

# **Subscriber's Agreement**

**This Agreement** dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, (the "Effective Date").

**Between:**

**Saskatchewan First Call Corporation**

(hereinafter referred to as the "Supplier")

***Of The First Part***

and

\_\_\_\_\_  
(hereinafter referred to as the "Association")

***Of The Second Part***

**In Consideration** of the covenants representations and conditions contained herein and other good and valuable consideration, the parties covenant and agree as follows:

1. The Association hereby retains the Supplier to provide the Services set forth in the Terms and Conditions attached to and forming part of this Agreement and the Supplier agrees to provide the Services in accordance with the Terms and Conditions attached and subject to receipt of the fees therein specified.
  - 1.1 The Association represents that it is entering into this Agreement as agent on behalf of each of the rural pipeline entities listed in the attached Schedule "A", which may be amended from time to time (hereinafter individually or collectively referred to as the "Subscriber" or "Subscribers", as the context requires).
  - 1.2 The parties agree that if any other rural pipeline entities become members of the Association, that this Agreement shall be binding upon such entity upon Supplier being advised by the Association accordingly, the Supplier being provided with an appointment of agency form signed by the new Subscriber and the Supplier confirming in writing its consent to have such new member become subject to this Agreement, which consent shall not be unreasonably withheld.
2. Attached as Appendix A are particulars respecting each Subscriber required by the Supplier and the Subscriber covenants that the information contained therein is true and correct as of the date hereof.
3. In accordance with the provisions of Appendix B attached, the Subscribers shall be classified as a \_\_\_\_\_ (**specify category**) and the applicable joining fees shall be \$\_\_\_\_\_ in aggregate, payable upon execution of this Agreement.

4. All requests for amendments to Appendix A (Subscribers' Information) and notices, requests, demands and other communications required pursuant to Paragraphs 2 and 3 of the Terms and Conditions (other than notice provided pursuant to subparagraph 2.3.1(e), (k) and (l)) shall be in writing and shall be deemed to have been duly given only if personally delivered, mailed by pre-paid mail or sent by facsimile or e-mail to the parties as follows,

- (i) To the Supplier at:  
1601 Winnipeg Street, Regina, Saskatchewan, S4P 4E7  
Facsimile No. (306) 777-9223  
E-mail: Sask 1st Call Mapping Administrator@SaskEnergy.com  
cc. celmer@sask1stcall.com

and

- (ii) To the Association/Subscribers at:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No. \_\_\_\_\_  
E-mail: \_\_\_\_\_

All other notices, requests, demands and other communications required under this Agreement, other than notice provided pursuant to subparagraph 2.3.1(e), (k) and (l) of the Terms and Conditions, shall be in writing and shall be deemed to have been duly given only if personally delivered, mailed by pre-paid mail or sent by facsimile to the parties as follows,

- (i) To the Supplier at:  
1000-1777 Victoria Avenue, Regina, Saskatchewan S4P 4K5  
Facsimile No. (306) 565 -3332  
Attention: Legal Department

and

- (ii) To the Association/Subscribers at:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No. \_\_\_\_\_

Any notice in writing in the manner set out above, excluding notice by facsimile, shall be effective upon actual receipt. Any notice given by facsimile shall be effective upon receipt by the recipient's fax machine if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours.

Notwithstanding anything in this paragraph, Notifications and Audit Reports pursuant to 2.3.1(e) and (k), and notification of damage pursuant to 2.3.1(l), will be given and deemed received as provided for in the Terms and Conditions hereto.

5. The Terms and Conditions, Appendix A - Subscriber Information Form, Appendix B - Subscriber Fees, Appendix C - Form of Notification, and Appendix D –Notice of Change to Subscriber Information Form, all attached hereto, are to be read into and form part of this Subscriber Agreement (collectively the “Agreement”) and the whole shall constitute the contract between the parties.

**In Witness Whereof** the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

**Supplier:**

**Subscriber:**

**Saskatchewan First Call Corporation**

\_\_\_\_\_  
(Type Name)

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

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

\_\_\_\_\_  
Printed Name of Person Signing

\_\_\_\_\_  
Printed Name of Person Signing

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Title of Person Signing

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

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

\_\_\_\_\_  
Printed Name of Person Signing

\_\_\_\_\_  
Printed Name of Person Signing

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Title of Person Signing

# Terms and Conditions

## 1. Interpretation

1.1 In this Agreement and in all Appendices attached hereto, unless the contrary is expressly stated:

- (a) "**Activation Date**" shall mean that date on which the Subscriber is a part of the System and capable of receiving Notifications, as determined by the Supplier;
- (b) "**After Hours**" means those hours of each and every day excluding Operating Hours;
- (c) "**Agreement**" shall mean this Agreement and all Appendices attached to and which form a part of this Agreement as it may be amended from time to time in accordance with the terms hereof and the expressions "herein", "hereof", "above" and "below" and similar expressions refer to this Agreement and where applicable, to the appropriate Appendices hereto;
- (d) "**Authorized Subcontractor**" shall mean a subcontractor with whom the Supplier has contracted to perform the obligations of the Supplier herein in accordance with the provisions of Section 6 below;
- (e) "**Call Centre**" means the facility to be manned and maintained by the Supplier in order to provide the Call Centre Services;
- (f) "**Call Centre Services**" shall mean the services described as such in subparagraph 2.3.1 below;
- (g) "**Data**" or "**Subscriber's Data**" shall mean information and material, which shall remain the property of the Subscriber, provided from time to time by the Subscriber to the Supplier as to the location of the Underground Facilities which are the property of, or under the control of, the Subscriber;
- (h) "**Data Base**" shall mean a mapping system created and maintained by the Supplier to contain the Data supplied and verified by the Subscriber to the Supplier;
- (i) "**Destination Code**" shall mean an alphanumeric code which identifies the specific reception location for Notifications to the Subscriber, recognizing that the Subscriber may have more than one Destination Code;
- (j) "**Dig-up Call**" shall mean an outgoing call from the Supplier to the Subscriber, which advises the Subscriber of a Dig-up Notification;

- (k) **"Dig-up Notification"** shall mean an outgoing transmission in writing from the Supplier to the Subscriber, which advises the Subscriber of information received by the Supplier that the Subscriber's Underground Facility may have been damaged;
- (l) **"EDT Subscriber"** means a Subscriber who receives Notifications by electronic data transmission, other than electronic mail, to a terminal on the Subscriber's premises;
- (m) **"E-mail Subscriber"** means a Subscriber who receives Notifications by electronic mail to a terminal on the Subscriber's premises;
- (n) **"Emergency Locate Request"** shall mean an incoming call from an Excavator requesting location of Underground Facilities where the excavation is to effect a repair or replacement of an essential service, the Excavator is on site or enroute to the site and the Excavator states that the situation is an emergency;
- (o) **"Excavator"** shall mean those persons including Subscribers who call the Toll Free Telephone Number to determine the location of Underground Facilities in the Province of Saskatchewan;
- (p) **"Fax Subscriber"** shall mean a Subscriber who receives Notifications by data communication to a facsimile machine at a particular Destination Code;
- (q) **"Homeowner"** shall mean the owner or tenant of a residential lot or farm whose Locate Request is restricted to that particular residential lot or farm and who is functioning as an Excavator on that private property;
- (r) **"Identification Number"** shall mean a numeric code number which may be assigned to each Excavator, excluding Homeowners, at the time of his or her first Locate Request;
- (s) **"Information"** shall mean information with respect to the Subscriber's organization as detailed in the Subscriber Information Form, attached as Appendix A hereto;
- (t) **"Land Location"** shall mean:
  - (i) the location of the Subscriber's Underground Facilities described by quarter section; or
  - (ii) such other land description as may be used or required by the Supplier to accommodate a parcel smaller than quarter section (such as a city lot); and
  - (iii) where applicable, the name of any population centre in which the Underground Facility is situated, including without limitation, those

defined or designated as a city, town, village, resort village or hamlet.

- (u) "**Law**" shall mean the laws in force in the Province of Saskatchewan and as amended or replaced from time to time;
- (v) "**Locate Request**" shall mean an incoming communication from an Excavator which advises the Supplier of the Excavator's intent to disturb the ground at a particular location;
- (w) "**Notification**" shall mean an outgoing transmission from the Supplier to the Subscriber which advises the Subscriber of an Excavator's request to have Underground Facilities located and provides relevant particulars about the Excavator and the location of the site substantially in the form of Appendix C attached, and which does not include a Dig-up Notification;
- (x) "**Operating Hours**" means between the hours of 0800 and 1700, Saskatchewan time, Monday through Friday, exclusive of the following holidays: New Year's Day, Good Friday, Victoria Day, Canada Day, August Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day and any other civic, provincial or federal holiday declared from time to time;
- (y) "**Owner**" shall mean any owner or operator of Underground Facilities in the Province of Saskatchewan who has entered into a Subscriber's Agreement with the Supplier, including the Subscriber;
- (z) "**Printout**" shall mean a paper or electronic representation of the Data entered into the Data Base, indicating the locations at which Underground Facilities of the Subscriber are shown in the Supplier's Data Base;
- (aa) "**Priority Locate Request**" shall mean a Locate Request in which the Excavator is giving less than eight hours notice of his intent to disturb the ground;
- (bb) "**Routine Locate Request**" shall mean a Locate Request in which the Excavator is giving at least two full working days notice of his intent to disturb the ground;
- (cc) "**Services**" shall mean the services to be provided by the Supplier to the Subscriber as described in section 2 below, including, without limitation, the Call Centre Services;
- (dd) "**Short Notice Locate Request**" shall mean a Locate Request in which the Excavator is giving more than eight hours notice but less than two full working days notice of his intent to disturb the ground;
- (ee) "**System**" shall mean the computer hardware and software and telecommunications systems operated by the Supplier to provide the Call Centre Service to Excavators and Subscribers;

- (ff) **"Testing Data Base"** shall mean a part of the Data Base, which is inactive and is not used to issue Notifications to the Subscriber, utilized by the Supplier to enter unconfirmed Data supplied by the Subscriber in order to commence the verification process set out in subparagraph 2.3.2;
- (gg) **"Ticket Number"** shall mean a numeric code number which is assigned to each Locate Request for reference and record keeping purposes;
- (hh) **"Toll Free Telephone Number"** shall mean the toll free telephone number for receiving calls at the Call Centre;
- (ii) **"Underground Facility"** shall mean:
  - (i) underground facilities for the generation, storage, transmission, or distribution of electrical energy;
  - (ii) underground facilities for the production, extraction, collection, processing, storage, transmission or distribution of carbon dioxide, steam, heat, oil, natural gas, propane or other petroleum substances;
  - (iii) underground facilities for the transmission or distribution of telephone communications, cable television or other forms of communications;
  - (iv) underground facilities for the extraction, supply, collection, treatment, storage, transmission, distribution, or disposal of water or sewage;
  - (v) all other underground facilities of the same nature which the Subscriber plans to place or install in the future; and
  - (vi) any areas of interest to the Subscriber in regards to a possible future location of such facilities.
- (jj) **"Audit Report"** shall mean a list of all Ticket Numbers sent to each EDT Subscriber Destination Code, Fax Subscriber Destination Code and E-mail Subscriber Destination Code transmitted by the Supplier to those Destination Codes to allow such Subscriber to verify that all Notifications and Dig-up Notifications for the preceding twenty-four hour period were in fact received.

1.2 The article and paragraph headings contained in this Agreement and in all schedules and appendices attached hereto are for convenience of reference only and shall not affect the construction or interpretation of the provisions hereof.

## 2. The Services

In consideration of payment of the fees specified in Appendix B by the Subscriber and subject to the Subscriber complying with its obligations set out in section 3 below, the Supplier shall provide the Services to the Subscriber, which shall consist of the following:

2.1 **Promotion Program**: The Subscriber acknowledges the advantages to it of an advertising, promotion and liaison program (the "Program") which would:

- (a) recruit additional owners or operators of Underground Facilities in the province of Saskatchewan to enter into Subscriber agreements with the Supplier in order to achieve economics of scale and wider use of Call Centre Services by excavators;
- (b) advertise and promote, on behalf of all Owners, use by excavators of Call Centre Services in order that persons in Saskatchewan are aware of the Call Centre Services and call before they dig; and
- (c) liaise with government and other regulatory bodies regarding owners and operators of Underground Facilities in relation to persons digging or excavating.

2.2 **Terms**: The Supplier shall utilize a portion of the fees collected by all Owners to fund such a Program on the following terms and conditions:

- (a) the Subscriber understands and acknowledges that all advertising and promotion undertaken as part of the Program (whether detailed herein or otherwise) is intended to maximize general public recognition of the Call Centre and the Call Centre Services for the benefit of all Owners including the Subscriber and the Supplier undertakes no obligation to ensure that any particular Owner including the Subscriber will benefit directly or pro-rata from the placement or conduct of such advertising and promotion; and
- (b) the Subscriber acknowledges that a portion of the Fees shall be disbursed, as the Supplier determines appropriate, to assist in all aspects of the marketing and promotion of the Call Centre Services and the Call Centre including, without limitation, the following purposes: public relations, promotional and advertising programs, government representation and owner and operator recruitment as Subscribers; and
- (c) the Subscriber acknowledges that all copyrights in the advertising and promotion undertaken as part of the Program shall be the property of the Supplier.

2.3.1 **Call Centre Services:** The Supplier shall do the following (collectively the "Call Centre Services"):

- (a) **Receipt of Locate Requests:** Following the Activation Date, the Supplier shall operate the Call Centre such that during the Operating Hours operators shall be available to receive telephone calls from Excavators on the Toll Free Telephone Number inquiring, inter alia, about the location of the Subscriber's Underground Facilities. A fax number and website messaging will also be provided to Excavators for Routine Locate Requests only. The Supplier will provide a number of consecutive telephone lines to handle incoming inquiries with a minimum of hold time and use reasonable efforts to answer all such calls quickly and efficiently. Separate telephone lines shall be maintained by the Supplier in order to conduct the normal administrative activities of the Call Centre.

The time and date identified in the Supplier's website messaging program or fax transmission records as the time and date that a fax or website Locate Request was received shall be deemed conclusive evidence of the time and date of receipt by the Supplier.

- (b) **After Hours:** During After Hours the Supplier shall provide an answering service connected through call forwarding provisions to the Toll Free Telephone Number where the answering operator will advise the caller that the Call Centre is closed for routine business and that if the request is not an emergency to call back during Operating Hours. If the caller indicates he or she is calling to advise of some emergency situation related to an Underground Facility, and the caller or operator is able to identify the owner of the Underground Facility, the operator shall provide to the caller the Subscriber's emergency response telephone number(s), as indicated in Appendix A. Further, or in the alternative, the operator may advise the caller to dial 911.

Any Locate Request received by fax or website messaging After Hours shall be transmitted within two hours of commencement of the next following Operating Hours.

- (c) **Planned Excavation Date:** The Suppliers' operators shall ask the Excavator the date on which he or she plans to begin excavation activities. If the Excavator will not be commencing excavation activities within ten working days of the date the Excavator's call is received, the Supplier shall not accept the Excavator's Locate Request except where the Excavator specifies in that phone call that the Excavator requires the location of the Subscriber's Underground Facilities to be marked above ground for planning or design purposes only.
- (d) **Ticket Numbers:** The Supplier shall assign a Ticket Number to each Locate Request.
- (e) **Subscriber Notification:** The Supplier shall determine, in accordance with the Subscriber's Data as displayed in the Data Base, whether the

Subscriber has Underground Facilities located in the geographic area described by the Excavator. In the event the Supplier determines the Subscriber has Underground Facilities located in such area, the Supplier will so advise the Excavator and shall provide Notification to the Subscriber in accordance with the following schedule:

- (i) Emergency Locate Requests shall be transmitted by the Supplier to the Subscriber within five minutes of receipt of the Locate Request, and in addition the Supplier shall telephone the Subscriber to advise of the Notification within 10 minutes of receipt of the Locate Request;
- (ii) Priority Locate Requests shall be transmitted by the Supplier to the Subscriber within fifteen minutes of receipt of the Locate Request;
- (iii) Short Notice Locate Requests shall be transmitted by the Supplier to the Subscriber within thirty minutes of receipt of the Locate Request;
- (iv) Routine Locate Requests shall be transmitted by the Supplier to the Subscriber within two hours of receipt of the Locate Request; and
- (v) Any Locate Request information received by fax or website messaging during Operating Hours shall be transmitted by the Supplier to the Subscriber within two hours of receipt of the Locate Request at the Supplier's fax or computer facilities, regardless of its nature or urgency.

The only undertaking of the Supplier is to ensure that the Subscriber is notified of a proposed excavation, the Land Location, and the name of and a contact phone number for the Excavator. Additional information will be stated in the Notification only where provided by Excavator

Notwithstanding anything in this Agreement, no Notification will be provided if the Excavator does not provide, or does not legibly or coherently provide, the following:

- (i) the Land Location, as required;
- (ii) an Excavator name; and
- (iii) an Excavator contact number;

and, in the event of a Locate Request received by fax or website messaging, the requisite information cannot be immediately obtained from the Excavator by telephone.

The Supplier shall have no responsibility for the accuracy of information provided by the Excavator.

- (f) **Destination Code:** Each Notification shall be assigned a Destination Code and the Ticket Number, being the same Ticket Number assigned to the Locate Request originating from the Excavator's call.

(g) **Transmission of Notification to Subscriber:**

The Supplier shall transmit Notifications to the Subscriber using one of the following methods selected by the Subscriber in Appendix A:

- (i) facsimile machine;
- (ii) electronic data transmission; or
- (iii) electronic mail.

It shall be the responsibility of the Subscriber to ensure its equipment is properly maintained and repaired such that it is capable of receiving Notifications during Operating Hours.

The Supplier, at its sole discretion, may introduce other methods of communicating Notifications to the Subscriber to improve efficiency and to take advantage of technological advances.

(h) **Notification by Fax, Electronic Data Transmission or Electronic Mail:**

Any Dig-up Notification, Notification or Audit Report transmitted by facsimile machine or electronic data transmission shall be deemed received on sending. Any Dig-up Notification, Notification or Audit Report transmitted by the Supplier to the Subscriber by electronic mail shall be deemed to have been received by the Subscriber immediately upon the Supplier, or its employee or representative, clicking on the "send" button on the Supplier's electronic mail program. The time and date identified in the Supplier's electronic mail program or fax or data transmission records as the time and date that the Dig-up Notification, Notification or Audit Report was sent shall be deemed conclusive evidence of the time and date of receipt by the Subscriber.

(i) **Information to Caller:** After obtaining the requisite information from the Excavator to complete a Locate Request, the Supplier shall advise each Excavator of the following:

- (i) whether the Subscriber appears to have Underground Facilities located in the geographical area described by the Excavator;
- (ii) if so, advise the Excavator that the Subscriber will be notified by the Supplier and the Excavator will be further advised not to commence any digging, excavating or similar work in the area until contacted by the Subscriber or by any other Owners the Supplier has advised the Excavator have Underground Facilities in the area; and
- (iii) that the Excavator remains responsible to contact any other parties who may have Underground Facilities in the described area.

The Supplier shall be responsible in the event that the Data Base reflects that the Subscriber has Underground Facilities in the area described by the Excavator and the Supplier fails to advise the Excavator of the presence of these Underground Facilities.

- (j) **Excavator Identification:** Each Excavator, except for a Homeowner, shall be assigned an Identification Number to permit his or her future identification, maintain information relative to his or her identity and reduce the length of time of future Locate Request calls.
- (k) **Records and Verification:** The Supplier shall maintain in accordance with the following provisions, records and verifications of its activities as follows:
  - (i) The Supplier shall voice record all telephone Locate Requests and store such recordings for a minimum period of three (3) years, all Locate Requests obtained through other permitted medium shall be similarly retained;
  - (ii) The Supplier shall retain and store, for a minimum period of seven (7) years, all documents comprising the Subscriber's Data and an electronic record of all Locate Requests, Dig-up Notifications, and Notifications; and
  - (iii) At the conclusion of each regular working day, a list of all Ticket Numbers sent to each EDT Subscriber Destination Code, Fax Subscriber Destination Code and E-mail Subscriber Destination Code (an 'Audit Report') shall be transmitted by the Supplier to those Destination Codes to allow such Subscriber to verify that all Dig-up Notifications and Notifications for the preceding twenty-four hour period were in fact received. The Subscriber shall contact the Supplier promptly upon learning of any discrepancies.

All such records and Audit Reports pertaining to the Subscriber shall be made available to the Subscriber upon request and within a reasonable period of time.

- (l) **Notification of Damage ('Dig-up Calls'):** The Subscriber shall provide a Dig-up emergency telephone number in its Subscriber Information Form (Appendix A). On receipt of information by telephone during Operating Hours that the Subscriber's Underground Facility may have been damaged, the Supplier shall transmit a Dig-up Notification to the Subscriber within five minutes, and in addition, the Supplier shall telephone the Subscriber at the Dig-up emergency telephone number to advise of the Dig -up Notification within 10 minutes of receipt of the call.

Where the Supplier receives information that the Subscriber's Underground Facility may have been damaged by fax or website messaging during Operating Hours, a Dig-up Notification shall be transmitted by the Supplier to the Subscriber within two hours of receipt of

that information, and in addition the Supplier shall telephone the Subscriber at the Dig-up emergency telephone number to advise of the Dig -up Notification within 10 minutes of sending said notification. Any information received by fax or website messaging After Hours shall be communicated in the same fashion within two hours of commencement of the next following Operating Hours.

Dig-up Notifications shall be sent to the same place, and in the same way, as a Notification.

The Supplier shall exercise reasonable efforts to obtain a Land Location, caller name and caller phone number and to include that information in a Dig-up Notification. Additional information will be included in a Dig-Up Notification only when provided by the caller. **The Supplier shall in no event be responsible for the accuracy, completeness or timeliness of the advice communicated to the Subscriber pursuant to this paragraph.**

The parties acknowledge that Supplier provides a line location screening and locate notification service and is not an emergency response service. The Supplier will rely on the advice of the caller as to whether the call should be forwarded to 911. Notwithstanding anything in this Agreement, the Supplier reserves the right, in its sole discretion, to forward or refer damage or dig-up information directly to 911 or other emergency service providers. Where calls are forwarded to 911 or another service provider, caller information will not be obtained, and no Dig -up Call or Notification will be provided to the Subscriber.

- (m) **Underground Facilities:** Notwithstanding anything in this Agreement, the Supplier shall not be responsible for facilities not defined herein as Underground Facilities, regardless of whether those facilities are identified in the Data Base.

### 2.3.2 Data Base and Data:

- (a) **Initial Data:** Following receipt of the initial Data from the Subscriber pursuant to paragraph 3.2 below, the Supplier shall use reasonable efforts to enter such Data into the Testing Data Base within thirty (30) days.
- (b) **Confirmation:** The Supplier shall use reasonable efforts to return a Printout showing the version of the Subscriber's Data input into the Testing Data Base by the Supplier within seven (7) days following input of the initial Data. The Subscriber shall advise the Supplier in writing as soon as possible, but in no event later than thirty (30) days after receipt of such Printout, of any changes, additions or deletions to the Data Base required to accurately reflect the location of the Subscriber's Underground Facilities. If the Printout is accurate the Subscriber shall verify the Printout in writing. **The initial Data will not be moved from the Testing Data Base to the active Database until the Printout, or a replacement Printout, is verified in writing.** Supplier will use reasonable efforts to

provide a replacement Printout within (14) days of receipt of a written request for changes.

- (c) **Updates:** The Supplier shall use reasonable efforts to amend the Data Base and to provide a revised Printout to the Subscriber within fourteen (14) days of receipt of updated Data from the Subscriber pursuant to paragraph 3.3. The Subscriber shall advise the Supplier in writing as soon as possible, but in no event later than thirty (30) days after receipt of such a Printout, of any changes, additions or deletions to the Data Base required to accurately reflect the location of the Subscriber's Underground Facilities.
- (d) **Supplier Requests:** The Supplier may from time to time, in its sole discretion, deliver to the Subscriber a Printout showing how the Subscriber's Data is then reflected in the Data Base. The Subscriber shall advise the Supplier in writing as soon as possible, but in no event later than thirty (30) days after receipt of such Printout, of any changes, additions or deletions to the Data Base required to accurately reflect the location of the Subscriber's Underground Facilities.
- (e) **Further Revisions:** In its sole discretion, Supplier may provide a new Printout once additional changes are made under 2.3.2 (c) or (d). In that event, the Subscriber shall advise the Supplier in writing as soon as possible, but in no event later than thirty (30) days after receipt of such Printout, of any additional changes, additions or deletions to the Data Base required to accurately reflect the location of the Subscriber's Underground Facilities.
- (f) **Responsibility:** The Supplier assumes no responsibility for the accuracy or completeness of the Data supplied by the Subscriber. Data provided pursuant to 2.3.2 (c), (d) and (e) will be entered into the active Data Base immediately without written verification of a Printout. Once a Printout is provided to a Subscriber it is the responsibility of the Subscriber to ensure that the Supplier's Printout accurately reflects the Data of the Subscriber and to promptly communicate problems. All risk created by delay in communication of problems, including delays of less than 30 days, shall be born by the Subscriber.

### **3. Obligations of the Subscriber**

The Subscriber shall:

- 3.1 **Fees:** Pay all applicable charges as set out in Appendix B hereto, and as further specified in this Agreement, as and when due.
- 3.2 **Provision of Data:** Provide to the Supplier in the format stipulated by the Supplier forthwith following the Effective Date, the Data which shall include the following:

- (a) the location of the Subscriber's Underground Facilities described by quarter section, where applicable;
  - (b) the name of any population centre, including without limitation those defined or designated as a city, town, village, resort village or hamlet, in which the Underground Facility is situated; and
  - (c) such other description of the location of the Underground Facility as may be required by the Supplier.
- 3.3 **Updating**: Provide to the Supplier, forthwith or on such schedule as requested by the Supplier, notification of any changes in, deletions from or additions to the Information such that the Information provided to the Supplier is current and accurate at all times. Provide to the Supplier, forthwith or on such schedule as requested by the Supplier, notification of any changes in, deletions from or additions to the Data such that the Data provided to the Supplier is current and accurate at all times.
- 3.4 **Verification**: Without limiting the generality of the Subscriber's obligations under paragraph 3.3, provide to the Supplier verification, in a form satisfactory to the Supplier acting reasonably, of the Data as reflected in the Data Base in accordance with the provisions of subparagraph 2.3.2 above.
- 3.5 **Response**: Respond to each Notification and Dig-up Notification from the Supplier by contacting the Excavator described in the notification in a timely manner.
- 3.6 **Equipment**: Ensure its equipment for receiving Notifications and Dig-up Notifications from the Supplier is operative at the commencement of each working day and ensure it has sufficient paper, ribbon, or other necessary facilities or equipment to be able to receive Notifications, Dig-up Notifications and information forwarded by the Supplier. If the Subscriber's equipment for receiving Notifications is inoperative, the Subscriber shall immediately notify the Supplier of the inoperative equipment and provide an alternate means of receiving Notifications and Dig-up Notification suitable to the Supplier. The Subscriber shall be responsible for its costs related to owning and maintaining its respective receiving units and associated connecting networks.
- 3.7 **Refer to Supplier**: The Subscriber shall refer any direct request for locates from an Excavator to the Supplier to ensure that all Owners with Underground Facilities at the site of the proposed ground disturbance receive Notifications.

## **4. Obligations of the Supplier**

- 4.1 **Confidentiality Covenants**: The Data and Information provided by the Subscriber shall remain strictly confidential, with the exception of the Subscriber's name, and the Supplier shall not use or disclose, and shall ensure that each of their employees, Authorized Subcontractors, or agents used to perform the Services shall not use or disclose any Data or Information, save as

is required in providing the Services or otherwise pursuant to this Agreement. The Supplier shall take reasonable precautions to preserve the confidentiality of the Data and Information and shall exercise the same degree of care as the Supplier uses in preserving the confidentiality of its own confidential information of a similar type. The Subscriber's Data and the Subscriber's Data contained in the Data Base may be disclosed in a blended manner which does not highlight or distinguish the confidential information provided by a particular Subscriber, provided that said disclosure is for advertising or statistical reporting purposes only.

4.2 **Exception:** Notwithstanding paragraph 4.1 or anything else herein, the Supplier shall, with respect to each Subscriber's Data and Information disclosed to it, be permitted to disclose all or part of such information without liability to the Subscriber as follows:

- (a) if the Supplier is required by applicable law or government directive, or is ordered by a court, regulator or other governmental body of competent jurisdiction to disclose such information;
- (b) such information was previously known to the receiving party free of any obligation to the Supplier to keep it confidential; or
- (c) such information has been previously publicly disclosed.

4.3 **Personal Information:** Each party shall endeavor to manage any personal information it gains access to through this Agreement in accordance with the requirements of the applicable privacy laws. Each party agrees to allow the other party to store contact information, such as names, phone numbers, and e-mail addresses for its business representatives, and to use such information internally and to communicate with the other party for the purposes of their business relationship. Each party shall, to the extent required by applicable law, give notice to, and obtain consent from, each of its employees, contractors and other representatives affected hereunder.

4.4 **Intellectual Property:** The Supplier covenants that all computer software, computer hardware, telecommunications equipment or other intellectual property used by it in connection with the Services shall in no way infringe upon any copyright, trademark or other proprietary interest of any other owner, operator or user of any similar system and the Supplier shall indemnify and hold harmless the Subscriber in respect of any loss, damage, liability, claim, costs or expenses, including legal fees and expenses, sustained by or brought against the Subscriber in connection with any such infringement claim against the Supplier.

## **5. General Liability Insurance**

5.1 **Insurance:** Without restricting the generality of section 8 - Indemnification, the Supplier shall provide, maintain and pay for the insurance coverages specified in paragraph 5.2 and the Subscriber shall provide, maintain and pay for the insurance coverages specified in paragraph 5.3. Unless otherwise stipulated, the

duration of each insurance policy shall be from the Effective Date of the Agreement until sixty (60) days following the expiry of the term of the Agreement.

- 5.2 **Supplier's Policy:** Comprehensive General Liability Insurance in the name of the Supplier and any Authorized Subcontractor of the Supplier shall be placed with limits of not less than \$10 million, Canadian funds, applicable to any single occurrence of personal injury or property damage relating to or arising out of the provision of Call Centre Services and operation of the Call Centre. To achieve the desired limit, umbrella or excess liability insurance may be used.
- 5.3 **Subscriber's Policy:** Comprehensive General Liability Insurance in the name of the Subscriber shall be placed with limits of not less than \$2 million, Canadian funds, applicable to any single occurrence of personal injury or property damage, including, without limitation, personal injury or property damage relating to or arising out of the inaccuracy or incompleteness of the Subscriber's Data, the Subscriber's response to Notifications and Dig-up Notifications received from the Supplier and the provision of facility locate services to Excavators, and having a personal injury and property damage deductible not exceeding the amount approved by the Supplier. To achieve the desired limit, umbrella or excess liability insurance may be used.
- 5.4 **Further Requirements:** Each Comprehensive General Liability Insurance Policy specified in this section shall:
- (a) be underwritten by insurers licensed to carry on business in the Province of Saskatchewan;
  - (b) contain provisions extending coverage to cover contractual liability.
- 5.5 **Further Requirements of the Subscriber's Policy:** The Comprehensive General Liability Insurance Policy required in this section to be provided, maintained and paid for by the Subscriber shall:
- (a) be confirmed to the Supplier, by the provision of a certificate of insurance, in a form reasonably satisfactory to the Supplier, to the Supplier prior to the Activation Date and upon every annual renewal date of this Agreement;
  - (b) name the Supplier as an additional insured and shall contain a cross-liability clause specifying that the insurance shall apply to any action brought against one insured by the other insured in the same manner as if separate policies were issued to each; and
  - (c) provide that at least thirty (30) days' prior written notice will be provided to all insureds under the policy in the event of termination.

## **6. Authorized Subcontractor**

- 6.1 Notwithstanding the provisions of paragraph 10.1 below, the Supplier, in its sole discretion, may assign all or a portion of its rights and obligations hereunder, including those relating to the provision of the Services, to one or more subcontractors ("Authorized Subcontractors"), whose authorization and approval shall be in the sole discretion of the Supplier. The Supplier may provide Data and Information to an Authorized Subcontractor who has a need to know for the purposes of performance of this Agreement. The Subscriber will cooperate in all respects with each Authorized Subcontractor, and shall provide Data and Information to an Authorized Subcontractor, as required in connection with the provision of Services by that Authorized Subcontractor.

## **7. Termination**

- 7.1 **Event of Default:** In the event one party does not fulfill its obligations hereunder the other party may send a written notice to the party in default stating the nature of the default. If the defaulting party has not corrected such default, if reasonably remediable, within twenty (20) days from receipt of the notice, or if not reasonably remediable within such twenty (20) day period, fails to immediately commence to take steps to remedy such default and to proceed as diligently and expeditiously as possible to remedy such default within thirty (30) days of receiving such notice, the other party may terminate this Agreement by sending the defaulting party no less than ten (10) days' prior written notice of its intention to do so. Without limiting anything in this paragraph 7.1, if the Subscriber breaches an obligation hereunder that, in the opinion of the Supplier, may result in inaccurate information being provided to Excavators, the Supplier may immediately suspend the provision of all Services to the Subscriber until the default is remedied or the Agreement is terminated pursuant to this paragraph.
- 7.2 **Terms to Survive:** The provisions of this Agreement which by their context are intended to survive termination shall survive notwithstanding such termination including, without limitation, the provisions of paragraphs 7.6, 7.7 and Sections 4, 8 and 9.
- 7.3 **Insolvency:** Notwithstanding the foregoing, this Agreement may be terminated by either of the parties upon the happening of any one or more of the following events:
- (a) the other party is liquidated, wound-up or dissolved, either voluntarily or involuntarily;
  - (b) the other party commits an act of bankruptcy or insolvency as defined by the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, as amended or replaced from time to time, or a petition, proceeding, assignment, arrangement, reorganization or proposal under any bankruptcy or similar law for the protection of creditors is filed by or against the other party; or

(c) the other party makes an assignment for the general benefit of its creditors.

7.4 **Fees on Termination**: Notwithstanding termination of this Agreement, the Subscriber shall be responsible to the Supplier for all fees payable in connection with the Services accruing up to and including the date of termination. Such fees shall be payable within thirty (30) days of such termination occurring.

7.5 **No Refund**: In the event that this Agreement is terminated in accordance with the provisions of this section 7, there shall be no refund or credit to the Subscriber of any joining fees.

7.6 **Return of Data**: All Subscriber's Data remains the property of the Subscriber. All requests for return or destruction of Information or Data shall be in writing. The Supplier may retain Data and Information provided by the Subscriber, or copies thereof, where reasonably required for liability purposes, where required by legislation, applicable law or government directive or as required to enforce this Agreement or pursuant to this Agreement, including, without limitation, paragraph 2.3.1(k).

7.7 **Transition**: The parties hereto shall act reasonably in order to effect a smooth transition from the Call Centre facilities to any system or facilities to be utilized by the Subscriber with respect to Excavator inquiries relating to location of the Subscriber's Underground Facilities following termination.

## **8. Indemnification**

8.1 **By Supplier**: The Supplier shall indemnify and hold harmless the Subscriber, and its directors, officers, employees and agents, in respect of any loss, damage, liability, penalty, fine, claim, cause of action or cost, including, without limitation, legal fees and expenses on a solicitor-and-client basis, of every nature and kind whatsoever, sustained by or brought against the Subscriber attributable to a negligent act or omission, willful misconduct or breach of obligations under this Agreement by the Supplier.

8.2 **By Subscriber**: The Subscriber shall indemnify and hold harmless the Supplier, and its directors, officers, employees, agents and subcontractors, in respect of any loss, damage, liability, penalty, fine, claim, cause of action or cost, including, without limitation, legal fees and expenses on a solicitor-and-client basis, of every nature and kind whatsoever, sustained by or brought against the Supplier its directors, officers, employees, agents or subcontractors, attributable to a negligent act or omission, willful misconduct or breach of obligations under this Agreement by the Subscriber.

8.3 **Restriction**: **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, IN NO EVENT SHALL THE SUPPLIER OR THE SUBSCRIBER BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, BUSINESS INTERRUPTION DAMAGES OR LOSS OF DATA) IN CONNECTION WITH OR**

**ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT THE SUPPLIER OR SUBSCRIBER, AS THE CASE MAY BE, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

## **9. Procedure of Indemnification against Third Parties Claims**

- 9.1 Where a party becomes aware of any demand or claim which could be a cause of indemnification that it wishes to make, it must promptly notify the other party of its intention to make a claim.
- 9.2 Promptly upon receipt by either the Supplier or the Subscriber (herein referred to as the "Indemnitee") of notice of any third party claim in respect of which this Indemnitee proposes to demand indemnification from the other party to this Agreement (the "Indemnitor"), the Indemnitee shall give notice to that effect to the Indemnitor with reasonable promptness.
- 9.3 The Indemnitor shall have the right by notice to the Indemnitee not later than thirty (30) days after receipt of the notice described in paragraph 9.1 to assume the control of the defence, compromise or settlement of the third party claim, provided that such assumption shall, by its terms, be without cost to the Indemnitee.
- 9.4 Upon the assumption of control by the Indemnitor as aforesaid, the Indemnitor shall at its expense diligently proceed with the defence, compromise or settlement of the third party claim at Indemnitor's sole expense, including employment of counsel reasonably therewith, the Indemnitee shall cooperate fully, but at the expense of the Indemnitor, to make available to the Indemnitor all pertinent information and witnesses under the Indemnitee's control, make such assignments and take such other steps as in the opinion of counsel for the Indemnitor are necessary to enable the Indemnitor to conduct such defence, provided always that the Indemnitee shall be entitled to reasonable security from the Indemnitor for any expense, costs or other liabilities to which it may be or may become exposed by reason of such cooperation.
- 9.5 The final determination of such third party claim, including all related costs and expenses, will be binding and conclusive upon the parties hereto as to the validity or invalidity, as the case may be, of such third party claim against the Indemnitor hereunder.
- 9.6 Should the Indemnitor fail to give notice to the Indemnitee as provided in paragraph 9.3, the Indemnitee shall be entitled to make such settlement of the third party claim as in its sole discretion may appear advisable, and such settlement or any other final determination of the third party claim shall be binding upon the Indemnitor.

## **10. Assignment**

- 10.1 **Prohibition:** The Supplier, in its sole discretion, may assign its rights and obligations under this Agreement. The Subscriber shall not assign its rights or obligations under this Agreement, or any part thereof, without the express written consent of the Supplier given in writing, which consent shall not be unreasonably withheld. Any prohibited assignment by the Subscriber shall be null and void. No assignment shall operate to release the assigning party from its obligations hereunder.

## **11. Excusable Delay**

- 11.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to paragraph 11.2 below, if either party is prevented or delayed from complying with any of the terms of this Agreement and such failure is occasioned by any cause beyond its reasonable control including, without limitation, the operation of any law, regulation or order of government or any other duly constituted authority, labour dispute or disturbance, strike, lock out, riot, war, interference by civil or military authority or act of God, but excluding a lack of finances or economic hardship, then that party shall not be liable to the other party for any damage or loss to person or property or costs or charges associated therewith or occasioned thereby and the time for performance of the parties obligations under this Agreement shall be extended by a period of time equal to the time required to remove or remedy the excusable delay; provided always that should the Subscriber be prevented, through excusable delay as set out herein, from providing or verifying Data to the Supplier in accordance with the terms hereof, the Supplier may in its sole discretion and until such time as the excusable delay is remedied and the Data supplied by the Subscriber to the Supplier is verified as required by the terms of this Agreement, refuse to give out to Excavators information as to the Subscriber's Underground Facilities and inform Excavators that they must contact the Subscriber directly to learn of the location of the Subscriber's Underground Facilities.
- 11.2 The party prevented or delayed from complying with a term of this Agreement as a result of an excusable delay as set out in paragraph 11.1 above shall not be excused from liability, and the time for performance of the parties obligations under this Agreement shall not be extended, unless that party:
- (a) notifies the other party of such event giving, or anticipated to give, rise to the prevention or delay in performance and of the obligations expected to be affected thereby immediately upon being made aware of the occurrence or impending occurrence of the event;
  - (b) immediately commences and diligently pursues the taking of all such steps as may be reasonable in the circumstances to cause the discontinuance of and to minimize the effect of the event causing the prevention or delay in performance, provided that neither party shall be required by the provisions hereof to settle any strike, lock out or other

labour dispute on terms which it would not otherwise be willing to agree to;  
and

- (c) notifies in writing the other party forthwith upon the occurrence of any significant development in this process of attempting to discontinue and minimize the effect of the event causing the prevention or delay in performance.

## **12. Limited License**

- 12.1 The Supplier grants limited consent and authorizes the Subscriber to utilize specified trademark interests, including the Supplier's logo, in accordance with the policies, advertising guidelines and graphics standards set by the Supplier. The Subscriber agrees to obtain the Supplier's prior approval on all copy and materials which utilize the trademarks, and to clearly indicate that the trademarks are owned by, and used with the permission of and under license with, the Supplier. For greater certainty, on termination of this Agreement for any reason, all rights to use the trademarks and other intellectual property of the Supplier shall cease, and the Subscriber agrees to cease all such use and return any unused materials to the Supplier.

## **13. Term**

- 13.1 This Agreement shall commence on the Effective Date and shall be for a term of one year. Thereafter this Agreement shall automatically be renewed for an additional period of one year, unless prior to January 31 in any given calendar year either party provides notice in writing to the other that it does not wish to renew the terms of this Agreement. In the event such notice is provided, Services hereunder will cease to be provided on the last day of February following receipt of such notice.

## **14. General**

- 14.1 **Amendment:** This Agreement may only be amended by further written agreement executed and delivered by both parties, provided always that, subject to paragraph 4.4 of Appendix B, Appendixes A, B and C may be modified from time to time by the Supplier during the currency of this Agreement, whereupon a copy of such revisions shall be promptly provided to the Subscriber, in writing. The Supplier agrees to use reasonable efforts to consult with a dialogue group consisting of a representative cross-section of the Owners (the "Subscriber Dialogue Committee") prior to modifying any provision of the Appendices, provided however that neither the consultation with nor the consent of the Subscriber Dialogue Committee is required to effect such modification. Appendix A may be amended by the Subscriber by letter or fax correspondence or by completion and execution of the form set out in Appendix D, delivered in accordance with the notice provisions of this Agreement. Amendments to Appendix A by the Subscriber will be effective upon receipt and acceptance, in writing, of the changes by the Supplier.

- 14.2 **Waiver**: Except as otherwise provided herein, no term or provision, nor any representation, warranty or condition herein granted shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any such consent or waiver shall not constitute a consent to, waiver of, or excuse for any other similar, different or subsequent breach.
- 14.3 **Unenforceable Terms**: If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or a circumstance other than those to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant or condition shall be valid and shall be enforceable to the fullest extent permitted by law.
- 14.4 **Whole Agreement**: The parties acknowledge that this Agreement contains the whole of the agreement between the parties as to the subject matter herein contained. This Agreement supersedes all other agreements, commitments, representations and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof.
- 14.5 **Enurement**: This Agreement shall apply and enure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto provided always that nothing in this paragraph shall impair any of the foregoing provisions prohibiting assignment of this Agreement without the written consent of the other party.
- 14.6 **Singular, Plural and Gender**: Wherever the singular and the masculine are used throughout this Agreement, the same shall be construed as meaning the plural or feminine or neuter where the context so requires.
- 14.7 **Independent Contractor**: The parties hereto acknowledge and agree that the Supplier is for all purposes an independent contractor and that nothing in this Agreement or otherwise shall be construed so as to constitute the Supplier as being the agent, employee, partner or joint venturer of the Subscriber. The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between the Supplier and Subscriber.
- 14.8 **Headings**: The headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

- 14.9 **Legislation:** The provisions of this Agreement are subject at all times to all applicable legislation including The SaskEnergy Act and The SaskEnergy Regulations as amended from time to time, or such other legislation as may be enacted in replacement thereof. Notwithstanding any provisions in this Agreement to the contrary, if any provision of this Agreement is contrary to any present or future law, rule, regulation or order of any governmental authority having jurisdiction therein, now or hereafter in effect, the contravening provision of this Agreement shall be amended and read to be in compliance with the said law, rule, regulation or order. Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and such regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulation.
- 14.10 **Electronic Transmission:** **SUBSCRIBER ACKNOWLEDGES THAT E-MAIL, FAX OR INTERNET COMMUNICATIONS ARE TRANSMITTED OVER THE INTERNET AND COMMUNICATION LINES, AND SUPPLIER CANNOT GUARANTEE THE PRIVACY OR SECURITY OF, NOR WILL SUPPLIER BE RESPONSIBLE OR LIABLE FOR DAMAGES TO, INFORMATION SENT IN THESE WAYS OR FOR ANY MALFUNCTION, INTERRUPTION OR FAILURE IN ELECTRONIC COMMUNICATION OR TRANSMISSION.**
- 14.11 **Recording:** Each Party acknowledges that in the course of providing Services hereunder communications occurring via a telephone conversation may be recorded and the Parties consent to such recording. The Subscriber hereby represents that it has given notice to, and obtained the consent of, each of its employees, contractors or other representatives who may have their communications recorded hereunder.

## SCHEDULE "A"

To the Subscriber's Agreement made between \_\_\_\_\_ and  
Saskatchewan First Call Corporation.

[insert numbered list of Subscribers/members]