

PROGRAM ADMINISTRATION AND SUPPORT AGREEMENT

THIS AGREEMENT is between **CANOE PROCUREMENT GROUP OF CANADA**, a corporation incorporated pursuant to the laws of Alberta (“CANOE”) and:

Supplier Legal Name: FoxEnergy Systems Inc. o/a FoxCanada

Supplier Corporate Jurisdiction: 2891 Box Springs Link NW, Medicine Hat AB, T1C 0H3
(the “**Supplier**”), as of

Date of Agreement: January 1, 2022 regarding

RFP No. CAN-2021-009

RFP Title Traffic Supplies with Related Accessories and Services
(the “**RFP**”).

BACKGROUND

- A. CANOE is a public agency serving as a national municipal contracting agency for its Members, and in that capacity issued the RFP for the purchase of goods and/or services.
- B. The Supplier is engaged in the business of selling some or all of those goods and/or services, and responded to the RFP.
- C. CANOE wishes to enter into an agreement with the Supplier for the purchase of goods and/or services by Members, pursuant to a purchase program administered by CANOE.
- D. The Parties wish to set out the terms and conditions upon which those purchases will occur, and under which the purchase program will be administered.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained and of other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each Party), the Parties hereby agree as follows:

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ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement the following terms have the corresponding meanings.

“Administrative Fee” means the fee paid by the Supplier to CANOE as described in Schedule A (Program Details).

“Agreement” means this Program Administration and Support Agreement and all schedules attached hereto, as the same may be supplemented, amended, restated or replaced from time to time in writing in accordance with its terms.

“Business Day” means Monday to Friday between the hours of 9:00 a.m. to 4:30 p.m. local time in Nisku, Alberta, except when such a day is a public holiday, as defined in the *Employment Standards Code*, R.S.A. 2000, Chapter E-9, or as otherwise agreed to by the parties in writing.

“Change Request Form” means the form set out in Schedule E (Change Request Form).

“Confidential Information” means all tangible and intangible information and materials, in any form or medium, received (directly or indirectly) by the Receiving Party from the Disclosing Party, or collected by the Receiving Party on behalf of the Disclosing Party, in connection with the Program that is:

- (a) related to the Disclosing Party’s, or any of its affiliates’, finances, assets, pricing, purchases, products, sales, business or operational plans, strategies, forecasts or forecast assumptions, operations, stakeholders, clients and personnel (including, without limitation, the Personal Information of officers, directors, employees, agents and other individuals), trade secrets, intellectual property, technology, data or other information that reveal the research, technology, processes, methodologies, know how, or other systems or controls by which the Disclosing Party’s existing or future products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- (b) designated as confidential in writing by the Disclosing Party, whether by letter or an appropriate stamp or legend, prior to or at the time such information is disclosed by the Disclosing Party to the Receiving Party; and/or
- (c) apparent to a reasonable person, familiar with the Disclosing Party’s operations, business and the sector in which it operates, to be of a confidential nature.

and without regard to whether that information and materials are owned by a Party or by a third party. Confidential Information does not include:

- (d) information that is in the public domain or has come into the public domain other than by reason of a breach of this Agreement; or

- (e) information that has been, or is hereafter, received by that Receiving Party other than from or at the request of the Disclosing Party, and other than during or as a result of carrying out the Program.

“Confidential Material” means any notes or other documents relating to the Confidential Information.

“Conflict of Interest” means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Supplier (including its directors, officers, employees, agents or subcontractors) other commitments, relationships or financial interests could or could be seen to (i) exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.

“Disclosing Party” means, in connection with particular Confidential Information, the Party that disclosed (directly or indirectly) the Confidential Information to the other Party, or the Party on whose behalf the other Party collected or generated the Confidential Information.

“Effective Date” means the date of this Agreement first noted above.

“Event of Force Majeure” means any cause beyond the reasonable control of a Party, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, Chapter F-25, as amended or superseded.

“Goods/Services” means the goods and/or services identified in Schedule A (Program Details).

“Governmental Authority” means any government, regulatory authority, commission, bureau, official, minister, court, board, tribunal, or dispute settlement panel or other law, rule, or regulation-making organization or entity having or purporting to have jurisdiction to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power.

“Member” means any current and future members of CANOE during the Term, and any CANOE-represented associations and their current and future members during the Term. CANOE may also be considered a Member in its capacity as a purchaser of Goods/Services. In addition, to be a Member for the purposes of this Agreement, the Member must operate within the Territory during the Term. See <https://rmlberta.com/wp-content/uploads/2020/06/Provincial-Associations-Public-Sector-Agencies-2020-2.xlsx> for a general list of Members.

“Parties” means both CANOE and Supplier collectively, and **“Party”** means either one of them.

“Person” shall be broadly interpreted and includes any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, corporation, with or without share capital, unincorporated association, trust, trustee, or other legal representative, Governmental Authority and any entity recognized by law.

“Personal Information” has the meaning ascribed to it in FOIPPA.

“Program” means the discounted price program designed by the Supplier for the purchase of Goods/Services by Members.

“Program Pricing” means the discounted pricing offered to Members as set out in the Proposal, unless other pricing is specifically agreed to by CANOE prior to the execution of this Agreement, or unless that pricing is amended via a Change Order Form submitted by the Supplier and approved by CANOE according to this Agreement.

“Purchase Agreement” means the agreement between Supplier and a Member for the purchase of Goods/Services in accordance with this Agreement.

“Receiving Party” means, in connection with particular Confidential Information, the Party that received (directly or indirectly) the Confidential Information from the other Party, or the Party that collected or generated the Confidential Information on behalf of the other Party.

“Term” means the term of this Agreement, as set out in Section 8.1.

“Territory” means the provinces or regions identified in the Goods/Services Schedule A (Program Details).

“Trade-marks” means the trade-marks, logos, designs and other indicia used to identify and distinguish a Party and its goods or services in Canada and elsewhere, whether these are registered or not, which are set out in Schedule D (Trade-marks).

1.2 Rules of Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning.

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (c) The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) “Hereof”, “hereto” and “hereunder” and similar expressions mean and refer to this Agreement and not to any particular section or paragraph. References herein to “Article”, “Section”, or “Schedule” refer to the applicable article, section or schedule of this Agreement.
- (e) If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

1.3 Schedules

The following Schedules are incorporated by reference into and form part of this Agreement:

Schedule A	Program Details
Schedule B	Proposal
Schedule C	RFP
Schedule D	Trade-marks
Schedule E	Change Request Form

1.4 Order of Priority

In the event of any conflict or inconsistency between any of the Articles of this Agreement and the Schedules to this Agreement, that conflict or inconsistency shall be resolved in the following (descending) order of priority:

- (a) Article 1 to Article 11 of this Agreement;
- (b) Schedule A (Program Details);
- (c) Schedule C (RFP); and
- (d) Schedule B (Proposal);

provided that Schedule A (Program Details) will supersede Article 1 to Article 11 of this Agreement if it expressly references the specific section or Article of this Agreement that it intends to supersede.

ARTICLE 2
PROGRAM ADMINISTRATION AND SUPPORT

2.1 Program Details

- (a) The Parties agree that CANOE administers the Traffic Supply Program as set out in this Agreement. Through the Program, Members have the option to purchase from the Supplier, and the Supplier agrees to supply to Members, the Goods/Services at Program Pricing.
- (b) Members who wish to purchase Goods/Services as part of the Program may be required to enter into a separate Purchase Agreement with the Supplier. The terms of that Purchase Agreement shall not conflict with any provision of this Agreement.
- (c) The Parties agree that the Supplier is an independent supplier and is not the agent or partner of CANOE. Nothing contained in this Agreement shall create or be deemed to create the relationship of joint venture, partnership, or agency between the Parties. Neither Party shall represent itself as the joint venturer, partner or agent of the other. The Supplier has no authority to bind CANOE and will not represent itself as having that authority.

2.2 Responsibilities of the Supplier

- (a) The Supplier will facilitate and administer the marketing and sales aspects of the Program as outlined in this Agreement – including Schedule A (Program Details), the Proposal and the RFP.
- (b) The Supplier will execute the marketing plan set out in Schedule A (Program Details) and its Proposal and will refine that plan over the course of the Term, and as reasonably requested by CANOE.
- (c) The Supplier will provide prompt cooperation to CANOE and its representatives to ensure that the Program is effective and responsive to Members.
- (d) The Supplier will manage the transition of Members into the Program and will take commercially reasonable efforts to ensure a prompt and seamless transition.
- (e) During the Term, the Supplier will continually provide Members with the Program Pricing for all Goods/Services.
- (f) The Supplier will ensure that its Program Pricing is uploaded in the online Member portal for Member access.
- (g) The Supplier will communicate directly with CANOE regarding low stock levels, major discounts, and other time sensitive subject matter.
- (h) The Supplier will inform CANOE of important developments within the industry that affect the Program or the Goods/Services.

- (i) The Supplier will maintain the insurance required under Schedule A (Program Details) at all times during the Term.

2.3 Responsibilities of CANOE

- (a) CANOE will act as a liaison between the Supplier and the Members, to help facilitate obtaining any information required in relation to the Program. CANOE will support the Supplier's Program marketing efforts by making information about the Program available to its Members.

2.4 Program Leads

- (a) CANOE and the Supplier will each designate a representative from its organization with the authority and competence to coordinate and manage its contributions to the Program on such Party's behalf (each a "**Program Lead**").
- (b) Once each quarter, or as otherwise reasonably requested by either Party, the Program Leads shall formally review the progress of the Program including any problems, concerns, results and any other information material to the progress and success of the Program. Such review shall occur by teleconference at a time mutually agreeable to the Program Leads.

2.5 No Guaranteed Volumes

CANOE makes no guarantee of the value or volume of purchases of Goods/Services by Members under the Program.

2.6 Exclusivity

The Supplier agrees that it shall not participate in any arrangement that is competitive or adverse to this Program for the term of the Agreement. However, CANOE makes no assurances that Members will exclusively purchase Goods/Services from the Supplier. Members are not bound to purchase Goods/Services through the Program and may contract with others for the same or similar goods or services.

2.7 Conflict of Interest

- (a) The Supplier shall promptly disclose to CANOE the existence of any actual or reasonably suspected Conflict of Interest in connection with the Program or this Agreement. The Parties shall cooperate in determining whether a Conflict of Interest exists and how it will be addressed or avoided, provided that if the Conflict of Interest cannot be resolved to CANOE's satisfaction, acting reasonably, CANOE may deem the Conflict of Interest to be a material breach of this Agreement by the Supplier.
- (b) The Supplier shall take reasonable measures to ensure that its directors, officers, employees, agents, or subcontractors involved in the Program promptly disclose to it any actual or reasonably suspected Conflict of Interest in connection with the Program.

- (c) The Supplier agrees not to enter into any contract or other commitment with any person during the term of the Agreement that would cause a Conflict of Interest in connection with the Program.

ARTICLE 3 FINANCIAL MATTERS

3.1 Pricing Commitment and Adjustment

- (a) Generally, Program Pricing is fixed for the Term of the Agreement. However, if the Supplier wishes to adjust Program Pricing, the Supplier must provide CANOE with at least 30 days prior written notice to request any increase or decrease in prices using the Change Request Form. To ensure timely consideration of the request, the Supplier must comply with the instructions set out in the Change Request Form.

[REDACTED]

- (c) CANOE shall consider all duly completed Change Request Forms and shall notify the Supplier of whether the Program Pricing (or other change) is acceptable or not within 20 days of receipt of the Change Request Form. CANOE shall not unreasonably withhold its approval to any requested change – provided that CANOE may refuse any change in Program Pricing prior to the first anniversary of the Effective Date for any reason or without giving any reason.

3.2 Administrative Fees

- (a) In consideration of CANOE's contributions to the Program, the Supplier agrees to pay to CANOE the Administrative Fee.

[REDACTED]

- (c) CANOE will short pay the Supplier invoices in accordance with the Administrative Fee described in Schedule A (Program Details).
- (d) The Administrative Fee will be paid to CANOE by the Supplier as set out in Schedule A (Program Details) – provided that any Member purchases of Goods/Services that deviate from the approach set out in that Schedule will not release the Supplier from paying the corresponding Administrative Fee for such purchases (for example, if the Administrative Fee is to be paid on sales billed to CANOE, the Supplier will still pay the Administrative Fee for any sales paid directly to the Supplier by the Member).

3.3 **Supplier Expenses**

- (a) If previously agreed to in writing by CANOE, CANOE will reimburse the Supplier for legitimate and reasonable business expenses, upon invoice with proper proof of the expense having been incurred by the Supplier in performance of its activities under the Program.

3.4 **Billings and Payment**

- (a) All invoices regarding Member purchases of Goods/Services and all payments to the Supplier in satisfaction of those invoices are processed through CANOE.
- (b) Invoices must be submitted in electronic format to invoices@canoeprocurement.ca.
- (c) Invoices may be submitted at any time.
- (d) All invoices must include:
 - (i) a 'Bill To' section to the CANOE address;
 - (ii) a 'Ship To' section that includes the Member name, address, and Member number; and
 - (iii) for each type of Goods/Services purchased by the Member:
 - (A) detailed description of what was purchased;
 - (B) quantities, unit price, and extended price (these prices shall include any Administrative Fee based on Section 3.2(a)); and
 - (C) GST, PST, and/or HST number (stated separately).
- (e) Invoices should not include:
 - (i) any statement of an Administrative Fee, commission or discount rate; or
 - (ii) any statement that indicates a reduced amount for paying an invoice within a certain time frame.
- (f) To the extent CANOE or any Member requests reasonable supporting documentation regarding invoiced amounts, the Supplier shall promptly provide it and the period to pay that invoice shall be extended by the time period between the Supplier's receipt of that request and the delivery of the relevant supporting documentation to CANOE.
- (g) The Supplier should ensure that any person ordering on behalf of a Member provides the Supplier with the Member's CANOE member number for electronic entry on the invoice.

- (h) The Supplier shall ensure that their contract number is included on the invoice.
- (i) The Supplier shall provide CANOE with all relevant invoice templates.
- (j) CANOE will promptly pay all undisputed Supplier invoices submitted in accordance with this Section 3.4 within 30 days of receipt, less any holdback contemplated by Schedule A (Program Details).
- (k) If CANOE disputes an amount on any Supplier invoice, CANOE will only withhold the portion in dispute and will pay the balance of the invoice.

3.5 Financial Reporting and Record-keeping

- (a) The Supplier shall provide the reports described in Schedule A (Program Details).
- (b) The Supplier shall keep and maintain sufficient records in connection with the Program to substantiate that it has performed its obligations hereunder, including as they relate to the payment of the Administrative Fee.
- (c) CANOE, its authorized representatives, or an independent auditor identified by CANOE may, at CANOE's expense, upon reasonable prior notice to the Supplier, review or audit the Supplier's records regarding the Supplier's performance of its obligations hereunder. The Supplier shall provide reasonable cooperation in connection with the foregoing, and shall disclose or grant reasonable access to any information requested by CANOE, its authorized representatives or an independent auditor in connection with the Program or this Agreement.

ARTICLE 4 TRADE-MARKS

4.1 Trade-mark License and Branding

Each Party acknowledges that certain aspects of the Program may be co-branded, such that the name and certain trade-marks of both Parties are used by both Parties in materials prepared in connection with the Program. Each Party agrees that:

- (a) it is the sole owner of all right, title, and interest in and to its Trade-marks;
- (b) any use of the other Party's Trade-marks enures solely to the benefit of that Party and neither Party acquires any rights in the other Party's Trade-marks as a result of such use;
- (c) it shall maintain and exercise control over the character and quality of the use of its Trade-marks as used in association with the Program; and
- (d) whenever it uses the other Party's Trade-marks in accordance with this Agreement, it shall (i) use such Trade-marks strictly in accordance with that other Party's standards of quality and specifications for appearance and style as may be supplied by that Party from time to time; (ii) use such Trade-marks only in the manner and

form approved by that Party; (iii) clearly identify the use of the Trade-marks as a licenced use and identify the other Party as the owner of the Trade-marks, in any manner specified by the other Party from time to time; and (iv) not alter, modify, dilute or otherwise misuse the Trade-marks.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations by Each Party

Each Party represents and warrants to the other that:

- (a) it has the authority to enter into this Agreement and carry out its obligations hereunder, and doing so will not result in a violation by it of any law or any rule, judgment, order, decree or similar act of any Governmental Authority;
- (b) this Agreement has been duly executed by it; and
- (c) it has not granted and shall not grant any rights or licenses and has not entered into and shall not enter into any agreement, either written or oral, that would conflict with this Agreement or the Program.

5.2 Representations by the Supplier

Supplier represents and warrants that:

- (a) it is properly qualified, licensed, equipped, and financed to provide the Program and perform its obligations under this Agreement and any Purchase Agreement;
- (b) its representatives, agents, dealers and distributors (if any) that are involved in the delivery of the Program or the performance of the Purchase Agreements are also properly qualified, licensed, equipped, and financed for such purposes;
- (c) if the Supplier is a manufacturer or wholesale distributor, Supplier has a documented relationship with a suitable dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Purchase Agreement on behalf of the Supplier – and any such dealer will be considered a subcontractor of the Supplier for the purposes of this Agreement;
- (d) it shall comply with all applicable standards and requirements referred to in this Agreement or as may be required by law;
- (e) all of its obligations will be carried out by qualified personnel and all work will be performed in a professional manner;
- (f) it is not aware of any proceeding in progress or pending or threatened that might be expected to have a materially adverse effect on the Program or impact its ability to meet its obligations under this Agreement; and

- (g) after due inquiry, it is not aware of any circumstances which do or might cause a Conflict of Interest in respect of its participation in the Program.

ARTICLE 6 CONFIDENTIAL INFORMATION

6.1 Use and Non-Disclosure of Confidential Information

The Receiving Party agrees not to:

- (a) use Confidential Information for any purpose except to carry out the Program; or
- (b) grant access or disclose Confidential Information to any person except to those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the information in order to carry out the Program, and who are bound by obligations to protect the Confidential Information that are substantially similar to those set out in this Agreement (provided that the Receiving Party remains liable for any breach of confidence cause by such persons).

6.2 Protection

The Receiving Party agrees that it will take all reasonable measures to protect the Confidential Information from loss, theft or any use or disclosure not permitted under this Agreement, which measures shall include:

- (a) taking reasonable measures to ensure that only those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the Confidential Information in order to carry out the Program have access to such limited Confidential Information as may be necessary for their duties; and
- (b) taking the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but no less than a reasonable degree of care, given the nature of the Confidential Information.

6.3 Mandatory Disclosure

Notwithstanding Section 6.2(b), the Disclosing Party acknowledges and agrees that the Receiving Party may be required by law or a Governmental Authority to disclose Confidential Information. If the Receiving Party believes that the disclosure of Confidential Information is or is about to be required by law or Governmental Authority, it will notify the Disclosing Party of the circumstances and scope of the disclosure – with an oral notice provided as soon as reasonably possible and as much in advance of the impending disclosure as possible, and such oral notice confirmed in writing promptly thereafter – and will provide reasonable assistance in resisting such disclosure.

6.4 Notice of Unauthorized Use or Disclosure

The Receiving Party agrees to notify the Disclosing Party of any actual or reasonably suspected loss, theft or unauthorized use or disclosure of Confidential Information that

may come to its attention – with an oral notice provided immediately and confirmed in writing promptly thereafter.

6.5 No Proprietary Right

The Receiving Party agrees that it acquires no right, title or interest to the Confidential Information, except a limited right to use that Confidential Information in connection with the Program. All Confidential Information shall remain the property of the Disclosing Party (to the extent possible) and no licence or other right, title or interest in the Confidential Information is granted hereby.

6.6 Return / Non-Use of Confidential Information and Other Related Materials

On receipt of a written demand from the Disclosing Party, and in any event within 20 days after the expiry or termination of this Agreement, the Receiving Party shall immediately return all Confidential Information, including any related Confidential Material, to the Disclosing Party, or, if instructed by the Disclosing Party to destroy any Confidential Information, shall securely destroy that Confidential Information and related Confidential Material and provide a written certificate to the Disclosing Party certifying the destruction of such Confidential Information and Confidential Material. This Section 6.6 shall not apply to routinely made back-up copies of Confidential Information in electronic form, or to archival copies required to be retained under the applicable law, provided that the Receiving Party shall comply with this Agreement in respect of such copies.

6.7 Freedom of Information Laws

- (a) The Supplier acknowledges that CANOE is subject to FOIPPA and that any information provided to CANOE in connection with the Program or otherwise in connection with this Agreement, or held on CANOE's behalf, may be subject to disclosure in accordance with FOIPPA. The Supplier also acknowledges that Members may be subject to other freedom of information legislation, which may similarly require them to disclose any information provided to them or held on their behalf in connection with the Program or any Purchase Agreement.
- (b) To support CANOE's compliance with FOIPPA, the Supplier will:
 - (i) provide CANOE-related records to CANOE within 7 days of being directed to do so by CANOE;
 - (ii) promptly refer to CANOE all requests made to the Supplier by third parties referencing FOIPPA or other public sector freedom of information laws;
 - (iii) not access any Personal Information on CANOE's behalf unless the CANOE determines, in its sole discretion, that access is permitted under FOIPPA and is necessary in order to provide the Program and/or Goods/Services to Members under the Program;

- (iv) keep CANOE Confidential Information physically or logically separate from other information held by the Supplier;
- (v) not destroy any information related to Program Administration until 7 years after the termination of this Agreement unless authorized in writing by CANOE to destroy it sooner;
- (vi) implement other specific security measures requested by CANOE that in the reasonable opinion of CANOE would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of CANOE Confidential Information (including, for greater certainty, information about or provided by any Member).

ARTICLE 7 INDEMNITY AND LIABILITY

7.1 Liability for Representatives

Each Party shall be responsible for any breach of this Agreement by its agents, directors, officers, employees and contractors – provided that CANOE shall not be responsible for the decisions, actions or omissions of any Member, including for the performance by any Member of its obligations under a Purchase Agreement.

7.2 Indemnity

- (a) Subject to the limitation of liability set out in Section 7.3 (and in the case of CANOE, subject to Section 7.1), each Party (an “**Indemnifying Party**”) shall indemnify, defend (at its expense) and hold the other Party (the “**Indemnified Party**”) and its directors, officers, employees, contractors and agents (collectively, the “**Indemnitees**”) harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, (“**Losses**”) brought against or suffered by the Indemnitees arising out of or related to:
 - (i) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;
 - (ii) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property; or
 - (iii) any breach of the Indemnifying Party’s obligations, representations or warranties in the Agreement;

except to the extent that such Losses were not caused by the Indemnifying Party or any person for whom it was responsible. The foregoing indemnity shall be conditional upon the Indemnified Party notifying the Indemnifying Party as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Indemnified Party has knowledge, and

the Indemnitee cooperating with the Indemnifying Party in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Indemnifying Party without the Indemnified Party's prior written consent.

- (b) The indemnity obligations hereunder will be enforceable without right of set-off or counterclaim as against the Indemnitee. The Indemnifying Party will, upon payment of an indemnity in full under this Agreement, be subrogated to all rights of the Indemnitee with respect to the claims and defences to which such indemnification relates.

7.3 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR ANY CLAIM FOR PUNITIVE, EXEMPLARY, AGGRAVATED, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS, HOWSOEVER DERIVED. THE FOREGOING SHALL NOT SUPERSEDE THE TERMS OF ANY PURCHASE AGREEMENT WHICH PROVIDE OTHERWISE.

7.4 Equitable Relief

Each Party acknowledges and agrees that, in the event of any breach or anticipated breach of the provisions of this Agreement relating to Confidential Information or privacy, damages alone would not be an adequate remedy, and agree that the non-breaching Party shall be entitled to equitable relief in respect of that breach, such as an injunction, in addition to or in lieu of damages and without being required to prove that it has suffered or is likely to suffer damages.

ARTICLE 8 TERM AND TERMINATION

8.1 Term

This Agreement comes into effect on the Effective Date and shall continue in force for an initial term of 3 years, unless terminated in accordance with its provisions. That initial term may be extended once by a further period of 2 years between Canoe and the Supplier by mutual agreement of the Parties in writing.

8.2 Reduction in Scope

CANOE may, on 30 days prior written notice to the Supplier, reduce the scope of the Goods/Services provided under the Program by identifying specific Goods/Services that will not longer be part of the Program.

8.3 Termination by Either Party

A Party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other Party fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within 15 days of written notice of such failure being provided to that Party.

8.4 Termination by CANOE

CANOE shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) on written notice to the Supplier where the Supplier: (i) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or equivalent legislation; (ii) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (iii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business;
- (b) on 30 days' written notice to the Supplier, following the occurrence of any material change in CANOE's requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority; or
- (c) on written notice to the Supplier if the Supplier breaches in any material respect any of its obligations or covenants hereunder with respect to Confidential Information or privacy.

8.5 Termination by Supplier

Supplier shall be entitled to terminate the Agreement, without liability, cost, or penalty on written notice to CANOE where CANOE ceases to carry on operations.

8.6 Orderly Termination

In the event of termination or expiry of the Agreement, each Party shall cooperate to effect an orderly wind-up of the Program. Within 30 days of termination or expiry, each Party shall pay to the other any amounts owed to that other Party under this Agreement.

In the event of a termination of this Agreement by CANOE pursuant to Section 8.3, the Supplier shall be liable to CANOE for any costs incurred by CANOE and corresponding Administration Fees as a result of the notice of default and termination of this Agreement.

8.7 No Limitation of Remedies

Any termination of the Agreement shall not limit any Party's rights or remedies either in law or in equity.

8.8 Survival

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding Confidential Information, privacy, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

ARTICLE 9 FORCE MAJEURE

9.1 General

Except as expressly provided otherwise in the Agreement, dates and times by which a Party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such Party is prevented from meeting such dates and times by an Event of Force Majeure.

9.2 Notice and Performance

Where an Event of Force Majeure occurs, the Party that is delayed or fails to perform shall give prompt notice to the other Party and shall use reasonable efforts to render performance in a timely manner.

9.3 Right to Terminate

In the event that a Party's inability to perform due to an Event of Force Majeure continues for longer than 45 days, the Party that received (or which was entitled to receive) notice pursuant to this Article may terminate this Agreement by written notice to the other Party without further liability, expense, or cost of any kind.

ARTICLE 10 DISPUTE RESOLUTION

10.1 General

- (a) Subject to Section 7.4, in the event of any dispute concerning this Agreement, the Parties agree to address the dispute through arbitration. Before pursuing arbitration, the Parties shall have first escalated the dispute to the highest level of management within their respective organization and given at least 7 days for resolution of the matter by such persons. Subject to the provisions of the Agreement, each Party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.
- (b) This Article 10 shall not:
 - (i) apply to claims by third parties; or

- (ii) prevent either Party from seeking an injunction or other equitable relief pursuant to Section 7.4.

10.2 Election

If elected by a Party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the *Arbitration Act*, R.S.A. 2000, Chapter A-43 and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

10.3 Arbitration Site and Arbitrator

The arbitration shall be held at the City of Edmonton or at such other site mutually determined by the Parties. Where the Parties are unable to agree upon an arbitrator who is willing to serve within 7 days of receipt of a demand to arbitrate by a Party, then either Party may apply to the Court of Queen's Bench for the appointment of an arbitrator willing to serve.

10.4 Procedure

The arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each Party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement. The proceedings shall be confidential, and the arbitrator shall issue appropriate protective orders to safeguard both Parties' Confidential Information. The arbitrator shall have the right, but not the obligation, to order that the unsuccessful Party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate an unsuccessful Party or does not order the unsuccessful Party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the Parties.

ARTICLE 11 GENERAL

11.1 Notices

Any notice, demand or other communication to be given or made under this Agreement (a "**Notice**") shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person (including by commercial courier) during a Business Day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) sent by registered mail to the applicable address set forth below; or
- (c) sent by any electronic means of sending messages which produces a paper record (an "**Electronic Transmission**") on a Business Day charges prepaid.

The Parties respective addresses and contact persons are set out in Schedule A (Program Details). Each Notice sent in accordance with this Section shall be deemed to have been received:

- (i) if delivered in person, on the day it was delivered;
- (ii) on the third Business Day after it was mailed (excluding each Business Day during which there existed any general or rotating interruption of postal services due to strike, lockout or other cause); or
- (iii) on the first Business Day after it was sent by Electronic Transmission.

The Parties may change their address for Notice by giving Notice to the other in accordance with this Section.

11.2 Public Announcements

The Supplier shall not make any public statement or issue any press release concerning the Program except with the prior approval of CANOE or as may be necessary, in the opinion of counsel to the Supplier to comply with the requirements of applicable law. When seeking the prior approval of CANOE, the Parties will use all reasonable efforts, acting in good faith, to agree upon a text for such statement or press release which is satisfactory to both Parties.

11.3 Governing Law and Forum

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters relating to the subject matter of this Agreement.

11.4 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, which induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement.

11.5 Amendment and Waiver

This Agreement may be amended, modified or supplemented only by a written agreement signed by both Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

11.6 Severability

If any part of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable or invalid, it will, be severed from the rest of this Agreement, which shall continue in full force and effect, so long as the economic or legal substance of the matters contemplated hereby is not affected in any manner materially adverse to either Party.

11.7 Assignment

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

11.8 Time of Essence

Time shall be of the essence in this Agreement.

11.9 Further Assurances

Each Party will take all necessary actions, obtain all necessary consents, file all necessary registrations and execute and deliver all necessary documents reasonably required to give effect to this Agreement.

11.10 Counterparts

This Agreement may be executed in any number of counterparts. Either Party may send a copy of its executed counterpart to the other Party by Electronic Transmission instead of delivering a signed original of that counterpart. Each executed counterpart (including each copy sent by Electronic Transmission) will be deemed to be an original; all executed counterparts taken together will constitute one agreement.

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


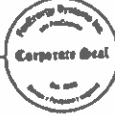
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CANOE PROCUREMENT GROUP OF CANADA

By: 
Name: Tyler Hannemann, MBA
Title: Manager of Supplier Relations

By: 
Name: Nigel Gamester, BComm
Title: Procurement Manager

Supplier Legal Name: FOXEnergy Systems Inc. o/a FOXCanada

By:  
Name: Tim Fox
Title: President & CEO

By: _____
Name:
Title:

SCHEDULE A

PROGRAM DETAILS

***Note:** The following schedule may highlight aspects of the Proposal for convenient reference or may address clarifications or the result of negotiations.*

1. Goods/Services

As per the FoxCanada proposal for Goods/Services offered to CANOE Members. See Schedule “B”

Traffic Signs	Posts, Stands, Anchors, Sleeves	Portable Traffic Signals
Speed Readers	Digital Message Signs	Barricades & Bollards
Steel Barriers	Traffic Data Collection	Technology Solutions
Roadside Safety Equipment	Rental Equipment	National Account Labour Rates

2. Territory

As per the FoxCanada proposal. See Schedule “B”.

This Agreement is available in British Columbia, Alberta, Saskatchewan, and Manitoba.

3. Administrative Fee

As per the FoxCanada for Administrative Fee. See Schedule “B”.



CANOE will short pay the supplier invoices by the Administrative Fee

4. Order Process and/or Funds Flow

As per the FoxCanada proposal. See Schedule “B”.

FoxCanada will invoice CANOE for all Member purchases using this Agreement.

As per Article 3 – Financial Matters

CANOE will short-pay the Supplier invoice according to the Administrative Fee proposed.

5. Payment Terms, Holdbacks and Financing Options

As per Article 3 – Financial Matters

CANOE payment terms on Supplier invoices are net 30.

6. **Marketing Plan**

As per FoxCanada proposal. See Schedule “B”.

7. **Reports**

The Supplier will provide quarterly reports to CANOE about Member purchases under the Program (showing province, association, Member name, Goods/Services purchased, price and Administrative Fee).

The Supplier will provide reporting details to CANOE identifying all sales and deliveries of Goods/Services pursuant to the Program and the Administrative Fee amount accumulated to date and owing (or paid) to CANOE. The Supplier will clearly show all supporting amounts, references, and provide appropriate supporting information.

The Supplier will provide a quarterly business review to CANOE to discuss the Traffic Supply Program sales performance and the deployment and effectiveness of marketing strategies. Such review will be provided within 90 days of the anniversary of the Effective Date.

8. **Insurance Obligations**

The Supplier shall maintain for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to its contribution to the Program would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000 per occurrence. The policy shall include the following:

- (a) the Indemnitees as additional insureds with respect to liability arising in the course of performance of the Supplier’s obligations under, or otherwise in connection with, the Agreement or the performance with the Supplier (or its representatives, agents, dealers and distributors) under a Purchase Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30-day written notice of cancellation, termination or material change.

The Supplier shall provide CANOE with certificates of insurance or other proof as may be requested by CANOE, that confirms the insurance coverage as provided for above.

9. **Additional Matters**

The Supplier will maintain Workers Compensation Board coverage throughout the Territory and maintain their Certificate of Recognition designation for the Term.

10. **Contact Information for Notices**

Any Notice to CANOE shall be addressed to:

CANOE PROCUREMENT GROUP OF CANADA
2510 Sparrow Drive
Nisku, Alberta T9E 8N5

Attention: Tyler Hannemann, MBA
Manager of Supplier Relations
Tel: 587-987-6785
Email: tyler@canoeprocurement.ca

Attention: Nigel Gamester, BComm
Procurement Manager
Tel: 780-910-0330
Email: nigel@canoeprocurement.ca

Any Notice to the Supplier shall be addressed to:

FoxEnergy Systems Inc. o/a FoxCanada
2891 Box Springs Link
Medicine Hat AB, T1C 0H3

Attention: Kaitlyn Fox
Tel: 403.548-8147
Email: kaitlyn@foxcanada.net