

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is entered into as of **MONTH DATE, YEAR** (the "Effective date"), by and between **Supplier's Legal Name** ("SUPPLIER") and Export Development Canada ("EDC") (each a "Party" and collectively referred to as the "Parties").

WHEREAS 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, the Competitive Bid Process, 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 Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the execution of this Agreement and the Parties providing information relating to the Transaction to one another, the Parties agree that:

1. Except as otherwise provided in this Agreement, the party receiving confidential information (the "Recipient") will neither (a) release to any person other than its employees, officers and directors, agents, auditors, 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 evaluating the Party's participation in the Transaction (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 Agreement) nor (b) use in any manner not connected with its role in respect of the Transaction, any non-public information, received from the Party disclosing confidential information (the "Disclosing Party") pertaining to the Transaction (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 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 is 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 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 Agreement shall prohibit EDC's disclosure, following the signing of the transaction, of the following information: the name of the principal counterparty; the EDC financial service provided and date of related agreement; a general description of the commercial transaction/project (including country); the amount of EDC support in an approximate dollar range; and the name of the Canadian supplier;

and any such information shall be deemed not to be Confidential Information for the purpose of this 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 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 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 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 Agreement.
- 7. The Parties agree that the Party which has suffered or would suffer by the breach of this 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 therefor 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 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 Agreement shall survive such return or destruction of the Confidential Information and shall subsist until the date determined under Section 9.

9. This 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 Agreement, agree that this Agreement shall be the sole and exclusive source of their rights against each other in relation to Confidential Information.
10. This Agreement may be terminated at any time by mutual agreement of the Parties and unless earlier terminated, this 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 Agreement for one year by written notice (by fax or otherwise) to the other Party, which notice shall be effective upon receipt.
11. The validity and interpretation of this 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.
12. By its execution, each Party represents to the other Party that the persons signing on its behalf (and the Party itself) are authorized to enter into this Agreement and that each of the Parties are relying on such mutual representations in entering into this Agreement.
13. This Agreement shall be binding upon and enure to the benefit of the Parties hereto.
14. This 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.
15. The Parties agree that receipt by fax transmission of an executed copy of this Agreement shall be deemed to be receipt of an original.

EXPORT DEVELOPMENT CANADA

Signature:
(Print Name):
(Title):

Signature:
(Print Name):
(Title):

SUPPLIER

Signature:
(Print Name):
(Title):