

[LETTERHEAD OF SELLER OR TARGET]

[Date]

CONFIDENTIAL

[Name/Address of Prospective Purchaser]

Dear Sirs/Mesdames:

You have asked **[NAME OF SELLER]** (the **Seller**) and **[NAME OF TARGET]** (**[together with its subsidiaries,] the Corporation**) to provide you with certain operational, financial and other information relating to the Seller and the Corporation, 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 **[or strategic alliance]** between us (a **Potential Transaction**).

It is in the interest of both the Seller and the Corporation (collectively, the **Disclosing Parties**) that certain confidential information be made available to you for purposes of evaluating and implementing a Potential Transaction (the **Permitted Purpose**). Therefore, subject to the terms and conditions of this letter agreement, and to the extent the Disclosing Parties consider advisable in the circumstances, each of the Disclosing Parties 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 Disclosing Parties or their respective businesses, operations or 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 and all analyses, compilations, studies, forecasts or other documents or materials prepared in connection therewith is referred to in this letter agreement as the **Information**. In addition, for purposes of this letter agreement, (i) **[Financial Intermediaries means (a) rating agencies and services; and (b) potential co-investors, hedge counterparties, re-insurers, financial intermediaries and liquidity or credit providers, (ii)] 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 (iii) "person" shall be broadly interpreted to include, without limitation, any individual, corporation, group, partnership, trust, governmental or regulatory authority or other entity.

As a condition to the Disclosing Parties agreeing to provide you and your Representatives with Information, you agree as follows:

- 1 **Information Requests.** **[Any requests for Information or other communications respecting a Potential Transaction and any questions regarding process, procedures or other matters must be submitted in writing to [●], [title] of [●], [address] [facsimile] [e-mail] (or such other person as [he][she] designates) (the Contact).]**

- 2 **No Other Contact.** You shall not, and shall direct your Representatives not to, contact any director, officer, employee, agent, customer or supplier of the Seller or the Corporation (other than the Contact) with respect to a Potential Transaction, the Information or any other matter contemplated in this letter agreement.
- 3 **[Personal Information. We will not disclose Information about identifiable individuals (Personal Information) unless (a) you specifically request such Personal Information, (b) such Personal Information is to be used for Permitted Purposes only, and (c) you have signed a personal information protection agreement in form and substance satisfactory to us.]**
- 4 **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 (i) that Information is being made available to you and your Representatives, (ii) that discussions or negotiations are taking place concerning a Potential Transaction, or (iii) any of the terms, conditions or other facts relating to a Potential Transaction, including the status of this letter agreement.
- 5 **Information Non-Disclosure.** You may give the Information only to those of your Representatives who need to know the Information for a Permitted Purpose. The Information is to be kept strictly confidential and you shall not, and shall direct your Representatives not to, (i) make any public comment, statement or communication or otherwise disclose to any person in any manner whatsoever, in whole or in part, the Information, or (ii) use, directly or indirectly, the Information for other than a Permitted Purpose. You shall inform each of your Representatives[, **in writing,**] of the confidential nature of the Information and each of them shall agree[, **in writing,**] to treat the Information as confidential in accordance with this letter agreement. You are responsible for any breach of this letter agreement by your Representatives and you shall take all reasonable, necessary and appropriate steps to safeguard the Information from disclosure to any person other than as permitted in this letter agreement.
- 6 **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 Seller [**in writing**]. In such case, or if for any reason the Seller so requests, you shall promptly deliver to the Seller 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. You shall also confirm the delivery, destruction or deletion of the Information by providing the Seller with a certificate of one of your senior officers certifying same.
- 7 **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 may 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. [**In addition, you and your Representatives may retain (and are not required to return or destroy) one copy of any materials prepared by you or your Representatives that are based on, contain, or reflect any Information (Notes)**]

to be used only for evidentiary purposes in the event of litigation or other legal disputes regarding a Potential Transaction. The Notes must be kept in a secure location under the supervision of your legal department or the legal department of your applicable Representative, as the case may be.]

- 8 **Exceptions.** The obligations imposed on you in this letter agreement do not apply to any Information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives, or (ii) was known or becomes available to you on a non-confidential basis from a source other than a Disclosing Party or its Representatives, provided that such source was not **[to your knowledge]** (x) bound by a confidentiality agreement, or (y) otherwise prohibited from giving the Information to you on a non-confidential basis.
- 9 **Property of Disclosing Parties.** The Information is and will, at all times, remain the property of the Seller or the Corporation, as the case may be, and the Seller and the Corporation 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.
- 10 **No Representations or Warranties.** **[Although the Disclosing Parties will use all reasonable efforts to include materials which are believed by them to be reliable and relevant]**, neither the Seller, the Corporation, nor any of their Representatives makes any representation or warranty as to the accuracy or completeness of the Information or any other matter except as may be set out in a definitive agreement, if any, which may be entered into by you and the Seller in connection with a Potential Transaction. Otherwise, the Seller, the Corporation and their Representatives have no liability to you or any other person for, or in connection with, your use of the Information.
- 11 **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 Seller prompt notice so that it can seek a protective order or other appropriate remedy. In addition, you shall cooperate with the Seller **[on a reasonable basis]** in its efforts to obtain a protective order or other remedy. If no protective order or other remedy is obtained and disclosure is required, you and your Representatives shall provide only that portion of the transaction details or Information which is legally required**[, as determined by legal counsel to the Purchaser, acting reasonably]** and you shall use your best efforts to obtain written assurances that the Information and the details of the transaction will be treated confidentially.
- 12 **[Non-Solicitation of Employees.** For a period of **[three years]** from this date, you shall not, directly or indirectly, solicit for employment or contract for the services of any person who is now employed **[in a senior management position]** by the Seller or the Corporation; provided, however, that this Section 12 does not apply where (i) a person responds to an advertisement published in a newspaper, magazine, trade or other publication, or (ii) a person is put forward by a recruitment agency that was not directed to solicit that person or any other employee[s] of the Seller or the Corporation.]

- 13 **[Non-Solicitation of Customers.** For a period of [three years] from this date, you shall not, directly or indirectly, contact or solicit any customers, clients or suppliers of the Seller or the Corporation or any persons with whom the Seller or the Corporation, as the case may be, has a contractual relationship; provided that this restriction does not apply to responses by you to requests in writing for proposals or to customer recruitment campaigns conducted in the ordinary course of business.]
- 14 **Remedies.** You acknowledge that damages would not be an adequate remedy and that the Disclosing Parties 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 each of the Disclosing Parties 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.
- 15 **No Waiver.** No failure or delay by a Disclosing Party 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 signed.
- 17 **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 **[five years]** from this date.
- 18 **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 facsimile transmission **[or email]** addressed: (i) to the Disclosing Parties at: **[insert address, facsimile and e-mail, if applicable]**, with a copy to their counsel, **[name of counsel]** at **[insert address]**, or (ii) to you at: **[insert address, facsimile and e-mail, if applicable]** with a copy to your counsel, **[name of counsel]** at **[insert address]**.
- 19 **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.
- 20 **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.

21 **Governing Law.** This letter agreement is governed by and interpreted, construed and enforced in accordance with the laws of the Province of **[Ontario]** and the federal laws of Canada applicable therein, without regard to conflict of laws principles. Each of the parties irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of the Province of **[Ontario]**.

22 **[Language. The parties acknowledge that they have requested and are satisfied that this letter agreement and all related documents be drawn up in the English language only. Les parties aux présentes reconnaissent avoir requis que la présente entente et les documents qui s’y rapportent soient rédigés en langue anglais seulement et elles s’en déclarent satisfaites.]**

If you are in agreement with the foregoing, please confirm your agreement by signing and returning one copy of this letter to the Seller. 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,

[NAME OF SELLER]

By: _____
Authorized Signing Officer

Yours very truly,

[NAME OF CORPORATION]

By: _____
Authorized Signing Officer

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

[NAME OF PURCHASER]

By: _____
Authorized Signing Officer