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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c-36, AS AMENDED AND IN
THE MATTER OF KYOTO FUELS CORPORATION.

DOCUMENT

FIRST REPORT OF ERNST & YOUNG INC. AS CCAA
MONITOR OF KYOTO FUELS CORPORATION

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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INTRODUCTION

1. On April 30, 2014, the Court of Queen's Bench of Alberta ("Court") issued an order ("Initial Order") granting Kyoto Fuels Corporation ("Kyoto" or the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "CCAA Proceedings"). Ernst & Young Inc. ("EY") was appointed monitor ("Monitor") under the Initial Order.
2. The Initial Order was granted upon the application of T&E Ventures Inc. ("T&E"), a secured creditor of Kyoto.
3. The primary purposes of the CCAA Proceedings are to protect Kyoto's business and operations, to allow Kyoto an opportunity to realize value from its biodiesel production facilities and to facilitate a restructuring of its credit facilities or other alternative, all under a court-supervised process.

Purpose of this Report

4. The purpose of this first report ("Report") is to:
 - a) Provide an overview of the operations and status of the Company;
 - b) Summarize the actions taken by the Monitor during the initial stay period;
 - c) Outline potential restructuring options potentially available to the Company; and
 - d) Respectfully recommend that this Honourable Court make an order in respect of the Monitor's application for advice and direction:
 - i. If the T&E Facility Amendment (as defined herein) is approved, granting a sixty day extension to the Stay Period, as defined in the Initial Order and authorizing the Monitor to sign the T&E Facility Amendment on behalf of Kyoto; or
 - ii. Alternatively, giving the Monitor leave to seek its discharge from all duties, responsibilities and obligations in its capacity as Court-appointed Monitor of Kyoto.

Terms of Reference

5. In developing this Report, the Monitor has relied upon unaudited financial information prepared by the Company's management, the Company's books and records and discussions with its management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the information. Future-oriented financial information relied upon in this Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material, and as such the Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

Currency

6. All currency references in this Report are in Canadian dollars.

BACKGROUND

Overview

7. Kyoto is intended to be a commercial producer of biodiesel fuel, a fuel made from feedstocks such as plant oils or animal fats. Kyoto's biodiesel plant is located near Lethbridge Alberta which is the second largest biodiesel plant in Canada, with production capacity of 79 million litres per year.
8. Considerable background and materials were included in the April 30, 2014 affidavit of Myles Hamilton (the "April 30, 2014 Hamilton Affidavit") filed in these CCAA Proceedings which included, *inter alia*, details on:
 - a) The Company's history and operations;
 - b) The capital structure of Kyoto;
 - c) Potential Board of Director impairment and concerns relating to Kyoto's strategic direction; and
 - d) Kyoto's immediate requirement for interim financing.

OPERATIONS

Overview

9. The Kyoto plant is currently not commercially operational. Oversight of the plant is provided by Integrated Industrial Solutions (2011) Inc. ("IIS"). There is a skeleton crew in place undertaking necessary maintenance and safety.
10. Kyoto appointed IIS to oversee completion of construction in May 2013. Initial production of biodiesel occurred in September 2013. IIS is also engaged by Kyoto to operate the plant and to provide accounting and administrative functions.
11. Although the plant is not operational costs are approximately \$280,000 per month to maintain it in its current state. Currently there are nine operational and maintenance personnel on site. The Monitor is undertaking a review of the required personnel levels to ascertain if any reduction in staffing is feasible but this review was not complete at the time of filing this report.
12. The plant is currently not able to produce biodiesel on a commercial basis. The Company estimates that the costs to complete the plant to allow commercial production are approximately \$50,000, including completion of the laboratory, valve testing and servicing and cleaning of certain equipment. Kyoto estimates such work will take 3-6 weeks to complete assuming appropriate additional staff can be retained.

13. The plant is able to use either canola or animal tallow as feedstock. However, the low cloud point (the temperature at which dissolved solids are no longer completely soluble and precipitate as a second phase giving the fluid a cloudy appearance) of tallow-sourced biodiesel makes it unusable as a fuel in cold weather markets and consequently there is no market for it in North America. Canola is useable as a feedstock in North America.
14. The plant also faces more significant longer term disadvantages namely:
 - i. On site storage capacity for biodiesel is approximately equivalent to a day's production (240,000 litres) and delays in trucking the product out could lead to a requirement to reduce or cease production. Kyoto estimates that installation of an additional 300,000 litres of biodiesel storage would cost approximately \$8,000 plus monthly rent of \$6,000 on a temporary basis, or between \$50,000 and \$100,000 to add permanent capacity;
 - ii. There are currently no water or sewer services connecting the plant to the City of Lethbridge. Consequently, water is regularly trucked in and the plant operates with a septic tank. Fully operational, the plant would use 3 to 4 truckloads of water daily. Kyoto estimates that connecting services could cost approximately \$1 million;
 - iii. The site is not currently secured or fenced;
 - iv. There is no direct rail link (Kyoto estimates that a rail spur could cost \$5 million but has prepared no detailed costing) and the existing gravel road is in need of repair. A rail link would reduce transport costs. The Monitor understands several other biodiesel plants in North America have direct rail connections; and
 - v. The Company advises that upgrades to the plant costing approximately \$1 million and taking up to three months to complete would provide increased efficiencies at the plant.
15. Certain chemicals are stored on site (including concentrated sulphuric acid, methoxide and methanol) that require specific storage conditions and ongoing monitoring. The chemicals create a safety and environmental concern; however, personnel on site consistently monitor the storage of these chemicals.
16. Kyoto estimates that the cost to decommission the plant (complete shutdown and removal of chemicals) is between \$200,000 and \$300,000 (including staff costs), would take 3-6 weeks and would require the hiring of additional personnel. The Monitor understands that the decommissioning cost may be mitigated through selling or returning certain chemicals where possible instead of disposing of them. Furthermore, the costs may be offset through the sale of the approximately 130,000 litres of untested biodiesel stored on site.

Economics of the North American Biodiesel market

17. The US and Canadian governments set levels of biodiesel to be used in diesel which accordingly drives the market price for biodiesel in North America.
18. Overproduction in 2013 and a significant reduction in the US governments's requirement for biodiesel use in 2014 has negatively affected both the demand for and price of biodiesel. The US government stimulates the US biodiesel industry by offering government support by way of a

"Blender's Credit" of approximately \$0.26 per litre (\$1.00 per gallon) of biodiesel blended into diesel fuel. The Monitor understands that the US will announce revised requirements for 2014 and 2015, and a determination as to whether the Blender's Credit legislation will be extended, sometime in 2014. Extension of such credit by the US government will result in continued challenges for the Canadian biodiesel industry.

Carbon Credits

19. Carbon credits are generated on sales of biodiesel in Alberta only and are effectively a commodity produced by Kyoto through its normal production. Emitters can purchase these credits at any price they choose on the open market or can purchase credits by payment to the Alberta Government's Climate Change Emissions Management Fund at \$15 per metric tonne. This effectively caps the market price. The Monitor is informed by Alberta Energy that current market pricing is between \$10 and \$14 per metric tonne.
20. At full capacity, the Monitor understands that Kyoto could generate approximately 150,000 to 180,000 metric tonnes of carbon credits annually, translating to a value of up to \$2.52 million.
21. Pursuant to Kyoto's existing loan agreement with CP Energy Marketing LP ("CP"), CP has an option to purchase all of Kyoto's carbon credits at \$3 per metric tonne. CP is also a senior secured lender to Kyoto and can purchase these carbon credits by way of offset against its loan of up to \$540,000 annually. We understand that CP is a significant carbon emitter and these credits can be used to offset its emissions.

Alberta Energy Grant

22. On or about April 1, 2011 Kyoto entered into a grant agreement with Alberta Energy (the "Alberta Energy Grant") whereby Kyoto would receive a production rebate of \$0.13 per litre, up to a maximum of 66 million litres per year, on biodiesel production for five years commencing April 1, 2011 through to March 31, 2016 (the "Alberta Energy Production Credit").
23. Kyoto did not meet the agreed minimum production quantities in the first three years of the Alberta Energy Grant's term (April 1, 2011 to March 31, 2014) as the plant was not operating commercially. Notwithstanding, Alberta Energy has informed the Monitor that it considers the agreement ongoing and will likely provide a required amendment to allow the agreement to run to the original end date of March 31, 2016.
24. The remaining value of the Alberta Energy Grant is estimated to be \$17.16 million (provided the plant commences commercial operations by June 1, 2014 and based on annual production of 66,000,000 litres) to March 31, 2016.

Production and Sale

25. The plant has produced non-commercially and has sold some of this production. There are approximately 130,000 litres currently onsite. This biodiesel can be sold but would require testing prior to any sale to determine the grade of biodiesel and therefore its selling price.
26. Kyoto entered into a written agreement with Elbow River Marketing ("Elbow River") which expires December 31, 2014 to market and sell Kyoto's production. Elbow River's fees are 2% on all sales

(excluding sales within a 150 kilometre radius of the plant where Kyoto can sell without Elbow River's involvement).

27. Kyoto's current production cost (excluding debt servicing and amortization) is \$1.51 per litre based on current US heating oil and canola feedstock prices. The current market price of biodiesel in North America is approximately \$1.18 per litre inclusive of the US blender's credit described above.
28. Kyoto produces glycerin as a by-product of the production of biodiesel which has a market price of approximately \$0.20 per litre.
29. Based on our review and discussions with Kyoto management, the Monitor estimates that in its current state, Kyoto's breakeven production price for biodiesel is approximately \$1.33 per litre calculated as follows:

Table 1: Breakeven Production Price

Production cost per litre excluding amortization and debt servicing	\$1.51
Less - Alberta Production Grant	(\$0.13)
Less - Carbon credit per litre pursuant to the CP agreement	(\$0.03)
Less - sale of glycerin (10% of biodiesel production sold at \$0.20 per litre)	(\$0.02)
Breakeven Production Price	\$1.33

30. Kyoto believes that major customers would pay an "off take" premium to guarantee a stable, quality supply. This premium would enable Kyoto, in conjunction with carbon credits, the Alberta Production grant, sale of glycerin, hedging of canola prices and the introduction of operational efficiencies, to operate profitably. Based on the current North American biodiesel price of approximately \$1.18 per litre a combination of price increases or cost reductions of approximately \$10 million based on Kyoto's production capacity would be required in order for Kyoto to breakeven (excluding any debt servicing or amortization).
31. Kyoto recently bid on a request for proposal ("RFP") from a large energy company seeking biodiesel supply for the second quarter of 2014. Kyoto applied an appropriate "off take" premium to its bid to enable the plant to make a profit on the proposed contract. Although unsuccessful, Kyoto was informed by the consumer that Kyoto's bid of \$1.36 per litre was comparable to other bids, being within \$0.02 per litre of all but one, very low, bid of under \$1.30 (the winning bid). The Monitor is advised that at the time of the RFP, canola prices were less than current pricing of the commodity effectively making the cost of producing biodiesel \$0.18 per litre less than it would be today.

Secured creditors

32. The Company has six primary secured creditors that are owed in aggregate approximately \$15.9 million as at March 31, 2014 as follows:

Table 2: Secured Creditors

Agricultural Financial Services Corporation ("AFSC")	\$5,009,681
CP Energy Marketing LP ("CP")	\$6,180,639
T&E Ventures Inc. ("T&E")	\$3,882,212
Courtland Hill Farms Ltd.	\$361,575
647928 Alberta Ltd.	\$361,575
Steven Ell	\$86,399
Total	\$15,882,081

33. As discussed below, the Monitor has been communicating regularly with AFSC, CP and T&E.
34. The Monitor's counsel is in the process of reviewing security and has requested documentation from all secured creditors. Counsel has reviewed AFSC and CP's security documentation and subject to certain assumptions and exceptions has confirmed to the Monitor that AFSC and CP's security is valid, properly perfected and ranking in first priority *pari passu* subject only to the priority charges outlined in the Initial Order.

Appraisals

35. Valuations of the manufacturing plant and of the land and buildings were obtained by Kyoto in early 2014.
36. Sandalwood Valuation prepared an appraisal of the manufacturing plant on or about April 15, 2014 indicating:
- A fair market value of \$15.2 million. The valuation is as "fair market value installed" in its current state rather than as a commercially operating entity; and
 - A liquidation value of \$5.3 million based on a "liquidation in place" scenario whereby the manufacturing plant would be liquidated *en bloc*.
37. Handley Appraisals Ltd. prepared two appraisals on the land and buildings (excluding the manufacturing facility) in 2014. The second appraisal dated March 20, 2014, indicated a fair market value of \$5.4 million and a forced sale value of \$2.75 million.

38. Based on the appraisals the value of the manufacturing plant, land and buildings appears to range between a forced sale value of \$8.05 million (excluding decommissioning costs) and a going concern value of \$20.6 million prior to consideration of ongoing operational costs.
39. Due mainly to budgetary constraints and given the highly specialized nature of the manufacturing equipment, the Monitor has not obtained its own valuation at this time. Consequently, the Monitor is unable to comment on the reasonableness of the above appraised values.

MONITOR'S ACTIVITIES

40. Under the Initial Order, the Monitor was granted expanded powers to effectively access information and review the operations, assets and affairs of Kyoto.
41. In the limited time available, with the assistance of 1817854 Alberta Ltd. (the "Monitor's Consultant" of which the principal is Mr. Tyrone Schneider), the Monitor has carried out various activities including:
 - a) Attending at Kyoto and reviewing its business and operations;
 - b) Working closely with IIS to ensure continued daily operations and address all safety concerns;
 - c) Working with suppliers to ensure ongoing supply of critical supplies to maintain plant safety and security;
 - d) Gathering and reviewing Kyoto's financial documents and material agreements;
 - e) Monitoring and approving the disbursement of Kyoto's interim financing;
 - f) Communicating with Kyoyo's Board of Directors in respect of restructuring and other strategic alternatives;
 - g) Communicating with the primary senior secured lenders in respect of restructuring and other strategic alternatives;
 - h) Gathering information for a data room for interested parties in a sales process;
 - i) Developing a preliminary sales process and draft materials; and
 - j) Exploring options for the Company.

SHORT TERM CASHFLOW

42. The Monitor has reviewed the cash flow attached to the April 30, 2014 Hamilton affidavit (the "Initial Cash Flow") and has prepared a revised cash flow for the period April 30 to July 26, 2014 which is attached as Exhibit "A". Included in Exhibit "A" are actual weekly results incurred to date.
43. There are some material variances to the Initial Cash Flow which are noted below:

Table 3: Material Variances from the Initial Cash Flow

	Actual	Forecast	Variance	Notes
DIP Financing	\$400,000	\$328,552	\$71,448	DIP financing was paid to Denton's at the time of the making of the Initial Order. The Initial Cash Flow anticipated weekly draws as required from the interim financing.
Utilities (electricity, gas, water)	-	\$107,754	\$107,754	Not yet invoiced; timing difference.
Contingency	-	\$40,000	\$40,000	No contingency spent to date.
Process and maintenance fees	\$57,843	\$81,200	\$23,357	Timing difference as paid one week in arrears.
Opening position	\$17,382	\$43,032	\$25,650	Principally due to the GST refund being deposited prior to CCAA (see below)
Other positive variances	\$50,173	\$69,593	\$19,420	Expected to be timing differences.
Receipts	-	\$52,613	(\$52,613)	GST refund paid into bank prior to CCAA.
Total			\$235,015	

44. Note that pursuant to the Initial Order the interim financing was \$400,000; the Initial Cash Flow erroneously reflected this figure as \$500,000.
45. The Monitor and the Monitor's Consultant continue to review expenses incurred at the plant. Any short-term reduction of maintenance and operational staff was assessed as not possible due to safety and environmental concerns. Ongoing provision of electricity, gas and water as required to maintain the plant and the chemicals in a safe state is in place.
46. Other costs such as lease costs for laboratory equipment and the on-site generator and sundry administrative costs are minimal.
47. Excluding professional fees, the Monitor estimates ongoing expenses of approximately \$280,000 per month as follows:

Table 4: Estimated Monthly Operating Costs

Operating personnel	\$95,000	Based on current IIS personnel levels and existing operations
Utilities	\$69,000	Electricity, gas and water at current operational status
IIS accounting services	\$45,000	CFO, controller and clerk costs
Insurance	\$16,000	Current premium
General and administrative	\$10,000	Estimated
Contingency	\$45,000	Estimated
<hr/>		
	\$280,000	Excluding professional costs
<hr/>		

48. In a liquidation scenario (which is described below) there will be opportunities to reduce some of the operating costs which the Monitor is currently reviewing. In addition to the operating costs, we estimate ongoing professional fees and disbursements are estimated at approximately \$150,000 per month for the period of the cash flow.

OPTIONS

49. Operating the plant as a going concern is not feasible in the circumstances. The Company does not have the working capital to commission the plant for commercial operations, nor to support ongoing losses in the current biodiesel market or service the existing debt load. Additionally, Kyoto has neither an agreement for supply of feedstock nor any purchaser of its biodiesel production.
50. Monthly costs to maintain the plant in its current state are approximately \$280,000 (as detailed above), excluding professional fees.
51. The Monitor is aware of a proposed plan of arrangement to restructure Kyoto's debt advanced by IIS (the "Proposed Plan"). The Monitor understands that IIS, AFSC and CP are in discussions in respect of the Proposed Plan.
52. The Proposed Plan requires a 60 day period to allow IIS to finalize the terms and secure financing. As described previously in this Report, maintaining Kyoto in its current state incurs considerable costs which need to be addressed.

Additional Financing

53. The Monitor is advised by T&E that T&E is proposing to provide additional interim financing (the "T&E Facility Amendment") sufficient to allow Kyoto's operations to continue at the current levels for the next 60 days. The Monitor supports the T&E Facility Amendment as:

- i. Additional financing will be required in any event, whether the plant is operated, decommissioned, sold or liquidated;
 - ii. The T&E Facility Amendment will allow any of these processes to be undertaken at the same time as allowing the senior secured lenders to continue to work with IIS in respect of the Proposed Plan; and
 - iii. The Monitor has not received any other proposal, from the senior lenders or other stakeholders, to address the need for continued funding.
54. A copy of the Amending Agreement in respect of the T&E Facility Amendment has been provided to the Monitor and is attached as Exhibit "B". The material terms of the T&E Facility Amendment are summarized as follows:
 - i. An additional principle amount of up to \$600,000 would be advanced;
 - ii. The term, and the CCAA stay of proceedings, would be extended for 60 days;
 - iii. All further advances would have the same security and super-priority charge as the existing T&E Facility, as approved in the Initial Order and ranking in priority to all existing debts, encumbrances and other charges with the exception of only the Administration Charge;
 - iv. Interest would accrue on all outstanding amounts at the rate of 14% per annum, calculated monthly in advance;
 - v. T&E would be paid a renewal fee of \$75,000 deducted as a set-off and paid to T&E concurrently with the first advance;
 - vi. A partial decommissioning of the plant and liquidation process, as described below, would continue to be advanced in a transparent and expedient fashion; and
 - vii. Any plans, including the Proposed Plan, are allowed to be continued.
55. The T&E Facility Amendment will allow either the Proposed Plan to be concluded or in the event the Proposed Plan cannot be successfully implemented an orderly liquidation within a reasonable time frame in a process that is structured and transparent.
56. If the T&E Facility Amendment is approved, the Monitor recommends that concurrently with working with IIS to implement the Proposed Plan, Kyoto undertakes a partial decommissioning (to reduce environmental risks) and implements the proposed sales process described below.
57. If the T&E Facility Amendment is not approved, the Monitor, subject to any stay extension and alternate source of approved financing, will have concluded its mandate under the Initial Order and would consequently seek an order for its discharge in due course.
58. As a result of the various options being presented, the Monitor has filed an Application for advice and direction concurrently with this Report.

PROPOSED SALES PROCESS

59. The Monitor's recommendation is that a sales process to realize on the assets of Kyoto for the benefit of its stakeholders should be undertaken concurrently with a partial decommissioning of the plant, while continued discussions are undertaken among IIS and Kyoto's senior secured lenders for a proposed plan.
60. The Monitor believes a sale could be carried out under three scenarios in either a CCAA or receivership process pending what further orders may be made by this Honourable Court:
 - i. Scenario 1: the plant is maintained in its current state and a sales process undertaken to attempt to facilitate a going concern sale. The Monitor envisages that this process would take up to six months;
 - ii. Scenario 2: the plant is maintained in its current state and a shorter, *en-bloc* liquidation-type sale is carried out over a period of up to three months; or
 - iii. Scenario 3: the plant is decommissioned, chemicals sold or removed and the biodiesel on site sold if possible, and the assets are liquidated either *en bloc* or on a piecemeal basis.
61. The Monitor estimates that under the above scenarios (subject to the comments in paragraphs 62 and 63) the net realizations could be between approximately \$6.7 million and \$17.7 million. The scenarios are described in more detail in Exhibit "C".
62. As previously noted, the Monitor has not obtained an independent appraisal and the appraisals previously prepared for Kyoto were not undertaken under the current conditions or for the purpose of a proposed insolvency sales process. Consequently, the Monitor cannot provide any assurances that the appraisal values detailed in the Sandalwood and Handley appraisals represent likely achievable values in any of the scenarios outlined herein.
63. Although Scenario 1 and Scenario 2 indicate that they could generate significant net realizations to stakeholders, the Monitor has significant concerns as to the likelihood of such a return as a result of:
 - i. The uncertainty as to the likely realizable value given the lack of an independent valuation in the current conditions;
 - ii. Kyoto's current disadvantages in terms of both the plant and the biodiesel market in general;
 - iii. Significant funds are required to meet the ongoing operational costs to maintain Kyoto in its current state; and
 - iv. Environmental concerns regarding the chemicals on site and the requirement for ongoing insurance. The Monitor is attempting to obtain quotes for receivership insurance from both the incumbent insurer and the Monitor's own broker but has not received any quotes at the time of filing this report. Insurance costs may be significant if there is no decommissioning of the plant.

64. The Monitor is of the view that Scenario 3, subject to the approval of the T&E Facility Amendment combined with a partial decommissioning of the plant, is the most appropriate course of action. As noted previously in this Report, the Monitor is unable to comment on the likelihood of a liquidation sale generating the amounts stated in the previous appraisals.
65. The Monitor proposes a sale by tender process be undertaken to market the Company's business and assets for sale either *en bloc* or piecemeal to maximize recoveries for all stakeholders.
66. The Monitor anticipates a sales process will include:
- i. Preparing a list of parties who may be interested in submitting an offer for some or all of the assets based on the Monitor's industry knowledge and experience, market research and input from Kyoto and the Secured creditors (the "Prospective Bidders");
 - ii. Preparing a summary description (the "Teaser") of the assets and the purchase opportunity to be sent to each party on the list of Prospective Bidders. A draft of the Teaser is attached as Exhibit "D";
 - iii. Preparing an advertisement for the sale of the assets in local, national and international publications – including relevant trade publications as appropriate - within seven days of the sales process being approved. A draft of the advertisement is attached as Exhibit "E";
 - iv. Preparing a confidentiality agreement (the "CA") to be executed by each Prospective Bidder who plans to pursue the opportunity. A draft of the CA is attached as Exhibit "F";
 - v. Gathering and reviewing the available documentation, information and other materials relating to the assets which may be required by a Prospective Bidder to undertake its own due diligence and establishing an electronic data room to house said information; and
 - vi. Preparing a draft purchase and sale agreement with the ultimate purchaser of the assets.
67. The Monitor anticipates that the Teaser will be sent to Prospective Bidders within seven days of agreement of a sales process with advertisements to be placed as soon as practicable.
68. The Monitor believes a 60 day period will be required to adequately market the assets, identify any interested parties and allow Prospective Bidders the opportunity to conduct due diligence, and that closing of an agreed sale – subject to the appropriate court approval – could occur within 30 days of the sales process concluding.

CONCLUSION AND RECOMMENDATION

69. Kyoto cannot be operated commercially at the current time and there is considerable doubt that it could be operated commercially in the short to medium term without significant additional working capital and/or a change in market conditions.
70. The costs of maintaining Kyoto's facilities in their current state to undertake a going concern sales process, or to decommission and sell *en bloc* or liquidate the plant are significant and would require third party funding. T&E is the only party that has proposed to provide this funding.

71. On Kyoto's premises are quantities of chemicals which pose a potential environmental threat. The site is not secured or fenced and safeguarding or removing these chemicals is essential.
72. The T&E Facility Amendment will allow further consideration of the Proposed Plan at the same time as a sales process and partial decommissioning could be undertaken, maximizing efficiency in the given circumstances.
73. Based on the foregoing and the Monitor's application for advice and direction, the Monitor respectfully recommends that this Honourable Court make an order as follows:
 - i. If the T&E Facility Amendment (as defined herein) is approved, granting a sixty day extension to the Stay Period, as defined in the Initial Order and authorizing the Monitor to sign the T&E Facility Amendment on behalf of Kyoto; or
 - ii. Alternatively, giving the Monitor leave to seek its discharge from all duties, responsibilities and obligations in its capacity as Court-appointed Monitor of Kyoto.

* * *

All of which is respectfully submitted this 26th day of May 2014.

**ERNST & YOUNG INC.
IN ITS CAPACITY AS CCAA MONITOR OF
KYOTO FUELS CORPORATION
AND NOT IN ITS PERSONAL CAPACITY**

Per: 

Robert J. Taylor, FCA, CIRP

Exhibit "A"

Kyoto Fuels Corporation
Forecasted cash flow for 13 weeks ending July 26, 2014
C\$, unaudited

	Notes	3-May-14	10-May-14	17-May-14	24-May-14	31-May-14	7-Jun-14	14-Jun-14	21-Jun-14	28-Jun-14	5-Jul-14	12-Jul-14	19-Jul-14	26-Jul-14	Aug-14	Total
				ACTUAL												
Receipts																
DIP Financing	1	\$ 400,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other receipts		\$ 400,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 400,000
Payments																
Process and Maintenance Fees	2	-	-	35,268	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	283,594
CFD, COO, Controller, purchaser and clerk fees	3	-	-	16,693	10,777	10,777	10,777	10,777	10,777	10,777	10,777	10,777	10,777	10,777	10,777	135,238
First Capital Insurance	4	-	-	16,429	-	-	16,249	-	-	-	569	-	-	-	-	48,927
First Capital Lease	5	-	-	-	325	325	325	325	325	325	325	325	325	325	325	4,200
Telephone/Internet	6	-	-	-	-	-	163	-	-	-	-	-	-	-	-	1,138
Delage Landen lease	7	-	-	4,200	-	-	-	-	-	-	-	-	-	-	-	975
Source Deductions (Kelsey's Payroll)	8	-	-	-	50	-	-	-	-	-	-	-	-	-	-	4,200
Bank Fees	9	-	-	1,749	-	-	-	1,749	-	-	-	-	-	-	-	150
GE Capital Lease	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,247
GST Refund/Due quarterly	11	-	-	27,000	-	-	-	-	-	-	-	-	-	-	-	27,000
Epcor (Utility) 21st of mth	12	-	-	32,000	-	-	-	-	-	-	-	-	-	-	-	32,000
Direct Energy (Utility) 20th of mth	13	-	-	10,000	-	-	-	-	-	-	-	-	-	-	-	10,000
Taber Water (water for plant)	14	-	-	1,000	-	-	-	-	-	-	-	-	-	-	-	1,000
Bell Mobility (21st of mth)	15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payroll Kelsey Premevoost 15th of mth	16	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Elbow River (Railcar Lease)	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Bissett Cleaning	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	525
Canadian Liens- Safety Overalls	19	-	-	-	-	-	3,000	-	-	-	-	-	-	-	-	3,000
CCOA Monitor and Legal Costs	20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contingency	21	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		\$ -	\$ -	\$ 74,664	\$ 33,352	\$ 116,927	\$ 210,658	\$ 43,352	\$ 45,101	\$ 43,352	\$ 210,708	\$ 43,352	\$ 45,352	\$ 45,101	\$ 195,402	\$ 1,103,220
Opening cash position		\$ 43,032	\$ 443,032	\$ 443,032	\$ 366,368	\$ 335,016	\$ 218,089	\$ 7,431	\$ 35,521	\$ 81,022	\$ 124,374	\$ 335,082	\$ 378,434	\$ 421,786	\$ 466,887	\$ 43,032
Net cash outflow		-	-	(74,664)	(33,352)	(116,927)	(210,658)	(43,352)	(45,101)	(43,352)	(210,708)	(43,352)	(45,352)	(45,101)	(195,402)	(1,103,220)
Net cash inflow		400,000	-	-	-	-	-	-	-	-	-	-	-	-	-	400,000
Closing Bank Balance		443,032	443,032	368,368	335,016	218,089	7,431	(35,921)	(81,022)	(124,374)	(335,082)	(378,434)	(421,786)	(466,887)	(660,289)	

Kyoto Fuels Corporation
 Forecasted cash flow for 13 weeks ending July 26, 2014
 C\$, unaudited

- 1 Interim financing was advanced by T&E Ventures Inc. on or about April 30, 2014.
- 2 Fees charged by IIS in respect of maintenance and operations personnel on site. Inclusive of GST.
- 3 Fees charged by IIS for Don Pearson and various other administrative staff undertaking accounting and administrative functions at Kyoto.
- 4 Current insurance coverage maintained.
- 5 Radio lease.
- 6 Lab equipment lease payments.
- 7 Source deductions for the company's Chairman, Kelsey Prenevost, in relation to April's wages were paid on or about May 15, 2014.
- 8 Generator lease payments.
- 9 All disbursements in the cash flow are inclusive of GST and therefore a GST refund may be available. Such refund is not included pending a more thorough review of the Company's current tax position.
- 10 Estimated; not yet invoiced.
- 11 Estimated; not yet invoiced.
- 12 Estimated; not yet invoiced.
- 13 Cellular phones.
- 14 Office cleaning.
- 15 Overall and protective clothing provision and laundry service.
- 16 No professional fees have yet been drawn.
- 17 No contingency amounts have yet been disbursed although minimal costs have been incurred in mirroring electronic information and in a small boiler repair (less than \$2,000 in total). This is included in the future contingency amounts.
- 18 Opening bank balance at the Company's bank account as at May 1, 2014. Several payments were allowed to be processed on April 30, 2014 as below:

Balance at Kyoto bank as at April 30, 2014	\$ 63,194.18
Less payments automatically deducted on April 30 and May 1, 2014	
De Lage Landen lease	\$ 162.74
AFSC #1	\$ 15,647.11
AFSC #2	\$ 3,784.14
First capital lease	\$ 568.68
	<u>\$ 20,162.67</u>
Balance at Kyoto bank as at May 1, 2014	<u>\$ 43,031.51</u>

The Monitor has advised AFSC that these payments may need to be returned to Kyoto.

Exhibit "B"

T&E Ventures Inc.

RR1 Site 16 Box 25 | De Winton, AB | T0L 0X0
O: 403-995-2181 | F: 403-995-2147

May 26, 2014

Kyoto Fuels Corporation
Box 493
Lethbridge, Alberta
T1J 3Z1

Dear Sir:

Re: AMENDING AGREEMENT - Interim Financing Facility Commitment Letter

On April 30, 2014 (the "**Filing Date**"), Kyoto Fuels Corporation (the "**Borrower**") was the subject of an Initial Order (the "**Initial Order**") of the Alberta Court of Queen's Bench (the "**Court**") made pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). The Initial Order, among other things, appointed a monitor, Ernst & Young Inc. (the "**Monitor**"), stayed actions by the Borrower's creditors and approved the Borrower entering into a super priority interim financing commitment (the "**Facility**") with T&E Ventures Inc. (the "**Lender**").

The Lender has agreed to amend the Facility in order to enable the Borrower to continue certain operations, take steps to partially decommission and better secure its plant, property and assets, implement a sales process with the assistance of the Monitor, and consider any plan or plans of arrangement that may be developed over the next 60 days. Subject to the terms set out in the Facility, as may be amended herein, and in the Initial Order, the Lender agrees to the following amendments to the Facility:

Purpose/Use of Proceeds: The provision concerning the purpose and use of the proceeds of the Facility is amended to include: i) to provide short-term funding on a super-priority basis to the insolvent Borrower to enable it to continue operations and pay critical suppliers and professional fees, as identified in the 30 day cash flow forecast attached to the Affidavit of Myles Hamilton, sworn April 29, 2014 (the "**Cash Flow**") and the extended cash flow forecast attached to the First Report of the Monitor, dated May 26, 2014 (the "**Revised Cash Flow**"), and such other payments as the Monitor considers necessary or appropriate.

Maximum Amount: The maximum amount available under the Facility shall be increased to CAD\$1,000,000 (the "**Maximum Amount**").

Repayment: "Maturity Date", as defined in the Facility, is amended to mean the earlier of (i) the occurrence of an Event of Default; and (ii) 60 days from the date in which all conditions are met and this Amending Agreement becomes effective. The Maturity Date may be extended with the written consent of the Lender, but the Lender shall

have no obligation whatsoever to extend the Maturity Date.

Interest Rate: Interest on advances made under the Facility (including all amounts currently outstanding) shall, effective as of the date of the Extension Order, accrue at the rate of 14% per annum, calculated monthly in advance.

Commitment Fee: The Lender shall be paid a renewal fee of \$75,000 by the Borrower, to be paid by way of set off against the first advance made to the Borrower following this Amending Agreement becoming effective.

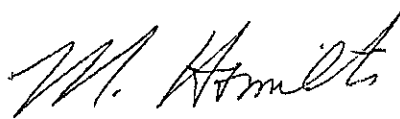
DIP Security: The Priority Charge shall be increased to \$1,000,000 and shall apply in respect of all present and future advances under the Facility and this Amending Agreement subject only to the Administration Charge as granted in the Initial Order. The Lender shall not be required to take any steps to register, reflect or perfect the Priority Charge granted pursuant to the Initial Order, as amended and/or extended by further court order.

Condition Precedent It is a condition precedent to the effectiveness of this Amending Agreement that: i) an Order be granted in favour of the Lender, in a form satisfactory to the Lender, including, without limitation, authorizing the Monitor to execute and perform this Amending Agreement, amending the Priority Charge to include any additional advances under the Facility and this Amending Agreement, and extending the Stay Period, as defined in the Initial Order, for 60 days (the "Extension Order"); and ii) that the Extension Order not be appealed, stayed, rescinded or otherwise not be in effect after it is filed.

The Facility as amended hereby continues in full force and effect, and references to the Facility shall be references to the Facility as amended hereby. This Amending Agreement may be accepted by the Borrower by signing and returning it to the Lender on or before 5:00 pm on Friday, May 30, 2014. Failing such acceptance, Amending Agreement shall be rescinded and no longer be available for acceptance.

T&E VENTURES INC.

Name: MYLES Hamilton
Title: Vice President
I have the authority to bind the Corporation.



The foregoing is accepted and agreed as of the date of this Commitment Letter:

KYOTO FUELS CORPORATION

Per: Ernst & Young Inc., in its capacity as Court-appointed
monitor of Kyoto Fuels Corporation

Exhibit "C"

Kyoto Fuels Corporation
Potential realizations as at May 26, 2014
C\$000 unaudited

	Notes	Going Concern Sale	Scenario 2: Liquidation - en bloc	Scenario 3: Liquidation - decommissioned
Appraised value	1	20,600	14,325	8,050
Less costs of realization				
<i>Decommissioning costs</i>	2	-	-	450
<i>Operating Costs</i>	3	1,590	795	300
<i>Insurance</i>	4	180	90	90
<i>Professional costs</i>	5	900	450	375
<i>Contingency</i>	6	250	200	100
		2,920	1,535	1,315
Net Realizations		17,680	12,790	6,735

Notes

1. Appraised values are based on appraisals in April 2014 for Kyoto carried out by Sandalwood Valuation ("Sandalwood") (plant equipment and machinery) and Handley Appraisals Ltd. ("Handley") (land and buildings). Sandalwood valued the plant, equipment and machinery at \$15.2m on a going concern basis and \$5.3m on a liquidation basis. Handley valued the land and buildings at \$5.4m and \$2.75m respectively. We have assumed a value, half way between going concern and liquidation in Scenario 2.

2. Decommissioning costs are estimated at \$300,000 by IIS personnel and include personnel cost on site. It is likely a receiver, given the environmental liability risks, would require its own third party oversight. We have estimated this oversight would incur an additional \$150,000.

3. Monthly operating costs are approximately \$265,000 (excluding Kyoto's existing insurance premium). Scenario 1 assumes operations "as is" for a period of six months. Scenario 2 estimates "as is" scenario for 3 months. Scenario 3 estimates an ongoing personnel, utility and security cost of \$50,000 per month for a period of six months.

4. Kyoto's current insurance premium is approximately \$16,000 per month. In Scenario 1, we have estimated receivership insurance of \$30,000 per month for six months; in Scenario 2, \$30,000 per month for three months. In Scenario 3, after decommissioning, we estimate insurance may be significantly reduced; for the purposes of this analysis it is estimated as \$15,000 per month, for six months.

5. Professional costs in Scenario 1 and 2 are estimated at \$150,000 per month, including Receiver's costs, Receiver's counsel's costs and costs of sale for six or three months respectively. In Scenario 3 we estimate professional fees at \$75,000 per month for three months and \$50,000 for three months.

6. Contingency for additional unanticipated expenses that may be incurred.

The Monitor has not obtained an independent appraisal and the appraisals prepared for Kyoto were not undertaken under the current conditions or for the purpose of a proposed insolvency sales process. Consequently, the Monitor cannot provide any assurances that the appraisal values detailed in the Sandalwood and Handley appraisals represent likely achievable values in any of the scenarios outlined herein.

Exhibit "D"



Building a better
working world

Acquisition opportunity

This Overview is confidential and is not to be reproduced or distributed. More detailed information is available for review upon the signing of a Confidentiality Agreement. The information contained herein, while obtained from sources which we believe to be reliable, has not been independently verified and no representation, express or implied, is given as to its accuracy or completeness. Delivery of this Overview does not constitute an offer to sell or a solicitation of an offer to purchase securities under the securities laws of any jurisdiction, including the Securities Act of 1933, as amended, or any state securities laws, or a solicitation to enter into any other transaction.

May [xx] 2014

SUMMARY

On [date], 2014, Kyoto Fuels Corporation (the "Company") was placed into [receivership/CCAA]. Ernst & Young Inc. was appointed the Company's [Monitor/Receiver] (the "[Monitor/Receiver]") pursuant to an order issued by the Court of the Queen's Bench of Alberta (the "Court"). Pursuant to a subsequent order by the Court, the [Monitor/Receiver] is hereby offering for sale the remaining assets (the "Assets") held by the Company as detailed below.

All offers to acquire the Assets (the "Bids") (in accordance with the Bid Requirements detailed below) must be received by the [Monitor/Receiver] via email or mail by 12:00 noon (Calgary time) on [date]. All bids must be addressed to:

Neil Honess
Senior Manager
403.206.5003

Neil.honess@ca.ey.com

The [Monitor/Receiver] reserves the right to reject any or all of the offers received and to extend any of the timelines set out below. The [Monitor/Receiver] will entertain *en bloc* or piecemeal offers for the Assets. All accepted Bids are subject to Court approval and the [Monitor/Receiver] retains the right to discontinue the Sale Process at any time.

ASSET OVERVIEW

The company has completed construction of a biodiesel production facility in Lethbridge, Alberta (the "Facility"). The Facility is the second largest biodiesel facility in Canada with an annual producing capacity of 79,000,000 litres. The Facility is engineered to utilize either canola or animal tallow as feedstock. The Facility generates Alberta Government carbon emission credits.

Initial (non-commercial) production began in September 2013 and the equipment and machinery has very low usage. The Facility is currently close to being commercially operational.

The Facility is sited on an owned parcel of land of approximately 22 acres, approximately 10 km south of the city of Lethbridge. The Facility incorporates a newly constructed custom building housing some of the plant and equipment, control functions and offices.

SELECT ACQUISITION HIGHLIGHTS

- ▶ Second largest biodiesel facility in Canada
- ▶ Annual producing capacity of 79 million litres of biodiesel
- ▶ Initial (non-commercial) operations in September 2013
- ▶ Engineered to utilize either canola or animal tallow as feedstock
- ▶ Generates Alberta Government carbon emission credits
- ▶ Approximately 22 acre freehold site
- ▶ Modern office and control buildings

CONFIDENTIALITY

The information contained in this Overview is submitted to parties on a confidential basis for use solely in connection with their consideration of the acquisition opportunity described herein. By its acceptance hereof, the recipient agrees that neither it nor any of its employees or advisors shall use the information for any purpose other than the evaluation of the business opportunity, nor shall it divulge the information or distribute this Overview to any other party, in whole or in part, at any time without the prior written consent of the Company through the [Monitor/Receiver].

BID PROCESS/NEXT STEPS

Prospective purchasers should direct all inquiries to the [Monitor/Receiver] who will arrange all contacts for appropriate due diligence. **Prospective purchasers are requested not to contact former employees/consultants of the Company other than as directed by the [Monitor/Receiver].** Upon expressing interest in these properties, the interested parties will be sent (and will be required to sign) a confidentiality agreement ("CA"). Once the CA is executed interested parties will receive access to further information and the ability to conduct diligence on the opportunity as well as attend at the location where the Assets are currently held.

Bidders are encouraged to submit their Bids in accordance with the terms of the bidding procedures as below:

1. All Bids must detail the purchase price;
2. All Bids must identify the name of the ultimate beneficial owner(s) of the Bidder including their respective percentage interests;
3. All Bids must provide evidence of the bidder's financial ability to complete the transaction, including the method and timing of financing the purchase;
4. All Bids must be accompanied by a deposit by way of certified cheque or bank draft for the greater of [\$1,000,000] and 10% of the bid price; and
5. All Bids must clearly set out all Bid conditions.

The Bid deadline for this opportunity will be Noon, MDT [date].

ERNST & YOUNG INC. – [Monitor/Receiver] OF Kyoto Fuels Corporation
1000, 440 2nd Avenue SW, Calgary, Alberta, Canada T2P 5E9

Robert J. Taylor
Senior Vice President
403.233.7112
Bob.taylor@ca.ey.com

Neil Honess
Senior Manager
403.206.5003
Neil.honess@ca.ey.com

Exhibit "E"

Biodiesel Production Facility Sale

**KYOTO FUELS CORPORATION
IN [CCAA/RECEIVERSHIP]**

INVITATION FOR OFFERS

Biodiesel production plant in Lethbridge, Alberta comprising:

- Second largest biodiesel facility in Canada with annual production capacity of 79m litres
- Initial operations in September 2013
- Utilize canola or animal tallow as feedstock
- Generates Alberta Government carbon emission credits
- Approximately 22 acre freehold site
- Modern office and control buildings

DEADLINE FOR RECEIPT OF OFFERS

**NOON, MDT
[DATE]**

FOR SALE INFORMATION, A DETAILED LIST OF ASSETS OR
TO VIEW THE ASSETS, PLEASE CONTACT:

NEIL HONESS
Tele: 403.206.5003
Neil.honess@ca.ey.com



Ernst & Young Inc., [Monitor/Receiver]
Suite 1000, 440-2nd Avenue SW, Calgary, Alberta T2P 5E9

Exhibit "F"

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made effective as of the __ day of _____ 2014.

GRANTED BY:

(the "Recipient")

IN FAVOUR OF:

**ERNST & YOUNG INC., [Monitor/Receiver] of
KYOTO FUELS CORPORATION**

1000, 440 2nd Avenue S.W.
Calgary, AB
T2P 5E9

(**"Confidential Information Owner"**)

WHEREAS:

- A. The Recipient wishes to undertake due diligence and investigation in relation to a potential acquisition (the "**Potential Acquisition**") by the Recipient of certain assets of Kyoto Fuels Corporation ("Kyoto") and, as such, has obtained and/or will from time to time hereafter obtain, certain Confidential Information (as defined below) relating to the assets, undertaking and property of Kyoto (the "**Assets**");
- B. The Confidential Information has and will be received by the Recipient for the sole purpose of conducting due diligence in relation to the Potential Acquisition;
- C. As a pre-condition to the Confidential Information, Owner or its representatives or agents providing confidential or proprietary business information concerning the Assets to the Recipient, the Confidential Information Owner requires and the Recipient has agreed to execute and deliver to the Confidential Information Owner a confidentiality agreement in form and substance satisfactory to the Confidential Information Owner and its advisors;

NOW, THEREFORE, in consideration of the premises and the Confidential Information Owner providing the Recipient with access to the Confidential Information for the purposes of the Potential Acquisition, and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the Recipient covenants and agrees with the Confidential Information Owner as follows:

- 1. The covenants contained in this Agreement apply to all data, records, reports, studies, projections, knowledge, patents, theories, information (financial, corporate, business or

otherwise), intellectual property, designs, drawings, plans, opportunities, prototypes, specifications, manuals, photographs, software, hardware, equipment, printouts, reports, market research, business plans, customer lists, supply sources, engineering, trade secrets, information relating to existing and potential financiers and investors, trade lists, processes, techniques, ideas, improvements, innovations, know-how, research and development, calculations, opinions, documents and other information, whether written or oral, and whether or not noted thereon to be confidential, pertaining to the Assets, businesses, liabilities, products, customers, technology, subsidiaries, affiliates, activities or affairs of Kyoto which have been or which may hereafter be disclosed or provided to the Recipient (collectively, the "**Confidential Information**").

2. The Recipient will keep all Confidential Information in strict confidence and shall not disclose or release the Confidential Information to any person except:
 - (a) to a governmental or judicial authority upon the direction or order of the governmental or judicial authority and after giving reasonable prior written notice of the disclosure or release to the Confidential Information Owner and marking the Confidential Information by referring to its confidential nature under the terms of this Agreement and endeavouring, where possible, to limit such disclosure;
 - (b) where the Confidential Information Owner has given prior written consent to disclosure or release of the Confidential Information to that person; or
 - (c) to those directors, senior officers, senior management employees and legal and accounting advisors of the Recipient, as the case may be, who need to know the Confidential Information for the purposes of evaluating the Assets or assisting the Recipient in relation thereto, provided that:
 - (i) the Recipient shall notify each of such persons of the obligations contained herein with respect to the confidentiality of the Confidential Information and the restrictions imposed on the use thereof; and
 - (ii) the Recipient shall direct each such person to exercise a level of care sufficient to preserve the confidentiality of the Confidential Information and shall direct each such person to abide by the terms and conditions of this Agreement, and shall take all reasonable steps to ensure that the Confidential Information is not disclosed by any of such persons to any other party or used in a manner contrary to the spirit and intent of this Agreement.
3. The obligation of the Recipient to keep the Confidential Information in strict confidence shall not apply where the Confidential Information:
 - (a) is otherwise known to the Recipient or is generally known to the public at the time of its disclosure to the Recipient; or
 - (b) subsequently comes into the public domain without any breach of the obligations of the Recipient hereunder.

4. The Recipient shall not deal with or use the Confidential Information, directly or indirectly, in any manner whatsoever for any purpose other than in connection with the due diligence associated with the Potential Acquisition.
5. The Recipient shall, within three (3) days of a written request being made by the Confidential Information Owner, return promptly to the Confidential Information Owner all documentation and other tangible manifestations relating to the Confidential Information which have been provided to the Recipient (without retaining any copy thereof) as and when requested by the Confidential Information Owner.
6. This Agreement is in addition to, and not in substitution for or in derogation of, the rights of the Confidential Information Owner at law or in equity arising in any way in connection with the disclosure of the Confidential Information by the Confidential Information Owner to the Recipient.
7. The Recipient agrees that the restrictions contained in this Agreement are reasonable in order to protect the legitimate interests of the Confidential Information Owner and all defences to the strict enforcement of the restrictions by the Confidential Information Owner are hereby unconditionally and irrevocably waived by the Recipient.
8. The Recipient recognizes that a breach or threatened breach by the Recipient of any of its obligations under this Agreement may result in damages to the Confidential Information Owner and that the Confidential Information Owner may not adequately be compensated for those damages by monetary award and, accordingly, the Recipient agrees that if a breach occurs, in addition to all other remedies available to the Confidential Information Owner at law or in equity, the Confidential Information Owner will be entitled, as a matter of right (and without having to show or prove any actual damages), to apply to a Court of competent jurisdiction for relief by way of restraining order, injunction, decree or otherwise, as may be appropriate, to ensure compliance with the provisions of this Agreement.
9. In the event that the Recipient becomes aware of a breach of this Agreement, the Recipient agrees that it shall, within two business days, advise the Confidential Information Owner, in writing, of such breach and provide the details thereof.
10. If any term or provision of this Agreement is declared to be void or unenforceable in whole or in part by a court of competent jurisdiction, it shall be deemed to be severable from the rest of this Agreement and it shall not affect or impair the enforceability or validity of any other covenant or provision of this Agreement.
11. This Agreement shall be governed by and interpreted in accordance with the laws in force in the Province of Alberta. The Recipient hereby irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta for the determination of all matters arising hereunder in the event the Confidential Information Owner should bring an action on this Agreement in the Courts of the Province of Alberta. The Recipient hereby agrees that, notwithstanding the foregoing, the Confidential Information Owner may bring an action on this Agreement in any jurisdiction where the Recipient has assets or in any jurisdiction

where this Agreement has been breached or where a breach is threatened, and in such an event, the Recipient hereby irrevocably attorns to the jurisdiction of the Courts of such jurisdictions for the determination of all matters arising hereunder.

12. If the closing of the Potential Acquisition does not take place, this Agreement will continue indefinitely, unless otherwise agreed in writing by the Confidential Information Owner.
13. No waiver of any particular requirement hereunder shall be construed as a general waiver of this Agreement, and any failure by or delay by the Confidential Information Owner in enforcing their rights against any particular breach of this Agreement shall not limit or affect their rights to enforce their rights against any other breach hereof.
14. This Agreement may not be assigned by the Recipient without the prior written consent of the Confidential Information Owner.
15. This Agreement shall enure to the benefit of the Confidential Information Owner and its successors and assigns and shall be binding upon the Recipient and its successors and permitted assigns, as the case may be.
16. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter herein and supersedes all prior contracts, agreements and understandings pertaining to the subject matter of this Agreement. No modification or alteration of this Agreement shall be binding unless executed in writing by the parties hereto. There are no representations, warranties, collateral agreements or conditions affecting this transaction that have been made or relied upon by any party hereto other than as set out herein in writing.
17. This Agreement may be executed in counterpart and pursuant to facsimile transmission.

IN WITNESS WHEREOF the Recipient has executed this Agreement on the day and year first above written.

Print Name of Recipient, if corporation

Per: _____

**Print Name of Authorized Representative
of Recipient**