



## **BONDING PRODUCTS DECLARATION AND INDEMNITY**

*This Declaration and Indemnity will be governed by the laws of the Canadian province or territory in which the Customer has its registered head office, and if the Customer has no registered head office in Canada, by the laws of the Province of Ontario. The Customer has explicitly requested that this Declaration and Indemnity and the documentation related thereto be drafted in the English language. Le client a expressément demandé et accepté que la présente Déclaration et Indemnité et toute documentation y rattachée soient rédigées dans la langue anglaise.*

The Customer (as identified in Part 3 below) has requested that Export Development Canada ("EDC") provide it with support with respect to the issuance of guarantees, bonds or insurance under EDC's Contract Insurance Bonding Program ("**Bonding Product(s)**"). In connection with EDC providing such support ("**Bonding Support**"), the Customer has agreed to make the following declarations and enter into the following indemnity all as set out in this Declaration and Indemnity ("**Declaration and Indemnity**").

### **1 DECLARATION**

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The Customer declares, acknowledges, represents, and warrants to EDC as follows:

#### Information Contained is True and Correct and is Not Aware of Any Circumstance Likely to Give Rise to a Loss

- (1) The information contained in this Declaration is true and correct, and the Customer acknowledges that EDC is entitled to deny liability under its Bonding Support insurance policies in the event that any Declaration contains a misrepresentation. The Customer is not aware of any circumstance likely to give rise to any call, claim or loss under any of the forms of Bonding Support to be provided by EDC.

#### Buyer/Obligee is Not Related

- (2) Neither any buyer under any contract nor any Obligee is or will be a Related Person. For the purposes of this paragraph, "**Obligee**" means any entity to which the Customer owes a financial obligation; and "**Related Person**" means a person, (a) who has a direct or indirect equity interest in the Customer, or a person in whom the Customer has a direct or indirect equity interest, (b) who is related to the Customer through a common third party's direct or indirect equity interest in both that person and the Customer, (c) who, or whose direct or indirect owners, has a family relationship with the Customer or the Customer's direct or indirect owners, or (d) who has any other kind of relationship with the Customer which could give rise to a concern on the part of a reasonable person that the Customer might not behave in a prudent manner with respect to, (i) its sales to such person, or (ii) its financial performance obligations to such person, in either case, to the detriment of EDC.

#### Compliance with Applicable Criminal Laws Dealing with the Bribery of Foreign Public Officials

- (3) With respect to the business to be supported by EDC: (a) neither the Customer, nor its Affiliates, have been or will knowingly be party to any action which is prohibited by applicable criminal laws dealing with the bribery of foreign public officials, including Canada's *Corruption of Foreign Public Officials Act*, which makes it illegal for persons to, directly or indirectly, give, offer, or agree to offer a loan, reward, advantage or benefit of any kind to a foreign public official in order to obtain or retain an advantage in the course of business; (b) neither the Customer, nor its Affiliates, nor to the best of the Customer's knowledge, anyone acting on its or its Affiliates' behalf, are currently under charge in a court or, within the last five years, have been convicted in a court for violation of laws against the bribery of foreign public officials of any country; and (c) upon request, the Customer agrees to provide to EDC the identity of persons acting on its and its Affiliates' behalf and the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons. For the purposes of this paragraph, "**Affiliates**" means any persons who: (a) are directly or indirectly Controlled by the Customer or by any persons that also directly or indirectly Control the Customer; (b) any persons that directly or indirectly Control the Customer; or (c) are agents of the Customer or of any persons described in paragraphs (3)(a) or (b); and "**Control**" means the ability, direct or indirect, to direct or cause the direction of

management or policies of a corporation, whether through ownership of voting shares of any class of any corporation, by contract, by de facto control or otherwise, and "**Controlled**" has a correlative meaning.

As reflected in this paragraph (3), under the auspices of the Organization for Economic Co-operation and Development (OECD), countries such as Canada, have agreed to take a concerted action to fight corruption. As such, legal measures to deter corruption are now in place in leading trading nations. Effective since 1999, Canada's Corruption of Foreign Public Officials Act makes it a criminal offence under Canadian law to bribe a foreign public official in the course of business. Businesses convicted under the Act face heavy fines and individuals can be sentenced to a maximum of five years in jail. EDC has a legal, corporate, and ethical responsibility to ensure it is not knowingly providing support to a transaction involving the offer or the giving of a bribe.

#### Contracts Do Not Contain Discriminatory Wording

- (4) Any contract which is the object of the Bonding Support does not contain any clauses or provisions requiring the contracting party to: (a) engage in discrimination based on the race, national or ethnic origin or religion of any person, (b) refuse to purchase from or sell to any other Canadian firms or individuals, (c) restrict commercial investment or other economic activity in any country, (d) produce any document (sometimes called a "negative certificate of origin") which by its terms confirms that particular goods or services have not originated from specific firms or places, (e) refuse to sell any goods and services to or buy any goods or services from, any country except that a buyer may define the country of origin of the goods and services, of specified non-Canadian origin that would be prohibited entry if imported directly, or (f) make a statement of fact to the effect that the party has not, or does not, deal with a named country, unless such statement is accompanied by a clause establishing clearly that such statement is not an indication of intent restricting such party's actions.

The Customer understands that Canadian Government policy calls for the denial of government support and assistance with respect to transactions where the parties have agreed to accept boycott provisions in contravention of this policy. The Customer declares and warrants having read EDC's information sheet on [Boycott Activities Prohibited by the Government of Canada's policy on International Economic Boycotts](#) located on EDC's website and hereby agrees not to submit a request to a bank for the issuance of a bank instrument that would be covered by Bonding Support if the underlying contract contains any such provisions as specified above in this Section (4). If the Customer makes a false declaration with respect to boycott, EDC reserves the right to impose sanctions on the Customer as EDC deems appropriate and reasonable in the circumstances, including, without limitation, refusing to extend further Bonding Support on behalf of the Customer. For more information on these and other EDC Corporate Social Responsibility initiatives and practices, please visit EDC's website at [www.edc.ca](http://www.edc.ca).

#### EDC's Requirements to Comply with Applicable Laws

- (5) With respect to any business which is the object of Bonding Support, it acknowledges that (1) EDC cannot provide Bonding Support which includes, without limitation, making any payments under any Bonding Product or agreeing to extend a Bonding Product or to cover an extension of a bank instrument or surety bond underlying a Bonding Product, which support is or would be prohibited pursuant to any applicable law, act, regulation, order or decree of a Government or by any legal process, including, without limitation, a legal injunction or court order (the "**Applicable Laws**"), (2) EDC is obligated to verify all parties, goods, and services involved, directly or indirectly, in a Bonding Product and any transaction underlying a Bonding Product in order to determine EDC's compliance with the Applicable Laws, and (3) EDC may be required to extend the timeframe for payment under a Bonding Product in order to determine EDC's compliance with the Applicable Laws. The Customer agrees to provide EDC, promptly upon request, with such information and documents as EDC may reasonably request in connection with the foregoing purpose. Any determination of compliance with the Applicable Laws made by EDC is for EDC's purposes only and cannot be relied upon by the Customer.

#### Has Actively Sought Support from the Surety Market Without Success – SURETY BONDS ONLY

- (6) If requesting EDC support in the form of surety bond fronting, it or a broker on its behalf, as applicable, has actively sought support from the surety market in respect of the transaction, without success.

#### FX Activity Is Not With Respect to "Speculation" Activity - FXGs ONLY

- (7) It understands that EDC's Foreign Exchange Facility Guarantee ("**FXG**") is to be used by the Customer to minimize currency conversion risks (i.e. hedging activity) and that EDC may refuse to extend further FXG support on behalf of the Customer if EDC determines that the Customer has used the FXG to carry out speculative foreign exchange activity.

#### No Significant Environmental Risks

- (8) It is not aware of any significant environmental risks associated with any business which is the object of the Bonding Support.

#### Additional Information May Be Required

- (9) It understands that additional information may be required by EDC prior to the issuance of an offer in relation to the Bonding Support and when supplied, any such additional information will form part of this Declaration and Indemnity and will be relied on by EDC in the issuance of such support.

#### Understands Indemnity and Agrees to Be Bound

- (10) If requesting EDC support in the form of an Account Performance Security Guarantee, Performance Security Guarantee, Financial Security Guarantee, Foreign Exchange Facility Guarantee or surety bond fronting, it understands the nature and effect of, and agrees to be bound by, the terms of the INDEMNITY (set forth below), and has had the opportunity to obtain independent legal advice in relation to the Indemnity.

## **2 INDEMNITY – FOR GUARANTEES AND SURETY BONDS ONLY**

#### Definitions

- (1) In this Indemnity, references to (1) "**Change of Control**" means any acquisition of Control of the Indemnitor(s) by any person or two or more persons acting in concert, other than by an Indemnitor; (2) "**Contract**" means any contract or supply contract related to Bonding Support; (3) "**Guarantee**" means any guarantee issued by EDC to a financial institution on or after the date of signature of this Declaration and Indemnity, including, without limitation, an Account Performance Security Guarantee, a Performance Security Guarantee, a Financial Security Guarantee or a Foreign Exchange Facility Guarantee; (4) "**Indemnity**" means this Indemnity made by the Indemnitor(s) under Part 2 of this Declaration and Indemnity; (5) "**Indemnity Bonding Product**" means, as applicable, a Guarantee and/or Surety Bond; (6) "**Indemnitor**" means the Customer and where applicable, each co-indemnitor identified in Part 4 of this Declaration and Indemnity; (7) "**Material Adverse Change**" means (a) any event or circumstance which, when considered individually or together with other events or circumstances, could be expected to have a material adverse effect on, (i) the condition, financial or otherwise, or on the earnings, operations, assets, business affairs or business prospects of an Indemnitor, (ii) the ability of an Indemnitor to perform or observe any of its material obligations under this Indemnity or the ability of an Indemnitor to perform or observe any of its material obligations under any Contract, (iii) the rights and remedies available to EDC under this Indemnity, and (b) a Change of Control; (8) "**Surety Bond**" means surety bonds issued by a Surety on or after the date of signature on this Declaration and Indemnity; and (9) "**Surety**" means any surety that has issued or reinsured a Surety Bond at the request of EDC. Capitalized terms not defined in this Part 2 "Indemnity" of this Declaration and Indemnity shall have the meanings attributed to them in Part 1 "Declaration".

#### Liability of Indemnitor(s)

- (2) In consideration of the issuance of any Indemnity Bonding Product, the Indemnitor(s) hereby jointly and severally and unconditionally and irrevocably agree to fully indemnify EDC against all claims and demands made in respect of an Indemnity Bonding Product, including the amount that EDC pays under any Indemnity Bonding Product, and to be liable to and compensate EDC for and against all (a) costs, fees and expenses in connection with any Indemnity Bonding Product, including without limitation, unpaid premium or fees due for any Indemnity Bonding Product (whether due by the Indemnitor(s), a bank or Surety), the costs of enforcing this Indemnity, and any bank or Surety fees or expenses paid by EDC in connection with an Indemnity Bonding Product, and (b) damages directly or indirectly arising or resulting from any claims or demands made in respect of an Indemnity Bonding Product. The Indemnitor(s) also agree to pay interest to EDC on any such amounts, such interest to accrue from the date of demand by EDC to the date of payment at a rate per annum equal to the prime rate of interest prevailing at the date of demand for the currency of the applicable Indemnity Bonding Product and compounded semi-annually, both before and after demand and judgment. Prime rate shall mean the prevailing prime rate charged by EDC's bank to its most creditworthy customers and designated by it as its "prime rate" as of the date of EDC's demand for payment.
- (3) Each Indemnitor agrees that its liability hereunder shall not be varied or discharged by reason of an Indemnity Bonding Product or any related document being or becoming in whole or in part, illegal, unenforceable, void or discharged, or by reason of any negligence on the part of EDC or a Surety, or by reason of any indulgence

or time being granted to EDC or any Surety or by any compromise, arrangement or plan whatsoever between EDC and any party in respect of EDC's liability under an Indemnity Bonding Product or on the part of any Surety. The Indemnitor(s)' liability under this Indemnity shall not be discharged, released, or otherwise terminated except by full payment to EDC of all amounts payable to EDC hereunder.

- (4) Where EDC has also issued a Performance Security Insurance ("PSI") policy to the Indemnitor(s) in respect of the bank instruments covered by a Guarantee issued by EDC, the Indemnitor(s) will pay to EDC, on demand, 5 percent of the amount that is payable under Section 2 of this Indemnity. Where EDC has determined that no loss is payable under the PSI policy, the Indemnitor(s) will also pay to EDC, on demand, the remaining 95 percent of the amount that is payable under Section 2. Where EDC has determined that a loss is payable in respect of the PSI policy, such amount payable will be retained by EDC and applied in payment of the remaining 95 percent of the amount that is payable under Section 2.

#### Discretionary Powers of EDC

- (5) The Indemnitor(s) absolutely and irrevocably authorize EDC or any Surety (in the case of issuance of Surety Bonds) to (i) pay immediately, at its absolute and sole discretion, in whole or in part, any amounts claimed pursuant to and in accordance with an Indemnity Bonding Product, (ii) enter into any agreement with any person for the purpose of discharging, in whole or in part, its obligation under an Indemnity Bonding Product, or (iii) take any other action in respect of an Indemnity Bonding Product, including without limitation, in the case of Surety Bonds, intervening in any Contract.
- (6) For the purpose of discharging, in whole or in part, its obligations under Surety Bonds, EDC is authorized and empowered to guarantee loans, advance or lend to the Indemnitor(s) or any other person, any money which EDC may deem necessary for any purpose in respect of any Contract; and all money so expended, lent, advanced or guaranteed, and any expenses incurred by EDC in relation thereto, unless repaid with interest at the rate and calculated and payable as provided in Section 2 of this Indemnity by the Indemnitor(s) to EDC when due, shall constitute a loss to EDC for which the Indemnitor(s) shall be liable to EDC under this Indemnity.
- (7) The Indemnitor(s) agree that, without prejudice to EDC's rights or to the Indemnitor(s)' liability under this Indemnity, EDC or any Surety (in respect of any Surety Bonds issued) may (i) make any amendments to an Indemnity Bonding Product, (ii) waive any breach of an Indemnity Bonding Product, (iii) agree to extend, substitute or renew an Indemnity Bonding Product or the bank instruments covered by any Guarantee, or (iv) refuse to extend, substitute or renew an Indemnity Bonding Product.

#### Undertakings – All Bonding Products

- (8) The Indemnitor(s) will take reasonable steps, including those steps as EDC may direct from time to time, to (1) perform their obligations under any Contract, and (2) if applicable, cause its Affiliates to perform their obligations under any Contract, in each case, in accordance with any Contract and will keep EDC informed as to the progress of any Contract.
- (9) The Indemnitor(s) will not, without obtaining EDC's prior written consent, either directly or indirectly, assign, transfer, sell, cancel, terminate, materially amend or change any Contract, charge or in any way grant a security interest in, or encumber their rights to receive payment under any Contract or their rights in any of the goods, services or rights in any way related to any Contract.
- (10) Each Indemnitor hereby waives any right of counterclaim, set-off, deduction, or any right to notice or consultation with EDC or any Surety which it may have, with the intent that it and its successors or assigns will not be able to claim or assert any such right in any legal proceedings which may be brought by EDC against the Indemnitor(s) pursuant to this Indemnity. Each Indemnitor also hereby expressly waives the benefit of all privileges and defences which now or hereafter may be available to indemnitors, including, in situations where there is more than one Indemnitor with respect to an Indemnity Bonding Product, the benefit of discussion and division, and each Indemnitor waives diligence, presentment, demand, protest, notice of every kind. EDC is not bound to exhaust its recourse against any person, securities or collateral it may hold before demanding or being entitled to a payment under this Indemnity.
- (11) Each Indemnitor will deliver or cause to be delivered to EDC (a) within one hundred and twenty (120) days after the end of the Indemnitor's financial year all annual financial statements, audited if available, (b) within forty-five (45) days after the end of the Indemnitor's financial quarter, all quarterly financial statements, audited if available, and (c) such other reports and information respecting the Indemnitor's financial condition

and operation as EDC may reasonably request, including, without limitation, in connection with the issuance, renewal, extension, amendment or replacement of any Indemnity Bonding Product.

- (12) Each Indemnitor will allow EDC and its representatives access to its property, premises, books and records and will provide to EDC, at the its expense, electronic and paper copies of any information, in each case, as EDC may reasonably request.
- (13) Each Indemnitor will immediately advise EDC of (1) any call or claim under a Surety Bond, a bank instrument to which an Indemnity Bonding Product relates, or an Indemnity Bonding Product, or (2) any occurrence of any event likely to result in a call or claim thereunder, including but not limited to a breach of any covenant signed by it in favour of a bank which has issued a bank instrument on its behalf.
- (14) Each Indemnitor agrees that it will not, without EDC's prior written consent, which consent will not be unreasonably withheld:
  - (1) sell or otherwise dispose of all or a substantial part of its assets to a person or entity which is not an Indemnitor;
  - (2) cease to conduct all or a substantial part of its business as conducted as at the date of signature on this Declaration and Indemnity;
  - (3) amalgamate, merge or consolidate with any other company; or
  - (4) permit any Change of Control of the Indemnitor.
- (15) Each Indemnitor will, (1) notify EDC in writing of any event or condition which will or would reasonably be expected to result in a Material Adverse Change or in the failure of the Indemnitor to perform or observe any of its material obligations under this Indemnity, in any case, as soon as the Indemnitor obtains knowledge of such event or condition, (2) upon the occurrence of a Material Adverse Change, as determined by EDC in its sole and absolute opinion, and upon demand by EDC, deposit with EDC sufficient collateral, in form, amounts, substance and ranking acceptable to EDC, and, (3) upon request by EDC, grant EDC a security interest in such collateral.
- (16) Until all sums owing to EDC under this Indemnity have been paid in full, (1) an Indemnitor will, with respect to any payment made or to be made to EDC under this Indemnity, subordinate and postpone all rights and claims it may now or hereafter acquire against any other Indemnitor to any rights and claims of EDC on account of amounts owing to EDC under this Indemnity, (2) not claim the benefit of any security or monies held by or for the account of EDC, and (3) take reasonable steps to cause its Affiliates to comply with this paragraph.

#### Undertakings – Surety Bonds Only

- (17) Each Indemnitor agrees that it will cooperate with EDC and any Surety and will, if so required by EDC or any such Surety, assign and transfer its rights, title and interest under or in respect of any Contract, including rights under related subcontracts, supply contracts and bonds securing any subcontractor supply contracts, security on any assets, tools, plant equipment and materials necessary for the performance of any Contract, where any such assignment is necessary for the obligations under a Surety Bond to be discharged by EDC or any such Surety.
- (18) Each Indemnitor agrees and hereby expressly declares that all funds due or to become due under any Contract are, whether in the possession of an Indemnitor or another, trust funds for the benefit of and payment to all persons to whom the Indemnitor incurs obligations in the performance of any Contract. If EDC or any Surety assumes or discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds. The Indemnitor(s) will, if so instructed by EDC in writing, cause all monies payable to the Indemnitor(s) under any Contract to be deposited in a segregated account for use in the performance of any Contract and will not permit any such monies to be transferred to any other account or applied to any other purpose until completion of any Contract.
- (19) Each Indemnitor agrees to maintain available all tools, plant, equipment and materials necessary for the performance of any Contract and permit EDC and its representatives to take possession of same.
- (20) Each Indemnitor will obtain the return of any original Surety Bonds from beneficiaries upon completion of its obligations under any Contract and promptly deliver same to EDC or any Surety.

### Representations and Warranties of the Indemnitor

- (21) Each Indemnitor represents and warrants to EDC that, (1) if it is a corporation, it is duly incorporated and validly subsisting under the laws of its place of incorporation, and (2) this Indemnity has been duly authorized, executed and delivered by it and is a legal, valid and binding obligation of the Indemnitor, enforceable against the Indemnitor in accordance with its terms.

### General - Indemnity

- (22) EDC's rights, powers and remedies under this Indemnity are cumulative and are in addition to, and not in substitution for, any rights, powers or remedies provided or hereafter acquired by law or equity, or under any other agreement with EDC.
- (23) As a condition of issuing any Indemnity Bonding Product, EDC may require additional indemnitors to jointly and severally indemnify EDC against all claims and demands made under an Indemnity Bonding Product as contemplated under Section 2 of this Indemnity, in which case, the Customer and all such indemnitors shall be jointly and severally liable to perform all of the obligations, covenants, terms and agreements contained in this Indemnity.
- (24) If any provision of this Indemnity becomes invalid, illegal or unenforceable in any respect under any regulation or law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- (25) Any demand or notice to be given hereunder, unless otherwise specified, shall be given in writing to the other party and shall be sent by facsimile, electronic mail or prepaid registered mail. It shall be deemed to have been received, if sent by facsimile or by electronic mail, on the day following the transmission thereof and, if sent by prepaid registered mail, on the fifth (5th) day after mailing, excluding Saturdays, Sundays and those statutory holidays upon which the offices of the addressee are normally closed for business. The address, facsimile number and electronic mail address of the Indemnitor(s) for the purposes of giving notice hereunder to the Indemnitor(s) are as set forth in Section 3 (Customer Signature) below, or as may be notified in writing to EDC. The address, facsimile number and electronic mail address of EDC for the purposes of giving notice hereunder are as follows, or as may be notified in writing to the Indemnitor(s):

Export Development Canada  
150 Slater Street  
Ottawa, Canada  
K1A 1K3  
Fax: 613-597-8504  
Email: CIB-APSG-Coverage@EDC.ca

- (26) This Indemnity is binding upon and shall enure to the benefit of the Indemnitor(s) and EDC and their respective heirs, executors, personal representatives, successors and permitted assigns. No Indemnitor may assign or transfer all or part of its rights or obligations under this Indemnity without EDC's prior written consent. EDC may assign all or part of its rights or obligations under this Indemnity without an Indemnitor's consent. It is hereby understood and agreed that an Indemnitor is bound by this Indemnity only in the event an Indemnity Bonding Product is issued by EDC.
- (27) Each Indemnitor understands the nature and effect of, and agrees to be bound by, the terms of this Indemnity and has had the opportunity to obtain independent legal advice in relation to this Indemnity.
- (28) The Indemnitor(s) agrees that the terms of this Indemnity shall be in addition to, and not in substitution for, the terms of any indemnity agreement previously executed by the Indemnitor(s) in favour of EDC.
- (29) This Indemnity may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute together one and the same instrument. This Indemnity may be delivered by facsimile or by electronic mail and the Indemnitor(s) and EDC agree that receipt by facsimile or by electronic signature of an executed copy of this Indemnity shall be deemed to be receipt of an original.

### **3 CUSTOMER SIGNATURE**

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**IN WITNESS WHEREOF**, the Customer hereby consents and agrees to the terms and conditions set out in this Declaration and Indemnity, certifies the truth and accuracy of all representations and warranties contained therein, and affixes its corporate signature, attested by its proper officer in that behalf, to this Declaration and Indemnity.

Legal name of the company (Customer):  
Address:  
City, Province, Country:  
Facsimile:  
Email:

Duly Authorized Signature

Name & Title (please print)

Date signed

### **4 CO-INDEMNITY (where applicable) (if additional co-indemnitors are required, please add a separate sheet)**

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**IN WITNESS WHEREOF**, each of the undersigned agrees and covenants to be jointly and severally bound by and liable to perform all the obligations, covenants, terms and agreements contained in the foregoing Indemnity, including, without limitation, the obligation to indemnify EDC in accordance with Section 2 of the Indemnity. Each of the undersigned understands the nature and effect of the terms of this Indemnity and has had the opportunity to obtain independent legal advice in relation to the Indemnity. Each of the undersigned agrees that the address, facsimile number and electronic mail address for the purposes of giving notice hereunder to each of the undersigned are as set forth in Section 3 (Customer Signature) above, or as may be notified in writing to EDC.

Legal name of the company (Indemnitor):  
Address:  
City, Province, Country:

Duly Authorized Signature

Name & Title (please print)

Date signed