Upon the Disclosing Party's written request, the Receiving Party shall promptly return to the Disclosing Party all Confidential Information in its possession or control, and promptly destroy or erase all notes, memoranda and other material prepared by the Receiving Party which reflect, interpret, evaluate, include or are derived from any Confidential Information and the Receiving Party shall certify such destruction in writing to the Disclosing Party.

2.08 Responsibility for Others

The Receiving Party agrees that it shall be responsible for any breach of this CNDA by any of its Representatives.

ARTICLE 3 - GENERAL PROVISIONS

3.01 Remedies

The Receiving Party acknowledges and agrees that it has entered into this CNDA on the understanding that any breach hereof by it will cause the Disclosing Party irreparable harm and expressly agrees that, in addition to all other remedies that the Disclosing Party may be entitled to as a matter of law, the Disclosing Party shall be entitled to specific performance and any form of equitable relief to enforce the provisions of this CNDA.

3.02 Continuing Obligations Regarding Confidentiality

The obligations of confidentiality contained herein shall survive the expiration or termination of the EOI Terms.

3.03 Notices

All disclosures, notices or other documents required or permitted to be given pursuant to this CNDA shall be in writing and delivered by hand or courier service or by fax to the address

(a) of the Receiving Party to the address provided by the interested buyer with its Expression of Interest.

(b) The Seller's address shall be as provided in the EOI Administrative Terms and Conditions

3.04 Entire Agreement

This CNDA, in respect of additional information provided pursuant to s. 2.3.2 of the EOI Administrative Terms and Conditions, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes the EOI terms, all previous discussions, understandings and negotiations and it is agreed between the parties that there are no oral statements, representations, warranties, undertakings or agreements between the Parties modifying the provisions of this CNDA.

3.05 Amendments

This CNDA shall not be amended except if in writing and signed by the Parties.

3.06 Offer and Acceptance

This CNDA shall be deemed offered upon a request by the Receiving Party by submitting its Expression of Interest and shall be deemed accepted upon the Seller providing the Work Sheets. No physical execution of this CNDA is required or expected.

3.07 Provisions Severable

If any provision of this CNDA is held to be invalid, unenforceable or illegal, such provision shall be deemed to be independent and severable from the remaining provisions of this CNDA, and the remaining provisions of this CNDA shall not be affected and shall be valid and enforceable to the full extent permitted by law.

3.08 Binding Nature of Agreement

This CNDA shall enure to the benefit of and shall be binding upon the Parties hereto together with their respective heirs, legal personal representatives, successors and permitted assigns. No Party hereto shall assign in whole or in part its rights or obligations under this CNDA without the express written consent of the other Party.

3.09 Governing Law

This CNDA shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Alberta. The Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this CNDA, or any of the transactions contemplated herein.

3.10 No Implied Waiver

The failure by any Party at any time to require performance by the other Party of any provision of this CNDA shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of any breach of any provision of this CNDA constitute a waiver of any succeeding breach of the same or any other provision.