

## CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** made effective as of the \_\_\_ day of \_\_\_\_\_, 2012.

### **BETWEEN:**

**FTI CONSULTING CANADA INC.**, in its capacity as court-appointed Receiver and Manager (the "Receiver") of Trafina Energy Ltd. ("Trafina" or the "Company"), and not in its personal capacity

- and -

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(the "Recipient")

### **WHEREAS:**

- A. The Receiver was appointed, pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta on June 13, 2012, as amended and restated by Order of the Honourable Justice J. Strekaf dated July 16, 2012;
- B. The Recipient is desirous of evaluating a possible transaction(s) (the "Transaction") with or involving the assets of the Company and, more particularly, the sale of Trafina's oil and gas assets as set out in **Appendix "A"** 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, properties and business of the Company;
- C. The Confidential Information has and will be received by the Recipient for the sole purpose of conducting due diligence in relation to the Transaction;
- D. As a pre-condition to the Receiver, its representatives or agents providing confidential or proprietary business information concerning the Company to the Recipient, the Receiver requires and the Recipient has agreed to execute and deliver to the Receiver a confidentiality agreement in form and substance satisfactory to the Receiver;

**NOW, THEREFORE**, in consideration of these premises and the Receiver agreeing that the Recipient may have access to the Confidential Information for the purposes of the Transaction, and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, you covenant and agree with the Receiver as follows:

1. As a condition to your receipt of the Confidential Information, you agree to treat the Confidential Information and any other information concerning the Transaction or the Company which is furnished to you or your Representatives (as defined below) by or on behalf of the Receiver in accordance with the provisions of this Confidentiality Agreement (this "Agreement") and to take or refrain from taking certain other actions herein set forth.
2. You recognize and acknowledge the competitive value and confidential nature of the Confidential Information and the damage that would result to the Company, if any of the Confidential Information is disclosed to any third party. You hereby agree that the Confidential Information will be used solely for the purpose of evaluating the Transaction and that all of the Confidential Information will be kept confidential; provided that any such information may be disclosed only to the limited group of your officers, directors, employees, agents, and outside advisors (such

Persons hereinafter collectively being referred to as "Representatives"), who are actually engaged in and need to know the Confidential Information for the purpose of evaluating the Transaction, who have been informed of the confidential nature of the Confidential Information, and who have been advised by and agree with you that such information is to be kept confidential and shall not be used for any purpose other than the evaluation of the Transaction. You agree that you will cause your Representatives to observe all terms of this Agreement, that you shall be responsible for any breach of this Agreement by any of your Representatives, and that (at your own expense) you will specifically enforce your agreements with any such breaching Representatives through court proceedings.

3. The covenants contained in this Agreement apply to: (i) all information furnished to you by the Receiver regarding the Company or any of its Representatives, whether furnished before or after the date hereof, whether oral or written, and regardless of the manner in which it is furnished; (ii) without limiting the generality of the foregoing, this includes, but is not limited 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, supply sources, 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, and documents; (iii) all analyses, compilations, forecasts, studies, interpretations or other documents prepared by you or your Representatives in connection with your evaluation of the Transaction (including, without limitation, such that reflects or is based upon, in whole or part, the information furnished to you or your Representatives pursuant hereto), and (iv) any other information, whether written or oral, and whether or not noted thereon to be confidential, pertaining to the businesses, assets, liabilities, technology, activities or affairs of the Company and/or the Receiver, which have been or which may hereafter be disclosed or provided to the Recipient (collectively all of the foregoing is referred to as the "Confidential Information"), except:
- (a) any information that is, on the date of this Agreement, in the public domain, other than as a result of its disclosure by you or your Representatives in breach of this Agreement;
  - (b) any information that, after the date of this Agreement, becomes part of the public domain through no fault of the Recipient;
  - (c) any information that the Recipient can prove was in its possession prior to the date of this Agreement and was not acquired by the Recipient directly or indirectly from the Receiver, or anyone under an obligation of confidentiality to the Receiver or the Company;
  - (d) any information which the Recipient can prove was developed independently and without any use of the Confidential Information; and
  - (e) any information received by the Recipient without restriction on disclosure from a third party without breach of this Agreement by the Recipient, provided that the Recipient does not know or have reason to believe that the information was acquired by the third party or disclosed by it in breach of an obligation of confidence owed to the Receiver or the Company

The Confidential Information shall remain the property of the Company. No rights to use, license, or otherwise exploit the Confidential Information are granted to you, by implication or otherwise. You will not by virtue of our disclosure of the Confidential Information and/or your use of the Confidential Information acquire any rights with respect thereto, all of which rights shall remain exclusively with the Company and the Receiver.

4. Given the nature of the Confidential Information and our current discussions, the estate of the Company would be irreparably damaged by any unauthorized disclosure or use of any Confidential Information or of our discussions or by any breach of this Agreement by you or your Representatives. Without prejudice to the rights and remedies otherwise available to the Receiver, you agree that the Receiver shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including an injunction or specific performance, in the event of any breach or threatened breach of the provisions of this Agreement by you or your Representatives. Such remedies shall not be deemed to be exclusive remedies but shall be in addition to all other remedies available at law or equity to the Receiver or the Company. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that you or any of your Representatives have breached this Agreement, then you shall be liable and pay to the Receiver the reasonable costs and expenses (including attorney's fees on a full indemnity solicitor and his own client basis) incurred by the Receiver in connection with such litigation, including any appeal therefrom. You shall indemnify and hold harmless the Receiver and the Receiver's directors, officers, employees, consultants, representatives, advisors and agents from all damages and losses of any nature whatsoever (including consequential damages) arising out of a breach by you or any of your Representatives of any of the terms and conditions of this Agreement.
  
5. You agree that the Receiver shall not disclose to you information about identifiable individuals forming part of the Confidential Information ("Personal Information") unless required by you, acting reasonably, for the purpose of evaluating the Transaction. If Personal Information is provided to you, then:
  - (a) you shall comply with the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, and any similar provincial legislation governing the protection of personal information in the private sector applicable to you in the course of collecting, using and disclosing Personal Information in connection with the Transaction;
  - (b) to the extent that we disclose to you any Personal Information prior to the closing of the Transaction (the "Closing"), you shall, prior to the Closing: (i) collect and use Personal Information only for the purpose of evaluating the Transaction; (ii) only disclose Personal Information to those of your Representatives who need to know such Personal Information for the purpose of evaluating the Transaction; and (iii) use appropriate security measures to safeguard all Personal Information against unauthorized collection, access, use or disclosure; and
  - (c) if the Transaction proceeds, following the Closing, you shall, and shall cause your Representatives to, use or disclose Personal Information obtained as a result of the Transaction only for purposes of carrying on the business of the Company or the carrying out of the objects for which the Transaction took place or otherwise for purposes for which such Personal Information was collected by the Company, unless the consent for other use or disclosure has been obtained from the individuals to whom such Personal Information relates has been obtained as permitted or required by law.

6. The Recipient will keep all Confidential Information in strict confidence and shall not disclose or release the Confidential Information to any person except:
  - (a) 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 Receiver 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 Receiver has given its prior written consent to disclosure or release of the Confidential Information to that person; or
  - (c) those Representatives of the Recipient, as the case may be, who need to know the Confidential Information for the purposes of evaluating the Transaction or assisting the Recipient in relation thereto, provided that:
    - (i) the Recipient shall notify each such Representative of the obligations contained herein with respect to the confidentiality of 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 will take all reasonable steps to ensure that 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.
7. In the event you or any of your Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, order or other legal process) to disclose any of the contents of the Confidential Information, or either the fact that discussions or negotiations are taking place concerning a possible Transaction between the Receiver and you, or any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof, the Company agrees that you and your Representatives may do so without liability, provided you (i) cooperate with the Receiver in any attempts it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the Confidential Information, and (ii) if no protective order is obtained and disclosure is required, (a) furnish only that portion of the Confidential Information that, in your counsel's opinion, you are legally compelled to disclose, and (b) take all reasonable measures to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.
8. The Receiver may elect at any time to terminate further access by you to the Confidential Information. If at any time you determine not to proceed with the possible Transaction, you will promptly notify the Receiver in writing. Following any request by the Receiver or any of its representatives, you agree (i) to promptly re-deliver to the Receiver all written Confidential Information and any other written material containing or reflecting any of the Confidential Information in your possession or your Representatives' possession, (ii) you and your Representatives will not retain any copies, extracts or other reproductions in whole or in part, mechanical or electronic, of such written material, and (iii) all computer records, documents, memoranda, notes and other writings whatsoever prepared by you or your Representatives based on the Confidential Information will be destroyed, and that any such destruction shall be confirmed to the Receiver in writing.
9. If you or any of your Representatives are provided with physical access to any properties or facilities of the Company (other than access in the normal course in respect of properties or facilities in which you have an existing interest), you agree that neither you nor your Representatives shall have, and shall not make, any claims whatsoever against the Receiver, or

any of its respective directors, officers, employees, agents, consultants, representatives or advisors as a result of such access including, without limitation, any and all claims and causes of action for personal injury, death or property damage occurring as a result of your or your Representatives' access to such properties or facilities and you agree to indemnify, defend and hold harmless the Receiver, or any of its respective directors, officers, employees, agents, consultants, representatives or advisors from and against any and all liabilities, claims and causes of action for personal injury, death or property damage occurring on or to such property or facility as a result of your entry onto the premises. You shall, and shall cause your Representatives to, comply fully with all rules, regulations and instructions issued by the Receiver regarding you or your Representatives' access to such properties or facilities.

10. You understand and acknowledge that neither the Receiver nor any of its representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. You agree that neither the Receiver nor any of its representatives shall have any liability to you or any of your Representatives relating to or resulting from your or their use of the Confidential Information. You further understand and agree that (i) the Receiver (a) shall be free to conduct the process for a Transaction as it in its sole discretion shall determine (including changing or terminating such process, providing any information to any other Person, negotiating with any other Person or entering into a definitive agreement with any other Person with respect to any transaction, in each case, at any time and without notice to you or any other Person) and (b) shall be free at its sole discretion to at any time accept or reject any proposal relating to the assets of the company for any reason without notice to you or any other Person, and (ii) you shall have no claim against the Receiver or any of its representatives in connection with any of the foregoing.
11. You hereby represent and warrant that you are not bound by the terms of a confidentiality agreement or other agreement with a third party that would conflict with any of your obligations under this Agreement.
12. In accepting and reviewing the Confidential Information, you represent and warrant that you are acting solely for yourself. Further, you represent and warrant that neither you nor any of your controlled Representatives have discussed or shared, and you hereby covenant that unless you have first received the written consent of the Receiver neither you nor any of your controlled Representatives will discuss or share, with any third party any aspect of the Confidential Information. You acknowledge that the effect of this covenant is that without the full disclosure to and the written consent of the Receiver, neither you nor any of your controlled Representatives can act as agent, partner, co-participant or co-venturer for any third party or third parties with respect to a proposed Transaction. In order to obtain the consent of the Receiver, which the Receiver is entitled to withhold in its sole discretion, you shall notify the Receiver of the identity of each Person for whom or with whom you or any of your Representatives had considered pursuing a possible Transaction and the nature and interest you or any of your Representatives and each such Person would have in respect of such possible Transaction.
13. You agree that, unless and until a binding agreement is entered into between the Receiver and you with respect to the Transaction, neither the Receiver nor you will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression, except with respect to the matters specifically agreed to herein. Except as provided in paragraphs 20 and 2, herein, nothing contained in any discussions between you and the Receiver or in any Confidential Information shall be deemed to constitute a representation or warranty. Except for the matters set forth in this Agreement or in any such binding agreement, neither party shall be entitled to rely on any statement, promise, agreement or understanding, whether oral or written, any custom, usage of trade, course of dealing or conduct.

14. You agree that all (i) communications regarding the Transaction, (ii) requests for additional information, (iii) requests for facility tours or management meetings, and (iv) discussions or questions regarding procedures, will be submitted or directed only to the Receiver. You further agree that under no circumstances will you or your Representatives discuss or otherwise communicate any aspect of the Transaction to any member of the management of the Company without the express written permission of the Receiver. Without the Receiver's prior written consent, you shall not, and you shall direct your Representatives not to, make any contact of any nature regarding a proposed Transaction (including inquiries or requests concerning Confidential Information) with any employee, supplier, customer, creditor, bank or other lender of or to the Company or any of its Affiliates.
15. For purposes of this Agreement, except as otherwise defined herein: (i) "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, controls, or is controlled by, or is under common control with, such Person (for this purpose, "control". (including "controlled by" and "under common control with"), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise); and (ii) "Person" shall be broadly interpreted to include any individual, corporation, company, partnership, limited liability company, trust or other group or entity (including any court, government or agency, commission, board or authority thereof, federal, state or local, domestic, foreign or multinational).
16. This Agreement may be executed by facsimile or electronic transmission and in any number of counterparts, each of which when so executed shall be deemed an original, but such counterparts shall together constitute one and the same Agreement.
17. The Recipient agrees that the restrictions contained in this Agreement are reasonable in order to protect the legitimate interests of the Receiver and the Company and all defences to the strict enforcement of the restrictions by the Receiver are hereby waived by the Recipient.
18. 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.
19. 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 exclusive jurisdiction of the Courts of the Province of Alberta for the determination of all matters arising hereunder in the event the Receiver should bring an action on this Agreement in the Courts of the Province of Alberta. The Recipient hereby agrees that, notwithstanding the foregoing, the Receiver 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.
20. This Agreement will continue for a period of twelve months from the date of Closing, unless otherwise agreed in writing by the Receiver.
21. 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 Receiver in enforcing its rights against any particular breach of this Agreement shall not limit or affect its rights to enforce its rights against any other breach hereof.
22. This Agreement may not be assigned by the Recipient without the prior written consent of the Receiver.

23. This Agreement shall enure to the benefit of the Receiver and its successors and assigns and shall be binding upon the Recipient and its successors and permitted assigns.
24. This Agreement constitutes the entire agreement between the parties hereto 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 other than as are expressed or referred to herein in writing.
25. Nothing contained in this Agreement shall in any way limit the rights or remedies available to the Receiver at law, in equity or under statute arising in any way in connection with the disclosure of the Confidentiality Information in the event of a breach or a threatened breach of this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the day and year first above written.

**FTI CONSULTING CANADA INC.**, in its capacity as court-appointed Receiver and Manager of Trafina Energy Ltd.

Per:

\_\_\_\_\_  
Dustin Olver, Director

Per:

\_\_\_\_\_  
Name of Recipient (please print)

\_\_\_\_\_  
Signature of Recipient and/or  
Signing Officer

**APPENDIX "A" TO CONFIDENTIALITY AGREEMENT**

**ASSETS**

**Receivership Sale:**

- (1) McMullen (Land, Wells),
- (2) Wetaskiwin (Land, Wells),

**Wells:**

- (3) Shekille,
- (4) Saddle Hills,
- (5) Knopcik,
- (6) Grande Prairie,
- (7) Giroux Lake,
- (8) Waskahigan,
- (9) Meekwap,
- (10) Windfall,
- (11) Pine Creek,
- (12) Bellis,
- (13) Three Hills Creek,
- (14) Lone Pine,
- (15) Chigwell,
- (16) Utikuma Lake,
- (17) Peerless,
- (18) House Mountain,
- (19) Twin Lake,
- (20) Alexis,
- (21) Riviere,
- (22) Woodbend/Wizard Lake,
- (23) Bittern Lake, Provost,
- (24) Heathdale,
- (25) Herronton,
- (26) Farrow).





