

## INDIVIDUAL IMMUNITY AGREEMENT

THIS AGREEMENT IS BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

as represented by the

DIRECTOR OF PUBLIC PROSECUTIONS OF CANADA

- and -

**[INDIVIDUAL]**

This document sets out the terms and conditions of an agreement between Her Majesty the Queen in right of Canada, as represented by the Director of Public Prosecutions of Canada ("the DPP") and **[Individual]** governing the grant of immunity from prosecution under the *Competition Act* (the "Act").

This grant of immunity follows an application to the Commissioner of Competition (the "Commissioner") pursuant to the Competition Bureau's Information Bulletin entitled "*Immunity Program Under the Competition Act*" (the "Immunity Bulletin", attached as Appendix 1).

This grant of immunity relates to anticompetitive conduct in the **[insert description as appropriate, e.g., "production, marketing, distribution and sale"]** of **[insert description of the products]**.

This agreement is conditional and depends upon **[Individual]** satisfying the terms and conditions set out below.

The parties agree and undertake as follows:

1. **Definitions:** In this agreement,

"anticompetitive conduct" means that **[Individual]** **[entered into an agreement to price-fix, rig bids, maintain prices, make false and misleading representations, etc.]** relating to **[insert precise description of the products/services]**. Specifically **[Individual]** represents that it **[describe particular conduct: description of alleged offence including nature of illegal behaviour and provision(s) of the Act violated, product and geographic market, parties involved, as applicable]**;

"cooperation" means complete, timely and ongoing cooperation, at **[Individual]**'s own expense throughout, with the DPP and the Commissioner in connection with the investigation of the anticompetitive conduct and in any proceedings that may be instituted by the DPP in relation to the anticompetitive conduct, and as more fully described in paragraph 3 of this agreement;

"confidential information" means this agreement and any information that in any way relates to the investigation of the anticompetitive conduct;

"disclosure" means in paragraph 3 of this agreement full, complete, frank and truthful disclosure of all non-privileged information, evidence or records relating to the anticompetitive conduct;

*NB: This document is for informational purposes only and does not constitute, nor is it a substitute for legal advice. Members should consult their own legal counsel for advice regarding the application of the Competition Act to any immunity/leniency process.*

2. **Representations:** **[Individual]** represents:

- that it has reported to the Commissioner and the DPP that it has engaged in the anticompetitive conduct which may constitute an offence under the Act;
- that it has taken effective steps to terminate its participation in the anticompetitive conduct;
- that it has not coerced others to be a party to the anticompetitive conduct; and
- that it has revealed to the DPP and the Commissioner any and all conduct of which it is aware which may constitute an offence under the Act.

3. **Cooperation and disclosure:** **[Individual]** shall provide disclosure and cooperation to the DPP and the Commissioner, including, but not limited to:

- whether or not requested all non-privileged evidence, information and records in his/her possession, under his/her control or available to him/her, wherever located, that in any manner relate to the anticompetitive conduct without falsely implicating any person or withholding any information;
- making him/herself available in Canada for interviews and to testify in judicial proceedings at times and places designated by the DPP or the Commissioner; and
- revealing any and all conduct of which he/she becomes aware which may constitute an offence under the Act.

4. **Immunity:** Having considered the recommendation of the Commissioner and, after an independent review pursuant to the policy of the DPP as set out in Part VII of the Federal Prosecution Service Deskbook, conditional upon:

- the veracity of the representations contained in paragraph 2 above; and
- the disclosure and cooperation of **[Individual]** as required pursuant to this agreement;

the DPP grants **[Individual]** immunity from prosecution under the Act in respect of the anticompetitive conduct.

5. **Confidentiality:** The DPP and the Commissioner shall not disclose to any third party the identity of **[Individual]**, except where:

- disclosure is required by law, including:
  - in response to an order of a Canadian court of competent jurisdiction;
  - to a person charged with an offence in Canada;
- disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers;
- disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers;
- **[Individual]** has agreed to disclosure;

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- there has been disclosure by **[Individual]**; or
- disclosure is necessary to prevent the commission of a serious criminal offence.

The DPP and the Commissioner shall not disclose to any third party information obtained from **[Individual]** subject only to the exceptions listed above or where disclosure of such information is otherwise for the purpose of the administration or enforcement of the Act.

The DPP and the Commissioner shall not disclose the identity of **[Individual]**, nor the information obtained from **[Individual]**, to any foreign law enforcement agency without the consent of **[Individual]**.

Unless made public by the DPP or the Commissioner, or as required by law, **[Individual]** shall not disclose confidential information to any third party, without the consent of the DPP, which consent will not be unreasonably withheld. Where disclosure is required by law, **[Individual]** shall give notice to and consult with the DPP prior to disclosure.

If any third party seeks to compel disclosure of confidential information from any party to this agreement, that party shall give prompt notice to the other party to this agreement, and shall take all reasonable steps to resist disclosure unless the parties to this agreement consent to such disclosure.

6. **Failure to Comply with the Immunity Agreement:** **[Individual]** agrees that full compliance with all the terms and conditions herein is fundamental to this agreement. Non-compliance constitutes a breach of the agreement which may result in revocation of immunity or such other remedy as the DPP may determine.

If the DPP determines that **[Individual]** has failed to fulfill the terms and conditions set out in this agreement, the DPP may revoke the immunity granted pursuant to paragraph 4 of this agreement after fourteen (14) days prior written notice.

Following revocation of immunity the DPP may take such action against **[Individual]** as the DPP considers appropriate, including prosecution under the Act or otherwise. In any such action the DPP may use in any way any evidence, record, statement, information, or testimony provided by **[Individual]** pursuant to this agreement and any evidence of any kind derived directly or indirectly therefrom.

7. **Use of Statements:** No information, record or statement provided during an interview by **[Individual]** will be used in evidence against him/her in any proceedings undertaken by or on behalf of the DPP except where **[Individual]**:
- subsequently gives in any trial, hearing, or judicial proceeding (including any proceeding in which **[Individual]** is an accused) evidence that is materially different from the statement given in an interview;
  - is charged with perjury, giving contradictory evidence, fabricating evidence or obstructing justice; or
  - has had his/her immunity revoked after a breach of this agreement.

Nothing in this agreement affects the right of the DPP or the Commissioner to use any evidence, information, record, or statement provided by **[Individual]** in order to discover or acquire other evidence, information, or records from another source.

8. **Privilege and Jurisdiction:** Except for paragraph 6, nothing in this agreement, or any action taken pursuant to it, shall constitute:
  - o a waiver of any privilege by any party to this agreement;
  - o a submission to the jurisdiction of the Canadian courts by **[Individual]**, not present in Canada, granted immunity by this agreement, except for the purpose of this agreement and proceedings related to the enforcement of this agreement.
9. **Applicable Law:** This agreement shall be construed in accordance with the laws of Canada.
10. **Entire Agreement:** This agreement constitutes the entire agreement between the DPP and **[Individual]** and supersedes all prior understandings or agreements, if any, whether oral or written, relating to the subject matter of this agreement.
11. **Notices:** Any notice required to be given under this agreement is deemed to be validly given if in writing and by pre-paid registered mail, courier delivery, facsimile transmission or electronic mail (e-mail) transmission to:
  - a. The Director of Public Prosecutions of Canada  
**[Insert appropriate address & fax number]**  
Attention: Public Prosecution Service of Canada, Competition Law Section
  - b. **[Individual]**  
**[Insert appropriate address & fax number]**  
Attention:
  - c. With copy to:  
Counsel for **[Individual]**  
**[Insert appropriate address & fax number]**  
Attention:
12. **Execution in Counterparts:** This agreement may be executed in counterparts.

*[continues on next page]*

13. **Authority and Capacity: [Individual]** represents that he/she has had an opportunity to consult Canadian legal counsel in respect of this agreement.

The signatories hereto acknowledge the full and voluntary acceptance of the foregoing terms and conditions.

Dated at \_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

Her Majesty the Queen in right of Canada as  
this represented by the Director of Public  
Prosecutions of Canada

Per: \_\_\_\_\_  
**[insert name and title of counsel for the  
Public Prosecution Service of Canada]**

Dated at \_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_, witnessed by  
**[Individual]**

\_\_\_\_\_  
**[insert name of counsel / witness (if no  
counsel) for [Individual]]**

**[Counsel.] [Witness.]**