CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** effective as of the \_\_\_ day of October, 2018.

**BETWEEN:**

**[CORPORATE LEGAL NAME],**

a corporation with an office in the City of Calgary,

in the Province of Alberta, Canada

(the “**Discloser**”)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,**

**as represented by the Minister of Transportation**

(the “**Province**”)

**WHEREAS** in pursuit of the Purpose (defined below) certain Confidential Information (defined below) will necessarily be exchanged between the Province and the Discloser;

**NOW THEREFORE** in consideration of the exchange of Confidential Information between the Parties (defined below) as contemplated in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

In this Agreement:

* 1. "**Affiliate**" and "**Affiliates**" means with respect to the Discloser any entity controlled, directly or indirectly, by the Discloser; any entity that controls, directly or indirectly, the Discloser or any entity, directly or indirectly, under common control with the Discloser.
  2. "**Agreement**" means this Confidentiality Agreement.
  3. "**Confidential Information**" means the information disclosed to the Province by the Discloser by electronic means (as further detailed in Section 1 of Schedule “A” hereto) showing the Discloser's entire infrastructure, facility, and utility route map within the Province of Alberta, which information includes those items identified in Section 2 of Schedule “A” as agreed to by the Parties.
  4. "**Parties**" means the parties to this Agreement, their successors and permitted assigns and "**Party**" means any one of them.
  5. "**Person**" means any natural or legal person, including a corporation, trust or partnership.
  6. "**Purpose**" means the utilization of the Confidential Information to assist the Province with project planning, scoping and design, including early engagement of utility companies, utility relocation coordination, and preparation of tender documents, written reports, designs, drawings and plans.
  7. "**Representatives**" means a Party's employees, consultants, advisors, agents, directors and shareholders and the employees, consultants, advisors, agents, directors and shareholders of its Affiliates.
  8. "**Third Party**" means any Person not a party to this Agreement, but specifically excludes the Representatives, as the case may be.

1. **UNDERTAKINGS**
   1. the Province undertakes that:
      1. unless it has received the prior written consent of the Discloser or as permitted by (b) below, it will hold all Confidential Information in confidence, will not disclose any Confidential Information to any Third Party, will not use any Confidential Information for any purpose other than the Purpose and will take all necessary and appropriate steps to safeguard the Confidential Information from disclosure;
      2. any Confidential Information shall only be disclosed to those of the Province's Representatives who need to know such information for the Purpose, and who have been advised that the Confidential Information is to be kept confidential in accordance with the terms of this Agreement; and
      3. the Province will take necessary steps to keep the Confidential Information confidential and to limit access to the Confidential Information by its Representatives.
   2. the Discloser undertakes to:
      1. deliver to the Province, no earlier than June 1st and no later than June 30th each year during the Term, a then current version of the Confidential Information.
2. **NON-APPLICATION**
   1. The undertakings of the Province in Section 2.0 shall not apply to any Confidential Information which:
      1. is or becomes publicly available other than as a result of a violation of this Agreement;
      2. after disclosure is published or otherwise becomes part of the public domain through no fault of the Province, its Representatives, or any Third Party under any obligation of confidentiality to the Discloser (but only after it is published or becomes part of the public domain);
      3. was at the time of disclosure, already in the Province’s possession without violating any of the Province’s obligations under this Agreement or any other agreement the Province may have with any person;
      4. has been independently acquired (including from Alberta One Call or a similar or entity) or developed by the Province without violating any of the Province's obligations under this Agreement or any other agreement the Province may have with any person;
      5. the Province can demonstrate was received by it from a Third Party who did not acquire it directly or indirectly from the Discloser under an existing obligation of confidence, after the Discloser provided disclosure; or
      6. the Province is required by law to disclose.
   2. The Province acknowledges that Confidential Information disclosed to it shall not be deemed to be within the exceptions mentioned in Section 3.0 merely because such information is embraced by more general information in the public domain.
   3. If the Province becomes legally obliged to disclose any Confidential Information, the Province will provide the Discloser with prompt notice of that obligation. Further, the Province will exercise all reasonable efforts to use any available procedures to ensure that the Confidential Information so disclosed is held in confidence.
3. **NO REPRESENTATIONS**
   1. The Discloser makes no representations or warranties in relation to any of the Confidential Information, its adequacy, or suitability for the Purpose, and except as expressly agreed in writing shall not be liable for any loss or damage arising from the use of any Confidential Information howsoever caused. It is the responsibility of the Province and its Representatives to confirm the accuracy of the Confidential Information when used for the Purpose.
4. **REMEDIES**
   1. The Parties acknowledge that unauthorized disclosure or use of Confidential Information would cause irreparable harm and significant injury to the Discloser and its Affiliates and as such, money damages may not be a sufficient remedy for any breach of this Agreement. Accordingly, the Parties agree that the Discloser will have the right to seek and obtain any remedies it deems appropriate.
   2. The Parties acknowledge the competitive value to the Discloser of the Confidential Information. Accordingly, without limitation and in addition to any rights of the Discloser against the Province arising by reason of any breach of this Agreement by the Province or its Representatives (including the rights in subparagraph 5.1), the Province shall, in respect of each such breach:
      1. be liable to the Discloser for all direct losses, costs, damages (including legal fees on a solicitor/client basis) and expenses whatsoever which the Discloser may suffer, sustain, pay or incur; and
      2. indemnify the Discloser against all actions, proceedings, claims, demands, losses, costs, damages (including legal fees on a solicitor/client basis) and expenses whatsoever which may be brought against the Discloser or which the Discloser may suffer, sustain, pay or incur.

Note: Proceedings Against the Crown Act forbids courts from granting Injunction or Specific Performance against the Crown.

1. **VICARIOUS LIABILITY**
   1. The Province shall be liable for any use or disclosure of Confidential Information of the Discloser by the Province’s Representatives which is not in compliance with the obligations imposed upon the Province under this Agreement.
2. **TERM**
   1. The obligations of the Parties hereunder shall continue for a period of five (5)years from the date hereof, at which time this Agreement shall terminate and be at an end.
3. **RETENTION AND USE OF CONFIDENTIAL INFORMATION**
   1. All Confidential Information disclosed by the Discloser to the Province pursuant to this Agreement is and shall remain the property of the Discloser.
   2. Notwithstanding anything to the contrary in this Section 8.0, the Parties acknowledge and agree that the Province may utilize the Confidential Information to insert or recreate such Confidential Information in the preparation of planning, scoping and design documents, including tender documents, designs, drawings and other similar written reports on a project-specific basis project, and such documents may be reproduced, retained, and disclosed to the extent they are deemed to be public documents. Extracted features or derivative works or derivative products shall become and will remain indefinitely the property of the Province and may be used in any manner. However, the Province will at no time reproduce or disclose the entirely of the Confidential Information, including the Discloser’s entire infrastructure map, to any Third Party without the express written consent of the Discloser.
   3. Additionally, the Parties acknowledge and agree that the Province's computer system may automatically retain back-up copies of Confidential Information disclosed to the Province under this Agreement. To the extent that such computer back-up procedures create copies of the Confidential Information, the Province may retain such copies in its archival or back-up computer storage for the period the Province normally archives backed-up computer records, and these computer copies are subject to the provisions of this Agreement until they are destroyed, deleted or erased.
4. **RELATIONSHIP**
   1. Neither Party acquires any intellectual property rights under this Agreement. This Agreement does not create any agency, partnership or joint venture relationship between the Province and the Discloser.
5. **ENTIRE AGREEMENT**
   1. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement. No amendments, changes, or modifications to this Agreement shall be valid unless the same are in writing and signed by each Party.
6. **ASSIGNMENT**
   1. Either Party may assign or transfer this Agreement or any part of it with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, and the Discloser may assign or transfer this Agreement or any part of it to an Affiliate without the consent of the Province upon written notice to the Province, provided that the Discloser shall continue to be bound by the terms of this Agreement.
7. **NOTICES**
   1. Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including fax transmission or e-mail, to the following respective addresses:

To the Discloser:

\_\_\_\_\_\_\_\_\_\_\_\_

Calgary, Alberta

Attention:

Telephone:

Email:

With a carbon copy to:

Attention: Legal Services

Email:

To the Province:

Government of Alberta

Department of Transportation

401 Provincial Building, 4320 – 51 Street

Red Deer, Alberta T4N 6K8

Attention: Gershon Richter, Utility Engineer, Project Management Office

Telephone: (403) 340-4317

Email: [Gershon Richter@gov.ab.ca](mailto:Gershon%20Richter@gov.ab.ca)

1. **ENUREMENT**
   1. This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Parties.
2. **APPLICABLE LAW**
   1. This Agreement is governed by and to be construed according to the laws of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta agreement. Furthermore, conflict of laws principles or rules that would impose the laws of any jurisdiction other than the laws of Alberta, or Canada where applicable, on the construction of this Agreement shall be excluded. The parties herein agree to the exclusive jurisdiction of the Alberta courts and courts of appeal with respect to any matter arising under this Agreement. The parties herein further agree that a judgment, after exhaustion of all available appeals, in any action or proceeding under this Agreement, is conclusive and binding upon both parties and may be enforced in any other jurisdiction by a suit upon that judgment, a certified copy of which is conclusive evidence of the judgment.
3. **FAX AND ELECTRONIC COUNTERPARTS**
   1. This Agreement may be executed by the parties and delivered by fax or other electronic means and in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF** this Agreement has been signed and delivered by the duly authorized officers of the Parties effective on the day and year first above written.

## [CORPORATE LEGAL NAME] HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,

## as represented by the Minister of Transportation

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Title:

**Schedule “A”**

**GIS DATA REQUIREMENTS**

1. **DATA FORMAT**
   1. File names should include both the utility company name and the date.

All data should be sent with projections assigned. Alberta Transportation uses **NAD 1983 10TM AEP Resource**. This is available in ArcMap under Projected Coordinate Systems -> National Grids -> Canada.

**NOTE**: a similarly named coordinate system used by Alberta Environment and Parks (NAD 1983 10TM AEP Forest) is not identical and will not work for Alberta Transportation.

* 1. The preferred format for data is **geodatabase (.gdb) and layer packages (.lpk)** rather than shapefiles (.shp). A shapefile contains references to the data, and may also have sidecar files that contain data relevant to the shapefile. Depending on how the data is arranged sending a shapefile may not include all the required data. A layer package can contain multiple shapefiles along with all referenced and sidecar data in a single compressed file that ensures the end user can access the information.

1. **ATTRIBUTE DATA**
   1. Preferably, the data should include the following information:

|  |  |
| --- | --- |
| **Attribute Name** | **Explanation** |
| Owner | The company that owns this utility. |
| Operator | The company that operates this utility, if applies. |
| Contact | The company to contact for utility moves/issues. |
| Position | Overhead or Underground |
| UtilityClass | Power, Telecommunications, or Pipeline |
| UtilityType | Specific type – pole, well, transmission/distribution line, etc. |
| OpStatus | Operating, abandoned, discontinued, planned |
| Comment | Attribute for storing any other relevant data that does not fit other columns. |
| OpPressure | Operating Pressure – Low vs High |

* 1. If a specific attribute type does not apply to your utility, please keep an attribute column of that name but leave values null.