

## NON-DISCLOSURE AND INDEMNIFICATION AGREEMENT

This Agreement made effective as of January 17, 2019.

### BETWEEN:

**ATCO ELECTRIC LTD.**, a body corporate formed pursuant to the laws of Alberta ("**ATCO**")

- and -

**Fishing Lake Metis Settlement** a Municipality pursuant to the laws of the Province of Alberta (the "**Recipient**").

WHEREAS the Recipient desires to receive and ATCO is prepared to supply certain Data (as defined below) on the terms and conditions set out herein and solely for the purpose to allow one or both Parties to complete the planning, development, construction, and/or operation and maintenance related to electric distribution and/or transmission facilities for up to 3 years (the "**Permitted Purpose**") and not for any other purpose;

AND WHEREAS the Parties and their licensors have, in part, acquired the Data through the expenditure of time, effort and money and wishes to protect the Data as the use or disclosure of the Data by or to anyone, but particularly to the general public or a competitor of ATCO, could be highly detrimental to, and not in the best interests of, such Parties or their licensors;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

#### 1. **Definitions**

In this Agreement, the following terms shall have the meanings set forth below:

"**Affiliate**" means, in respect to a Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such first Person, and "**control**" shall mean the ability to appoint a majority of the members of a Person's board of directors or similar management body or the ownership of a majority of a Person's issued voting capital;

"**Data**" means any and all information, regardless of its form or medium, whether conveyed orally, visually, electronically or in writing, and whether or not it is designated as "confidential", that is provided by, or on behalf of, one party (the "**Disclosing Party**") to the other party (the "**Recipient**") prior to, or following, the execution of this Agreement and in any way relating to the Permitted Purpose (including, without limitation, any and all geographical information systems facility data, designs, plans, specifications, and other documents pertaining thereto or provided in connection therewith such as the information described in Schedule A hereto);

"**Parties**" means the parties to this Agreement and "**Party**" means any one of such Parties;

"**Person**" includes any individual, company, corporation, firm, partnership, joint venture, association, organization, trust, government or any department or agency thereof (in each case, whether or not having separate legal personality); and

**"Representative"** means any Person that receives Data from or on behalf of a Disclosing Party, including without limitation, its directors, officers, employees, professional consultants, legal counsel, accountants, advisors and agents.

**2. Proprietary**

All right, title and interest in and to the Disclosing Party's Data, including, without limitation, all patent rights, trade secret and confidential information rights, copyrights and other intellectual property, industrial, proprietary and other rights of any kind or nature, shall remain the exclusive property of the Disclosing Party, and the Disclosing Party's Data shall be held in trust and confidence by the Recipient for the Disclosing Party. The Disclosing Party shall also retain title to all tangible media on which the Disclosing Party's Data resides, including documentation, digital versions, and all copies thereof. No interest, license or any other right in, or to, the Disclosing Party's Data, other than expressly set out herein, is granted to the Recipient under this Agreement by implication or otherwise.

**3. Confidentiality Requirements**

- (a) The Recipient agrees that all Data shall be kept in strict confidence and that the Recipient shall use all reasonable efforts to protect the Disclosing Party's interest in the Data. The Disclosing Party's Data shall not be copied or reproduced in any form or stored in a retrieval system or database by the Recipient without the prior written consent of the Disclosing Party, except for such copies and storage as may reasonably be required internally by the Recipient for the Permitted Purpose.
- (b) All copies of the Disclosing Party's Data shall contain the same proprietary notices which may appear on the original.
- (c) The Recipient shall not use, deal with or exploit the Disclosing Party's Data for any purpose other than the Permitted Purpose.
- (d) None of the Disclosing Party's Data shall be disclosed to any Person other than the Recipient's Representatives who are directly involved in and require access to such Data in connection with the Permitted Purpose, and may only be disclosed to such Recipient's Representatives if each such Person agrees to keep such information in strict confidence and to be bound by the confidentiality and non-disclosure provisions of this Agreement to the same extent as if they were parties hereto and in respect of whom the Recipient agrees that any Data will be kept in strict confidence and shall not be used, dealt with, exploited or disclosed other than as contemplated herein and in strict accordance herewith. The Recipient will be liable for any breach of this Agreement by any of the Recipient's Representatives.
- (e) The Recipient agrees that it will not disclose any information related to or indicative of the fact that this Agreement exists, except as consented to in writing by ATCO or as required by applicable law, regulation or legal process, and then only after compliance with the provisions of paragraph 8 below.

**4. Exceptions to Confidentiality Requirements**

The confidentiality requirements set forth in paragraphs 2 and 3 shall not apply to any part of the Data which:

- (a) is, at the time of disclosure, or thereafter becomes, a part of the public record through no violation or breach of this Agreement;
- (b) was, as evidenced by its records, in the lawful possession of the Recipient prior to its disclosure hereunder;
- (c) is hereafter lawfully acquired by the Recipient through a third Person, which, to the best of the Recipient's knowledge, is not under an obligation of confidence to the Disclosing Party or is not in a contractual or fiduciary relationship with the Disclosing Party;
- (d) is disclosed following receipt of the written consent of the Disclosing Party agreeing to such disclosure of Data being made;
- (e) has been independently acquired or developed by the Recipient without violating any of its obligations under this Agreement; or
- (f) is otherwise disclosed pursuant to the provisions of this Agreement.

**5. Return, Destruction of Data**

At the request of the Disclosing Party, the Recipient and the Recipient's Representatives shall immediately return or cause to be returned to the Disclosing Party's Data in whatever form it may be held by the Recipient or any of the Recipient's Representatives, and shall not retain any copies or other reproductions thereof, or any reports, extracts, notes, memoranda or other records in respect thereof (whether written, electronic, magnetic or otherwise), and shall destroy or have destroyed all such copies, other reproductions, reports, extracts, notes, memoranda and other records in respect of any Data. Furthermore, the Recipient shall, upon request, provide written confirmation to the Disclosing Party of compliance with the terms and conditions of this paragraph 5.

**6. Equitable Relief**

It is agreed that the Disclosing Party will be irreparably injured by a breach of the provisions of this Agreement relating to the protection of the Data by the Recipient or any of the Recipient's Representatives, which injury could not be adequately compensated for by damages, and ATCO shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of such provisions. Such remedies shall not be deemed to be exclusive remedies for the breach of such provisions but shall be in addition to all other remedies available hereunder or otherwise at law or in equity.

**7. GIS Mapping and Associated Information**

- (a) It is agreed that ATCO will provide the Recipient with certain Data related to its electric distribution and transmission infrastructure. This Data is provided with no guarantee to the accuracy of the information and is to be used solely for planning purposes. The Data may not be relied upon: (i) for any purpose other than the Permitted Purpose, including, without limitation, any safety, construction or maintenance purposes; or (ii) in substitution of any safety-related resource such as Alberta One-Call. ATCO shall not be held liable for any errors or omissions in the Data or the use, or the results from the use, of the Data.

- (b) Any post-processing of the Data will be the responsibility of the Recipient.

**8. Liability and Indemnification**

- (a) This Agreement shall not constitute any representation, warranty or guarantee to the Recipient by ATCO whatsoever including, without limitation, any representation, warranty or guarantee with respect to the Data infringing, violating, misappropriating or otherwise interfering with any rights of third parties.
- (b) Without limitation and in addition to any other rights of ATCO against the Recipient or any of the Recipient's Representatives arising by reason of any breach hereof, the Recipient shall:
  - (i) be liable to ATCO and its directors, officers, employees, Affiliates and representatives for any and all losses, costs, damages and expenses whatsoever (including legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which such parties may suffer, sustain, pay or incur;
  - (ii) indemnify and hold ATCO and its directors, officers, employees, Affiliates and representatives harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever (including legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which may be brought against or suffered by any of them or which any of them may sustain, pay or incur, including any claim relating to any use of the Data by a Recipient who obtained such information from the Recipient or the Recipient's Representative; and
  - (iii) indemnify and hold ATCO and its directors, officers, employees, Affiliates and representatives harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever (including legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis),

which liabilities and indemnities are established to result or arise, directly or indirectly, from the disclosure of all or any part of the Data contrary to the provisions hereof or any other breach of this Agreement relating to the protection of the Data.

**9. Legal Compulsion to Disclose**

If the Recipient or any of the Recipient's Representatives becomes legally compelled (by oral questions, interrogatories, requests for data, documents, subpoena, civil investigative demand or similar process) to disclose any of the Data (after using its commercially reasonable efforts to avoid such disclosure), the Recipient or the Recipient's Representative to whom the request was made or who is legally compelled as aforesaid shall provide ATCO with prompt written notice of same so that ATCO may either seek a protective order or other appropriate remedy. If such protective order or remedy is not obtained, the Recipient or the Recipient's Representative, as the case may be, shall furnish only that portion of the Data which it is advised by counsel is legally required and will, where permitted under applicable law, use its commercially reasonable efforts to obtain reliable assurance that the Data will be accorded confidential treatment.

10. **Notices**

- (a) All notices, communications and statements (hereinafter called "notices") required, permitted or contemplated hereunder shall be in writing, and shall be sufficiently given and received if:
- (i) personally served on the other Party during normal business hours at the address set forth below (personally served notices shall be deemed received by the addressee when actually delivered);
  - (ii) received by email;
  - (iii) sent by first class registered mail, postage prepaid, to the intended recipient (notices so served shall be deemed to have been received by the addressees on the fifth business day of such addressee following the date of mailing thereof), provided that in the event of an actual or threatened postal strike or other labour disruption that may affect the mail service, notices shall not be mailed.
- (b) The address of each of the Parties shall be as follows:

**ATCO Electric Ltd.**  
8 ATCO Center  
10035 – 105 Street  
Edmonton, AB T5J 2V6

Attention: **Blair Boisvert**, Senior Business Advisor  
Phone: 780-420-4377  
Email: blair.boisvert@atco.com

**Fishing Lake Metis Settlement**  
Sputinow, Alberta  
T0A 3G0

Attention: **Tanya Fayant**, Administrator  
Phone: 780-943-2202  
Email: Administrator@flms.ca

- (c) Any Party may change its said address by notice to the other Party given in accordance with this paragraph.

11. **Miscellaneous**

- (a) This Agreement and its Schedule constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. Both Parties acknowledge and agree that they have had adequate opportunity to obtain legal representation and that this Agreement reflects arms' length negotiations. Neither Party will be deemed the drafter of this Agreement.

- (b) No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing and signed by a duly authorized representative of each of the Parties.
- (c) This Agreement and the obligations set forth hereunder shall not be assigned in whole or in part by any Party or any Person bound hereby.
- (d) This Agreement shall be construed and interpreted in accordance with the laws in force in the Province of Alberta, without reference to conflicts of law principles.
- (e) If any paragraph of this Agreement or the application thereof to any Person or any circumstance shall be held to be invalid or unenforceable to any extent, the remainder of the paragraph in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement, shall not be affected thereby.
- (f) No waiver by any Party hereto shall be effective unless in writing and any such waiver shall only affect the matter, and the occurrence thereof, specifically identified therein and shall not extend to any other matter or occurrence. No failure or delay by ATCO in exercising any right under this Agreement shall operate as a waiver thereof or preclude any other or further exercise of such right or the exercise of any other right under this Agreement.
- (g) This Agreement may be executed in separate counterparts and all such executed counterparts together shall constitute one agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

**Fishing Lake Metis Settlement**

**ATCO ELECTRIC LTD.**

Per:   
Name: Tanya Fayant  
Title: Administrator

Per: \_\_\_\_\_  
Name: ~~Rick Adams~~  
Title: ~~Vice President, Operations & Planning~~

Pete Bothwell  
Vice President, Customer  
Experience & Initiatives

## **Schedule A**

### **Data Type #1**

Format: Shapefile

Coordinate System: Supplied with extract

Extent of Data: Fishing Lake Metis Settlement

Layer naming convention: Supplied with extract

Data Supplied:

- Distribution Poles
- Primary Distribution Conductors
- Secondary Distribution Conductors
- Streetlights
- ATCO Electric Regions

Disclaimer: All data provided above is for information only. Data accuracy will vary due to source limitations and temporal constraints.

