

**[LETTERHEAD OF SELLER]**

**[date]**

**CONFIDENTIAL**

**[Name/Address of Potential Purchaser]**

Dear Sirs/Mesdames:

In order to assist **[Purchaser]** (the **Company**) in evaluating a possible purchase transaction involving **[Target]** (the **Target**) (the **Potential Transaction**) with **[Seller]** (the **Seller**), the Seller agrees to provide certain information, some of which is of a confidential or proprietary nature, to the Company on the terms set out in this letter agreement.

- 1     **Certain Definitions. Confidential Information means** (a) all information (whether in written, electronic or other form and whether or not identified as confidential at the time of disclosure) relating to the Seller or the Target or their businesses, operations or assets given to the Company or any of its Representatives, and (b) all analyses, compilations, studies, forecasts or other documents or materials prepared in connection therewith which contain or are based upon, in whole or in part, any such information.

**Excluded Information** means Confidential Information which **[the Company clearly demonstrates]**:

- (a)     was public prior to its receipt;
- (b)     is public through no fault of the Company or its Representatives;
- (c)     was available and non-confidential prior to the Seller or the Target revealing it to the Company or its Representatives; or
- (d)     was received in good faith from a third party who legally held and transmitted it without breaching an obligation of confidentiality.

**Representative** means any director, officer, employee, agent or other representative of one party or the other, including lawyers, accountants, consultants and financial advisors.

- 2     **Information Non-Disclosure.** The Company shall keep the Confidential Information confidential and shall not, without the Seller's prior written consent, (a) make any public comment, statement or communication or otherwise disclose to any person in any manner whatsoever, in whole or in part, the Confidential Information, or (b) use, directly or indirectly, the Confidential Information other than for the purposes of evaluating and

implementing a Potential Transaction. The non-disclosure obligations set out above do not apply to Excluded Information.

- 3 **Transaction Non-Disclosure.** The Company shall not disclose to any Person:
  - (a) that it has received Confidential Information;
  - (b) that it has entered into this letter agreement; or
  - (c) that it is interested in or is negotiating a Potential Transaction.
- 4 **Property of Disclosing Parties.** The Confidential Information is and will, at all times, remain the property of the Seller or the Target, as the case may be, and the Seller and the Target may, at any time and from time to time, disclose the Information to other persons in connection with other possible transactions or for any other purpose.
- 5 **No Representations or Warranties.** [Although the Seller and the Target will use all reasonable efforts to include materials which are believed by them to be reliable and relevant], neither the Seller, the Target, nor any of their Representatives makes any representation or warranty as to the accuracy or completeness of the Confidential Information or any other matter except as may be set out in a definitive agreement, if any, which may be entered into by the parties in connection with a Potential Transaction. Otherwise, the Seller, the Target and their Representatives have no liability to you or any other person for or in connection with any use of the Confidential Information.
- 6 **Return of Information.** Upon request by the Seller, the Company shall promptly deliver to the Seller or destroy or delete (at its option), all documents and materials constituting or containing Confidential Information and neither the Company nor any of its Representatives shall retain copies of any such documents or material [except that the Company may retain an electronic record solely for the purpose of backup, recovery, contingency planning or business continuity planning provided same is not accessible in the ordinary course of business].
- 7 **Compelled Disclosure.** If the Company or any of its Representatives is required by law to disclose Confidential Information or the existence of a Potential Transaction, the Company shall give the Seller prompt notice so that the Seller or the Target may seek a protective order or other appropriate remedy. The Company shall also exercise its best efforts to obtain written assurances that confidential treatment will be accorded to the Confidential Information and the details of the Potential Transaction.
- 8 **No Contact.** The Company agrees not to contact employees of the Seller or the Target with respect to any aspect of its interest in a Potential Transaction or have any discussions or communications of any kind with any creditors, customers, shareholders or suppliers of the Seller or the Target without the Seller's prior written consent.
- 9 **Remedies.** The Company acknowledges that damages would not be an adequate remedy and that the Seller and the Target would be irreparably harmed if any of the provisions of this letter agreement are not performed strictly in accordance with their specific terms or are otherwise breached. Accordingly, you agree that each of the Seller and the Target is entitled, individually or together, 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.

- 10 **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 signed.
- 11 **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.
- 12 **Termination.** This letter agreement will terminate on **[5 years from date of letter]**, without prejudice to the rights of the parties to claim for any loss or damage incurred prior to its termination.
- 13 **Governing Law.** This letter agreement is governed by and interpreted and enforced in accordance with the laws of the Province of **[Ontario]** and the laws of Canada applicable therein, without regard to conflict of law provisions. The parties attorn and submit to the non-exclusive jurisdiction of the courts of **[Ontario]**.

If you are in agreement with the foregoing, please confirm same by signing and returning a copy of this letter agreement to the Seller. A signed copy of this letter agreement may be transmitted by facsimile or other electronic means and the transmission of a signature by such means constitutes effective delivery.

Yours very truly,

**[NAME OF SELLER]**

By: \_\_\_\_\_  
Authorized Signing Officer

**ACCEPTED AND AGREED TO AS OF THE  
DATE SET FORTH ABOVE.**

**[NAME OF PURCHASER]**

By: \_\_\_\_\_  
Authorized Signing Officer