



CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is entered into as of MM/DD/YYYY (the "Effective Date"), by and between SUPPLIER'S LEGAL NAME (the "Supplier") and Export Development Canada ("EDC") (each a "Party" and collectively referred to as the "Parties").

BACKGROUND

1. The Parties, in dealing with one another, will disclose information to one another pertaining to procurement, which may include discussions between EDC and the Supplier or the provision of services to EDC (collectively referred to as the "Transaction"), which each of the Parties desires that the other hold in confidence in accordance with the terms of this Confidentiality Agreement.
2. The Supplier (which term includes any employee, officer, or agent of the Supplier, including the Representative) may be exposed to EDC's customer information ("Customer Information"), which must be protected and held in strict confidence pursuant to Section 24.3 of the Export Development Act. R.S., 1985, c. E-20, s. 1; 2001, c. 33, s. 2(F).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RESTRICTIONS

- 1.1 Except as otherwise provided in this Confidentiality Agreement, the Recipient will neither:
 - (a) without compromising the disclosure of information required for employees' normal use of internal information systems, transmit, disclose, or permit disclosure, access, loss or use of Confidential Information to any person other than (i) its employees, officers and directors, agents, auditors, consultants, advisors, and legal counsel (collectively and together with EDC's sole shareholder, the "Representatives") who need to know such information for the purpose of fulfilling the terms and conditions of the Agreement, and (ii) EDC's sole shareholder (it being understood that such persons shall be informed of the confidential nature of such information and shall be directed to treat such information in accordance with the terms of this Confidentiality Agreement and the Agreement); nor
 - (b) use in any manner not connected with the Agreement any Confidential Information. In the case of EDC, the Deliverables shall not constitute Confidential Information to which this Confidentiality Agreement applies.

2. DEGREE OF CARE

- 2.1 The Recipient shall exercise in relation to the Confidential Information no lesser security measures and degree of care than that which a commercial corporation acting reasonably under similar circumstances would exercise in relation to its own confidential information.

3. PERMITTED DISCLOSURES

- 3.1 The terms of this Confidentiality Agreement shall not apply to any Confidential Information which is:
 - (a) disclosed by a Party or its Representatives pursuant to the requirements of law, regulation, or instruments thereunder or in connection with any legal proceedings, including if required by the Access to Information Act;
 - (b) already in the possession of the Recipient at the time of its disclosure by the Disclosing Party to the Recipient under this Confidentiality Agreement;
 - (c) disclosed to the Recipient (or substantially identical to information disclosed to the Recipient) by a source other than the Disclosing Party, provided that the source of information is not known to the Recipient to be bound by any obligations of confidentiality which prohibit disclosure of such information;
 - (d) used or disclosed by the Recipient with the prior written approval of the Disclosing Party;

- (e) furnished by EDC to the Auditor General of Canada;
 - (f) required to be disclosed by EDC pursuant to EDC's Disclosure Policy or pursuant to Canada's or EDC's international commitments. Nothing in this Confidentiality Agreement shall prohibit EDC's disclosure, following the signing of the Agreement, of the following information: the name of the Supplier, the amount of the total fees paid and payable by EDC to the Supplier under the Agreement; the total value of the contract, and a general description of the Services and Deliverables.
- 3.2 In addition to 3.1, the terms of this Confidentiality Agreement shall not apply to Confidential Information that is not Customer Information which is:
- (a) independently developed by the Recipient;
 - (b) in the public domain at the time of its disclosure, or subsequently made available to the general public by a person other than the Recipient, or by the Recipient, but only to the extent that in making such information public, the Recipient was not in breach of this Confidentiality Agreement; or
 - (c) requested by any governmental agency or other regulatory authority (including any self-regulatory organization having have jurisdiction).
- 3.3 If any portion of the Confidential Information falls within any one of the above exceptions listed in 3.1 or 3.2, the remainder of such Confidential Information will continue to be subject to the prohibitions and restrictions set forth in Section 1.
- 3.4 Specific items and details of Confidential Information shall not be deemed to be within any of the exceptions in Section 3 only because such item or detail is generally referred to in more general information that falls within such exception.

4. DAMAGES

- 4.1 With respect to a breach related to Confidential Information that is not Customer Information, the Recipient shall be responsible only for direct damages caused to the Disclosing Party by any transmission or disclosure, access, loss or use of Confidential Information not permitted by this Confidentiality Agreement. The Disclosing Party shall not be entitled to recover from the Recipient any amount on account of any indirect, special or consequential damages as a result of any action or failure to act under or in respect of this Confidentiality Agreement. Any acts or omissions by a third party to whom the Supplier has transmitted, disclosed or permitted the disclosure of Confidential Information shall be deemed to be actions or omissions of the Supplier for the purpose of this sub-section 4.1.
- 4.2 With respect to a breach related to Customer Information, the Supplier shall be responsible for damages caused by any transmission or disclosure, access, loss or use of Customer Information not permitted by this Confidentiality Agreement. The Supplier shall also be liable to indemnify EDC for breach of this Confidentiality Agreement. Any acts or omissions by a third party to whom the Supplier has transmitted, disclosed or permitted the disclosure of Confidential Information shall be deemed to be actions or omissions of the Supplier for the purpose of this sub-section 4.2.
- 4.3 The Parties agree that the party which has suffered or would suffer by the breach of this Confidentiality Agreement by the other, may, subject to applicable law, be entitled to immediate equitable relief, including injunction and specific performance, as remedies for any such breach. Such remedies shall, subject to applicable law, not be deemed to be the exclusive remedies available for any such breach but shall be in addition to all other remedies available at law or in equity. By entering into this Confidentiality Agreement, EDC is not waiving any rights which it may have pursuant to applicable law.

5. RETURN AND DESTRUCTION OF INFORMATION

- 5.1 All documents, drawing, spreadsheets, data and writings (including electronic materials) containing Confidential Information and all copies thereof shall be returned promptly by the Recipient upon receipt of a written request from the Disclosing Party or at any time by the Recipient in its discretion and any copies that have been made will (subject to the requirements of applicable law and internal audit purposes in the case of which the terms of this Confidentiality Agreement shall continue to apply to the Confidential Information not so dealt with) be destroyed in accordance with the Recipient's procedure for destruction of similar confidential material; however, the undertakings set forth in this section shall not apply to Confidential Information furnished to EDC in connection with transactions entered into by EDC including any financing, insurance or other arrangements whatsoever.

- 5.2 The Parties' obligation to protect all Confidential Information that is not Customer Information in accordance with this Confidentiality Agreement shall survive such return or destruction of the Confidential Information and shall subsist until the date determined under Section 7.
- 5.3 In the case of Customer Information, the Parties' obligation to protect the Customer Information in accordance with this Confidentiality Agreement shall survive such return or destruction of the Customer Information and shall subsist until the date determined by EDC.

6. NOTICE

- 6.1 All notices and communications hereunder shall be in writing and shall be either (a) delivered personally, (b) forwarded by registered mail or courier to the postal address indicated below or such other address as may hereafter be designated in writing in accordance herewith, or (c) transmitted by e-mail to the address indicated below:

Supplier:

SUPPLIER'S LEGAL NAME

Address, City, Postal Code

Email Address

EDC:

Procurement

Export Development Canada

150 Slater Street, Ottawa, ON, K1A 1K3

(613) 598-2501 (Telephone)

procurement@edc.ca

- 6.2 All notices delivered shall be deemed to have been received when delivered.

7. ENTIRE AGREEMENT

- 7.1 This Confidentiality Agreement constitutes the entire understanding and agreement of the Parties relating to the protection of Confidential Information. No rights or obligations other than those expressly recited herein are to be implied from this Confidentiality Agreement, or otherwise, and the Parties, to the extent permitted by the governing law of this Confidentiality Agreement, agree that this Confidentiality Agreement shall be the sole and exclusive source of their rights against each other in relation to Confidential Information. If there is a conflict between terms of this Confidentiality Agreement and the terms of the Privacy Undertaking, the terms of the Privacy Undertaking shall prevail.

8. TERMINATION

- 8.1 This Confidentiality Agreement may be terminated at any time by mutual agreement of the Parties and unless earlier terminated, this Confidentiality Agreement shall expire three (3) years from the termination of the delivery of the Services. On a single occasion, at any time before its expiration or termination, either Party may extend this Confidentiality Agreement for one year by written notice (by fax or otherwise) to the other Party, which notice shall be effective upon receipt.
- 8.2 However, the terms of this Confidentiality Agreement as they apply to Customer Information received by the Supplier will survive any termination of this Confidentiality Agreement and shall subsist until the date determined by EDC.

9. GOVERNING LAW AND JURISDICTION

- 9.1 The validity and interpretation of this Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and Canadian Federal laws applicable therein. Any action against EDC shall be taken exclusively before the competent Court in Canada.

10. MISCELLANEOUS

- 10.1 This Confidentiality Agreement shall be binding upon and enure to the benefit of the Parties.

- 10.2 If any provision or any part of any provision of this Confidentiality Agreement is determined to be invalid, unenforceable, or illegal, it shall be severable and deemed to be deleted and the remaining provisions shall remain valid and binding, and not be in any way affected or impaired.
- 10.3 This Confidentiality Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute the same instrument.
- 10.4 Receipt of an executed PDF copy of this Confidentiality Agreement shall be deemed receipt of an original.
- 10.5 This Confidentiality Agreement shall be binding upon and enure to the benefit of the Parties their successors and any permitted assigns.

11. DEFINITIONS

- 11.1 The following definitions will apply to this Confidentiality Agreement:
- (a) "Confidential Information" means any and all materials and information in whatever form, whether provided in writing, orally or otherwise, which are made available by one Party to the other Party, directly or indirectly, in connection with the Transaction, which is either confidential, proprietary or otherwise not generally available to the public (including any document, electronic record, note, extract or analysis recalling or recording information which is or derives from Confidential Information). This applies regardless of whether the Confidential Information is specifically identified as "confidential", "proprietary" or "non-public". As used in this Confidentiality Agreement, the term Confidential Information shall include Customer Information.
 - (b) "Deliverables" means the work product described in the [applicable schedule of services.
 - (c) "Disclosing Party" means the party disclosing Confidential Information.
 - (d) "Privacy Undertaking" means a privacy undertaking entered into by the Supplier in favour of EDC.
 - (e) "Recipient" means the party receiving Confidential Information.
 - (f) "Services" means the services to be performed by the Supplier to EDC.

The Parties hereto have each executed this Confidentiality Agreement by their respective duly authorized officers.

SUPPLIER'S LEGAL NAME

By: _____
Name:
Title:
Date:

EXPORT DEVELOPMENT CANADA

By:
Name:
Title:
Date:

By:
Name:
Title:
Date: