

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (this “Agreement”) is made effective as of the date set out in Schedule A (the “Effective Date”).

BETWEEN: **EXPORT DEVELOPMENT CANADA**
150 Slater Street
Ottawa, Ontario
K1A 1K3
 (“EDC”)

AND: **SUPPLIER**
ADDRESS
CITY, PROVINCE
POSTAL CODE
(the “Supplier”).

1 **Services and Deliverables**

1.1 EDC hereby retains the Supplier to provide to EDC services (the “Services”) and to supply the work product (the “Deliverables”) described in the attached Schedule “A”. If Schedule A provides that the Services shall be performed by a specific individual (the “Representative”), EDC engages the Supplier to provide the Services on the express and essential condition that the Services shall be performed by the Representative and by no other person. In the event that the Representative is no longer (i) able or willing to perform the Services, or (ii) active with or employed by the Supplier, for any reason whatsoever, EDC shall have the right to terminate this Agreement immediately upon written notice, without prejudice to EDC’s rights hereunder. Notwithstanding the foregoing, the Supplier may replace the Representative with another individual reasonably satisfactory to EDC with the prior written consent of EDC.

2 **Term**

2.1 This Agreement is effective as of the commencement date set out in Schedule “A” and, unless earlier terminated pursuant to Section 4 hereof, shall continue until the termination date set out in Schedule “A” (the “Term”). This Agreement shall not be renewed by its own terms, and any further rendition of services by the Supplier beyond the Term of the Agreement shall require the execution of a new Agreement with a new purchase order number.

3 **Fees**

3.1 For and in consideration of the Services and Deliverables furnished by the Supplier to EDC under this Agreement, the Supplier shall receive fees set out in Schedule “A”. Although the fees set out in Schedule A may not set out the relevant sales, goods and services, excise, value added or similar taxes, whether of federal or other jurisdictional level, taxes should be charged to EDC in the normal course, and suppliers may be subject to withholding tax under Canadian law. All taxes shall be shown separately on each invoice. Invoices shall be submitted to the attention of **Accounts Payable** as set out in Schedule “A”.

- 3.2 If any fees payable to the Supplier are subject to withholding taxes, EDC shall withhold and remit such amounts to the applicable taxing authority, unless the Supplier provides EDC with an exemption or waiver certificate. EDC will provide the Supplier with written confirmation of any such withholding and remittance.

4 Termination

- 4.1 This Agreement shall terminate as specified in Section 2 above. Either party may terminate this Agreement:
- (a) at any time for convenience upon fourteen (14) days' written notice to the other party; or
 - (b) immediately upon written notice if the other party becomes insolvent, or is made the subject of bankruptcy, conservatorship, receivership or similar proceedings.
- 4.2 EDC may also terminate this Agreement, without prejudice to EDC's rights hereunder:
- (a) in accordance with Section 1 of this Agreement;
 - (b) immediately upon written notice, if the Supplier or Representative, as applicable, fails to meet or maintain any security clearance requirements; or
 - (c) if the Supplier breaches any provision of this Agreement or the Schedules attached hereto and fails to remedy such breach within five (5) business days following notice thereof.

5 Consequences of Termination

- 5.1 Should this Agreement expire, or be terminated for any reason, EDC shall pay the Supplier for all of the Services and Deliverables satisfactorily rendered and delivered by the Supplier prior to termination and for all expenses reasonably and properly incurred by the Supplier prior to termination, if otherwise payable hereunder. In the event of termination by EDC for any reason other than convenience, or by the Supplier for any reason, EDC may withhold any unpaid amounts due to the Supplier under this Agreement, which amounts may be applied by EDC to indemnify it for any amounts owing by the Supplier to EDC hereunder and any excess costs that EDC may incur to complete the Services or Deliverables. Any amounts so withheld that are not applied toward such indemnification shall be paid to the Supplier when EDC, in its sole discretion, determines that it has been adequately indemnified. EDC shall have no further obligation to Supplier for any costs, losses or damages of any kind whatsoever as a result of such expiration or termination.
- 5.2 Upon termination of this Agreement, the Supplier shall immediately return to EDC all records, files, lists, documents (including electronic material), equipment, software, intellectual property and any other property belonging to EDC, unless otherwise directed by EDC in writing. The provisions of Sections 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 18, 20 and 21, of this Agreement shall survive any termination of this Agreement.

6 Representations and Warranties

6.1 The Supplier hereby represents and warrants to EDC that:

- (a) the Services will be performed in a timely, professional and competent manner, with all due skill and care, and in accordance with applicable professional standards;
- (b) the Deliverables will conform with the requirements and specifications set out in Schedule "A";
- (c) it has the authority and capacity to enter into this Agreement and it is not subject to any restrictive covenant or other legal obligation which prohibits the Supplier from performing the Services or supplying the Deliverables;
- (d) none of the Services or Deliverables infringe the intellectual property rights of any other person and EDC shall have the right to use the Services and Deliverables without any restriction or obligation to any other person, except as set out in Schedule "A";
- (e) neither the Supplier, the Representative nor any other employee or agent of the Supplier has any relationship with any third party with whom EDC has contracted which would cause such person to have a conflict of interest in relation to this Agreement or in respect of the Services. Should any such conflict of interest arise during the Term of this Agreement, the Supplier covenants and agrees to immediately notify EDC; and
- (f) the Supplier is, where applicable, duly registered as a GST registrant under Part IX of the *Excise Tax Act* (Canada).

6.2 The Supplier shall be responsible for maintaining its own business insurance and shall provide EDC with proof of such insurance upon request.

7 Indemnity

7.1 The Supplier hereby undertakes to indemnify, defend and save harmless EDC and its directors, officers, employees, agents and other representatives from and against any and all losses, claims, demands, debts, actions, causes of actions, damages, penalties, interest, costs or expenses (including legal fees and disbursements) or liability of any kind whatsoever resulting from:

- (a) the negligent or wilful acts or omissions of the Supplier or its employees and/or agents, including the Representative, arising in connection with this Agreement or the Schedules attached hereto;
- (b) any and all breaches by the Supplier or its employees and/or agents, including the Representative, of any representations, warranties, covenants, terms or conditions of this Agreement or the Schedules attached hereto;
- (c) any employee source deduction, employer contribution or other employer/employee obligation, including interest and penalties thereon, which EDC may be assessed or otherwise may incur under any federal, provincial or municipal law as a result of a federal, provincial or municipal governmental department or agency, authority or competent tribunal determining that the Representative is considered an employee of EDC; and
- (d) any claim that the Services or Deliverables infringe the intellectual property rights of any person.

8 Non-Exclusivity

- 8.1 Subject to any conflict of interest, nothing in this Agreement shall prohibit or restrict the Supplier and the Representative from contracting with or being engaged in any capacity in promoting, undertaking, providing services to or in any way being involved with another person, firm or entity.
- 8.2 Nothing in this Agreement shall prohibit or restrict EDC from contracting with or engaging in any capacity any person to provide services or perform work for EDC that are similar to or compete with the Services or Deliverables provided by the Supplier hereunder.

9 Intellectual Property

- 9.1 “Intellectual Property Rights” means all intellectual and industrial property rights of EDC which include rights to inventions and patents for inventions, including reissues thereof and continuations in part, copyright, designs and industrial designs, trademarks, know-how, trade secrets and confidential information, and other proprietary rights. Subject to the provisions of Schedule “A”, the Supplier agrees that EDC shall be the exclusive owner of all Intellectual Property Rights howsoever created or developed by the Supplier, whether by it alone or jointly or with the contribution or assistance of others arising out of its engagement with EDC, including without limitation all Intellectual Property Rights in the Deliverables. The Supplier further agrees that it has no rights in any such Intellectual Property Rights and hereby assigns to EDC all rights, title and interest that may accrue to the Supplier as a result of its engagement with EDC. The Supplier hereby undertakes and agrees to cause the Representative to waive all moral rights and *droits de suite* that either the Supplier or Representative now or in the future may have to the Intellectual Property Rights. Each of the Supplier and the Representative agree that all Deliverables and other works created in full or in part by the Supplier may be maintained, changed, modified and/or adapted by EDC without the consent of either the Supplier or the Representative. Notwithstanding the foregoing, the Supplier and EDC may agree in writing that certain identified and designated Intellectual Property Rights will remain with the Supplier.
- 9.2 EDC acknowledges that Supplier and Representative possess knowledge and expertise relating to the subject matter of the Services and Deliverables (“Supplier Know-How”), which may include intellectual property rights in certain pre-existing tools and materials used by Supplier in performing the Services. Nothing in this Agreement is intended to transfer to EDC any rights in the Supplier Know-How, which shall remain the property of the Supplier. To the extent that any Supplier Know-How is included in any Deliverables, Supplier hereby grants to EDC a perpetual non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to exercise EDC’s rights in the Deliverables.

10. Confidential, Customer and Personal Information

- 10.1 The Supplier acknowledges and agrees that EDC is the custodian and owner of confidential, customer and proprietary information as well as personal information, all of which EDC is required to protect. The parties agree to execute and abide by the terms of the Confidentiality Agreement attached hereto as Schedule “B”. The Supplier agrees to execute and abide by the terms of the Privacy Undertaking attached hereto as Schedule “C” and the Customer Information Protection Undertaking hereto as Schedule “D.” The Supplier agrees that any breach of the terms of the Confidentiality Agreement; the Privacy Undertaking; or the Customer Information Protection Undertaking by either the Supplier or the Representative would cause irreparable harm, and EDC shall be entitled to seek specific performance or injunctive relief to enforce the terms of those Schedules in addition to any remedies it may otherwise be entitled to at law or in equity.

11. Location and Access to Information

- 11.1 The Supplier shall not and shall ensure that all subcontractors shall not transmit or store any data or information received from EDC or created in relation to this Agreement outside the boundaries of the jurisdiction identified in Schedule "A", and shall ensure that no person outside the jurisdiction identified in Schedule "A" (including any affiliate or subcontractor of the Supplier) has access to any such information or data. The Supplier shall ensure at all times that such information or data (i) shall be held, located, accessed and used solely by Supplier and subcontractors located in the jurisdiction identified in Schedule "A"; and (ii) shall be processed and stored by Supplier or subcontractors on hardware resident in Canada that is physically independent from any databases, hardware, networks or systems located outside the jurisdiction identified in Schedule "A", including those of any affiliates of Supplier.

2 Federal Legislation

- 12.1 The Supplier acknowledges that EDC is subject to the Canadian federal *Access to Information Act*, the *Privacy Act* and the *Export Development Act* and that information provided to or from EDC in connection with of this Agreement may be subject to the provisions of these federal Acts.
- 12.2 Moreover, and without limiting the provisions of this Agreement, the Supplier hereby covenants and agrees that it shall comply with all duties and obligations as set out in and which arise from the *Access to Information Act*, the *Privacy Act* and the *Export Development Act*, as amended from time to time, and shall make all reasonable efforts to assist EDC in complying with EDC's duties and obligations as set out in and which arise from these federal Acts as it may relate to this Agreement as well as the Services and the Deliverables provided hereunder.

3 Audit

- 13.1 The Supplier must keep proper accounts and records of the cost relating to the Services and Deliverables, including all invoices, receipts and vouchers.
- 13.2 If this Agreement includes payment for time spent by the Supplier, its employees, representatives, agents or sub-contractors providing the Services and Deliverables, the Supplier must keep a record of the actual time spent each day by each individual providing any part of the Services and Deliverables.
- 13.3 Unless EDC has consented in writing to its disposal, the Supplier must retain all the information described in this section for six (6) years after either:
- a) when the Supplier receives the final payment under this Agreement, or
 - b) until the settlement of all outstanding claims and disputes, whichever is later.

During this time, the Supplier must make this information available for audit, inspection and examination by the representatives of EDC, who may make copies and take extracts. The Supplier must provide all reasonably required facilities for any audit and inspection and must furnish all the information EDC or its representatives may, from time to time, require to perform a complete or partial audit of this Agreement.

4 Relationship

- 14.1 The parties hereto expressly acknowledge and agree that the Supplier shall render the Services hereunder as an independent Supplier and that the Supplier's employees and/or agents, including the Representative, are not employees of EDC. As such, neither the Supplier nor any of its employees and/or agents, including the Representative, shall have any right to any EDC employee benefit, entitlement or advantage.

14.2 Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties, or as authorizing either party to act as agent for the other or to enter into any contracts on behalf of the other party. As such, neither the Supplier nor the Representative is authorized to bind or commit EDC, either actually or apparently, in any manner whatsoever, without express prior written authority from EDC to do so.

15 Reference

15.1 The Supplier and the Representative shall not make reference to EDC in any future promotional material, except as a professional reference, without the prior written authorization of EDC.

6 Security and Policies

16.1 The Supplier acknowledges and agrees that it must meet and maintain any requisite government security screening requirements as may be determined as necessary by EDC from time to time. The Supplier further agrees that it will cause its employees and agents, including the Representative, to take all necessary steps to meet such requirements. These requirements may involve verification of personal data, education/professional qualifications, employment history and other similar checks. The Supplier also agrees that it and its employees and agents, including the Representative, will comply with EDC's Mutual Respect and Internet/E-Mail Policy, which EDC shall provide to the Supplier and the Representative in advance of the execution of this Agreement. The Supplier further acknowledges EDC's commitment to employment equity and diversity in its workforce and understands that EDC encourages applications from all qualified candidates, including women, aboriginal peoples, people with disabilities and visible minorities. The Supplier agrees to work together with EDC to support its employment equity program when providing EDC with Representatives.

7 Severability

17.1 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

8 Notices

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

SUPPLIER
ADDRESS
PHONE NUMBER
FAX NUMBER
EMAIL ADDRESS

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

Procurement
Export Development Canada
150 Slater Street, Ottawa, ON, K1A 1K3
(613) 598-2501 (Telephone)
(888) 649-8277 (Toll Free)
(613) 598-2533 (Facsimile)
procurement@edc.ca

- 18.3 Notices delivered personally or transmitted by facsimile or by e-mail shall be deemed to have been received when delivered. Notices forwarded by certified or registered mail shall be deemed to have been received four (4) days after mailing.

9 Amendment and Assignment

- 19.1 This Agreement may be amended in whole or in part only by the written consent of the parties hereto. Neither party may assign its rights under this Agreement without the prior written consent of the other party hereto, and any attempt to do so shall be a breach of this Agreement and shall be void.

0 Entire Agreement

- 20.1 This Agreement and the Schedules attached hereto constitute the entire agreement between the parties and supersede all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this Agreement except as specifically set out in this Agreement. The Schedules hereto form an integral part of this Agreement and are incorporated by reference herein.

2 Governing Law and Attornment

- 21.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Each party irrevocably and unconditionally attorns to the exclusive jurisdiction of the Provincial or Federal Courts located in the Province of Ontario for the purpose of any action or proceeding brought by either of them in connection with this Agreement or any alleged breach thereof.

2 Language

- 22.1 The parties hereto have explicitly requested and hereby accept that this Agreement be drawn up in English. Les parties aux présentes ont expressément demandé et acceptent par les présentes que le présent document « Agreement » soit rédigé en anglais.

2 Counterparts

23.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other party by electronic transmission and the signature transmitted by such transmission shall be deemed to be that party's original signature for all purposes.

2 Acknowledgement

24.1 The parties acknowledge that they have read and understand this Agreement, and agree to be bound by its terms and conditions.

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

SUPPLIER

By: _____

Name:

Title:

Date:

EXPORT DEVELOPMENT CANADA

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

SCHEDULE “A”

<u>Effective Date</u>	[DATE]
<u>Commencement Date</u>	[DATE]
<u>Termination Date</u>	[DATE]
<u>Representative</u>	[NAME] <i>Note: include any specific terms relating to qualifications, etc.</i>
<u>Description of Services</u>	[DESCRIPTION OF SERVICES]
<u>Description of Deliverables</u>	[DESCRIPTION OF DELIVERABLES] <i>Notes:</i> - include reference to applicable requirements and/or specifications - include any specific terms relating to Supplier or third party ownership of intellectual property and licensing to EDC
<u>Jurisdiction for Data Storage / Backup / Support Services</u>	<i>Identify jurisdiction for data storage, backup and provision of support services</i>
<u>Fees</u> The fees and amounts set out herein are in Canadian funds unless otherwise specified herein. Please refer to Section 3 of this Agreement for further terms regarding the fees.	[SET OUT FEE STRUCTURE] <i>Note: fees for Services may be time and materials or fixed fee; fees for Deliverables should be based on agreed milestones (e.g. specification sign-off, delivery, acceptance)</i>

<p><u>Expenses/Disbursements</u></p>	<p>EDC shall reimburse the Supplier for all reasonable expenses and other disbursements necessarily incurred in the performance of the Services, provided that: (i) EDC has given its prior written consent for any such expenses; (ii) the expenses have been detailed on a form acceptable to EDC and submitted to EDC for review and approval in accordance with EDC's expense review and approval policies; and (iii) appropriate documentation evidencing the expenses is provided by the Supplier. All such expenses will be invoiced at reasonable actual cost.</p>
<p><u>Invoices</u> All invoices shall reference the above purchase order number and shall be sent to:</p>	<p>Accounts Payable Export Development Canada 150 Slater Street Ottawa, Ontario K1A 1K3 accountspayable@edc.ca</p>
<p><u>Payment Terms</u></p>	<p>The Supplier shall prepare and submit invoices monthly on the 10th day of the month following the month in which the Services were rendered or the Deliverables were completed or accepted, as applicable. Each invoice shall specifically reference the applicable EDC purchase order number, and include time sheets and any other documentation reasonably requested by EDC from time to time. EDC shall pay approved invoices within 30 days of receipt of such invoice. Payment shall be in Canadian funds unless otherwise specified above.</p>

SCHEDULE "B"

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT forms part of the agreement it is attached to (the "Agreement") as Schedule "B".

Both EDC and the Supplier may disclose information to one another which they each desire that the other hold in confidence in accordance with the terms of this CONFIDENTIALITY AGREEMENT and the Agreement. As a result, the parties agree that:

1. Except as otherwise provided in this CONFIDENTIALITY AGREEMENT, the party receiving confidential information (the "Recipient") will neither:
 - (a) release to any person other than its employees, officers and directors, agents, auditors, consultants, advisors, legal counsel and, in the case of EDC, its sole shareholder (collectively, the "Representatives") who, except in the case of EDC's sole shareholder and without compromising the disclosure of information required for employees' normal use of internal information systems, need to know such information for the purpose of fulfilling the terms and conditions of the Agreement (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 non-public information, received from the party disclosing confidential information (the "Disclosing Party") pertaining to the Agreement (including any documentation, spreadsheets, correspondence, memoranda, notes, analyses or financial data and including information provided in electronic form or by oral communication) which is legibly marked or otherwise clearly identified by the Disclosing Party, either in writing or verbally (including by electronic means) as confidential at the time of its receipt by the Recipient ("Confidential Information").

2. 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. 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;
 - (b) furnished by EDC to the Auditor General of Canada;
 - (c) disclosed by a Party or its Representatives pursuant to the requirements of Canada's or EDC's international commitments;
 - (d) requested by any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction);
 - (e) 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 Agreement;
 - (f) independently developed by the Recipient;
 - (g) already in the possession of the Recipient at the time of its disclosure by the Disclosing Party to the Recipient under this Agreement;
 - (h) 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;
 - (i) used or disclosed by the Recipient with the prior written approval of the Disclosing Party; or
 - (j) required to be disclosed pursuant to EDC's Disclosure Policy. 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 by EDC to the Supplier under the Agreement; and a general description of the Services and Deliverables;

and any such information shall be deemed not to be Confidential Information for the purpose this CONFIDENTIALITY AGREEMENT; provided that if any portion of the Confidential Information falls within any one of the above exceptions, the remainder of such Confidential Information will continue to be subject to the prohibitions and restrictions set forth in Section 1.

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.
5. The parties consent to the Recipient's non-exclusive use of e-mail and fax transmission for any disclosure of Confidential Information that is allowed by the terms of this CONFIDENTIALITY AGREEMENT and agree that unauthorized third party interception of Confidential Information so transmitted will not constitute a breach of the Recipient's obligations under this CONFIDENTIALITY AGREEMENT. For greater certainty, this Section is not intended to limit disclosure by any other means.

6. The Recipient shall be responsible only for direct damages caused to the Disclosing Party by any disclosure of Confidential Information in breach of 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.
7. 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 Agreement, EDC is not waiving any rights which it may have pursuant to applicable law.
8. All documents, drawing, spreadsheets, data and writings (including electronic materials) disclosing 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. The Parties' obligation to protect Confidential 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 10.
9. 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 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.
10. 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 Effective Date. 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.

The parties hereto have each executed this CONFIDENTIALITY AGREEMENT by their respective duly authorized officers.

SUPPLIER

By: _____
Name:
Title:
Date:

EXPORT DEVELOPMENT CANADA

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

SAMPLE

SCHEDULE “C”

PRIVACY UNDERTAKING

This Privacy Undertaking forms part of the agreement it is attached to (the “Agreement”) as Schedule “C”. For the purposes of Section 10 of the Agreement, the Supplier hereby agrees as follows:

WHEREAS the Supplier (which terms includes any employee, officer, or agent of the Supplier, including the Representative) may be exposed to Personal Information (“Personal Information”), which must be protected and held in strict confidence pursuant to the *Privacy Act*,. As a result, the Supplier agrees that:

1. Definitions

1.1 In this Privacy Undertaking:

- (a) “Act” means the *Privacy Act*, (R.S., 1985, c. P-21), as amended from time to time;
- (b) “Personal Information” means personal information as defined in the Act which is disclosed to or collected by the Supplier in the course of the performance of the Agreement; and
- (c) “Privacy Coordinator” means the incumbent of the position of Privacy Coordinator at EDC.

2. Purpose

2.1 The purpose of this Privacy Undertaking is:

- (a) to enable EDC to comply with its statutory obligations under the Act with respect to Personal Information;
- (b) to ensure that, as a service provider to EDC, the Supplier is aware of and complies with the requirements of the Act with respect to Personal Information; and
- (c) if applicable, to enable EDC to ensure the protection of the Personal Information in light of the potential application of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (the “Patriot Act”) and any other similar foreign legislation.

3. Ownership of Personal Information

3.1 Unless EDC otherwise specifies, the Supplier is merely the custodian of the Personal Information and has no ownership or control of any such Personal Information, EDC remaining the sole owner thereof.

4. Collection of Personal Information

- 4.1 Unless EDC otherwise specifies, in the course of performing its obligations under the Agreement, the Supplier shall:
- (a) collect and use Personal Information only as necessary for the performance of the Supplier's obligations under the Agreement;
 - (b) subject to Paragraph (c) below, collect Personal Information from the individual to whom the Personal Information pertains and inform the individual of:
 - (i) the purpose of the collection; and
 - (ii) the title, business address and business telephone number of the person designated by EDC to answer questions about the Supplier's collection of the Personal Information; and
 - (c) obtain prior written authorization from EDC if information is to be collected otherwise than from the individual.

5. Accuracy of Personal Information

- 5.1 The Supplier must make every reasonable effort to ensure the accuracy and completeness of any Personal Information collected by the Supplier.

6. Means of Electronic Communication

- 6.1 Personal Information may only be communicated by means of properly addressed fax or voice mail. Use of any other means of communication, including e-mails is subject to the prior written authorization of EDC.

7. Use of Personal Information

- 7.1 The Supplier may only use the Personal Information for the use for which it is collected and in the performance of the Supplier's obligations under the Agreement. Without limiting the generality of the foregoing, the Supplier shall not make any consistent use of the Personal Information under Subsection 8(2) of the Act unless the prior written authorization of EDC is obtained.

8. Disclosure of Personal Information

- 8.1 Notwithstanding anything to the contrary in this Privacy Undertaking, the Supplier shall maintain and treat Personal Information as confidential at all times and shall not disclose such Personal Information except to those of its employees and officers who have a need to know for the performance of the Supplier's obligations under the Agreement and only if such disclosure is within Canada.
- 8.2 The Supplier shall not disclose or permit disclosure of the Personal Information outside Canada, or permit use of or access to the Personal Information by any person outside Canada for any reason.

9. Requests for Access to Personal Information

- 9.1 If the Supplier receives a written or verbal request for access to Personal Information, the Supplier must within five (5) days of such request being made advise the requestor to make the request to EDC's Privacy Coordinator and provide the following name and contact information for EDC's Privacy Coordinator:

Privacy Coordinator
Export Development Canada
150 Slater Street
Ottawa, Ontario
K1A 1K3

10. Protection of Personal Information

- 10.1 The Supplier must protect the Personal Information by making appropriate security arrangements, acceptable to EDC, against risks such as unauthorized access, collection, use, disclosure or disposal, including keeping the Personal Information in a secure location.

11. Location and access to Personal Information

- 11.1 The Supplier shall not transmit or store any Personal Information outside the boundaries of the jurisdiction identified in Schedule "A", and shall ensure that no person outside the jurisdiction identified in Schedule "A" (including any affiliate of the Supplier) has access to the Personal Information.

12. Retention of Personal Information

- 12.1 The Supplier shall only retain the Personal Information until the earlier of:
- (a) completion or termination of the Agreement; and
 - (b) receipt of a direction in writing from EDC to return or, at EDC's option, destroy, the Personal Information, at which time the Supplier will immediately return or destroy, as applicable, all Personal Information including all copies thereof, whether in paper or electronic form. If the Personal Information is destroyed at the direction of EDC, the Supplier will provide EDC, upon request with written confirmation of such destruction.

13. Correction of Personal information

- 13.1 The Supplier must correct or annotate any Personal Information in accordance with any written direction from EDC to do so, within the time period set out in the request. The Supplier shall send EDC the corrected or annotated Personal Information within five (5) business days of correcting or annotating any Personal Information under this Section 13. If the Supplier receives a Correction Request from a person other than EDC, the Supplier must within five (5) days of any such request advise such person to make the request to the Privacy Coordinator.

14. Inspection of Personal Information

- 14.1 In addition to any other rights of inspection EDC may have under the Agreement or pursuant to applicable law or regulation, EDC may, at any reasonable time and upon reasonable notice to the Supplier, enter the Supplier's premises to inspect:
- (a) any Personal Information in the possession of the Supplier; or
 - (b) any of the Supplier's information management policies or practices relevant to the management of the Personal Information or the Supplier's compliance with this Privacy Undertaking. The Supplier must provide all necessary assistance to EDC in the event of such inspection.

15. Compliance with the Act and Directions

- 15.1 The Supplier must comply with:
- (a) any requirements of the Act applicable to the Supplier as a result of entering into the Agreement, including any applicable order of the Commissioner (as defined in the Act) under the Act; and
 - (b) any direction given by EDC under this Privacy Undertaking.

16. Notice of Non-Compliance

- 16.1 If for any reason the Supplier does not comply, suspects that it has not complied, or anticipates that it will be unable to comply, with a provision in this Privacy Undertaking or the Act in any respect, the Supplier must promptly notify EDC of the particulars of the non-compliance, suspected non-compliance or anticipated non-compliance.. The Supplier shall cooperate with EDC in remedying any breach, anticipated breach or suspected breach including taking any actions as directed by EDC within the time periods directed by EDC.

17. Survival

- 17.1 The obligations of the Supplier under this Privacy Undertaking shall survive for as long as the Supplier retains any Personal Information.

18. Conflict

- 18.1 The Supplier must comply with the provisions of this Privacy Undertaking despite any conflicting provision of the Agreement or the law of any jurisdiction in or outside Canada.

The Supplier has executed this Privacy Undertaking by its duly authorized officer.

SUPPLIER

By: _____
Name:
Title:
Date:

SCHEDULE “D”

CUSTOMER INFORMATION PROTECTION UNDERTAKING

This CUSTOMER INFORMATION PROTECTION UNDERTAKING (this “CIPU”) forms part of the agreement it is attached to (the “Agreement”) as Schedule “D”.

WHEREAS the Supplier (which terms 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). As a result, the Supplier agrees that:

1. The Supplier and the Representative shall take all measures to assist EDC in protecting and safe guarding Customer Information in accordance with the *Export Development Act* and in particular, the Supplier and the Representative shall not:
 - (a) release or disclose to any other person or entity any Customer Information except as otherwise provided in this CIPU; nor
 - (b) use in any manner not connected with the Agreement, any Customer Information (including any documentation, spreadsheets, correspondence, memoranda, notes, analyses or financial data and including information provided in electronic form or by oral communication) which is legibly marked or otherwise clearly identified by EDC, either in writing or verbally (including by electronic means) as Customer Information.

3. The Supplier and the Representative shall exercise, in relation to the Customer 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.

4. Restrictions under this CIPU shall not apply to Customer Information, which is:
 - (a) disclosed pursuant to the requirements of law (including the *Export Development Act*), regulation, or instruments thereunder;
 - (b) already in the possession of the Supplier or the Representative at the time of its disclosure by EDC to the Supplier or and the Representative under the Agreement; or
 - (c) disclosed to the Supplier or the Representative (or substantially identical to information disclosed to the Supplier or the Representative) by a source other than EDC, provided that the source of information is not known to the Supplier or the Representative to be bound by any obligations of confidentiality which prohibit disclosure of such information;

provided that if any portion of the Customer Information falls within any one of the above exceptions, the remainder of such Customer Information will continue to be subject to the prohibitions and restrictions set forth in Section 1.

5. Specific items and details of Customer Information shall not be deemed to be within any of the exceptions in Section 4 only because such item or detail is generally referred to in more general information that falls within such exception.

6. The Supplier and the Representative shall be responsible for damages caused by any disclosure of Customer Information in breach of this CIPU. The Supplier and the Representative shall also be liable to indemnify EDC for breach of this CIPU in accordance with Section 7 of the Agreement.

7. The parties agree that the party which has suffered or would suffer by the breach of this CIPU 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 the Agreement, EDC is not waiving any rights which it may have pursuant to applicable law.

8. All documents, drawing, spreadsheets, data and writings (including electronic materials) disclosing Customer Information and all copies thereof shall be returned promptly by the Supplier and the Representative upon receipt of a written request from EDC or at any time by EDC 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 CIPU shall continue to apply to the Customer Information not so dealt with) be destroyed in accordance with EDC's procedure for destruction of similar confidential material. The obligation of the Supplier and the Representative to protect Customer Information in accordance with this CIPU shall survive such return or destruction of the Customer Information and shall subsist until the date determined by EDC.

9. The obligations set out in this CIPU are in addition to the obligation contained out in the Confidentiality Agreement in Schedule "B" to the Agreement.

10. This CIPU cannot be terminated and survives the termination of the Agreement.

The Supplier has executed this CIPU by its duly authorized officer.

SUPPLIER

By: _____

Name:

Title:

Date: