

Solicitation No. - N° de l'invitation
23240-120758/F

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Buyer ID - Id de l'acheteur
411zg

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ANNEX H: NON-DISCLOSURE AGREEMENT Revised

The Government of Canada, as represented by the Minister of Natural Resources (“**we**”, “**us**” or “**Canada**”) is currently engaged in procuring services of a private sector contractor to manage the site operating company that will be responsible for the management and operation of the Nuclear Laboratories of Atomic Energy of Canada Limited (“**AECL**”) under a Government-owned, Contractor-operated model (“**the Restructuring**”). As part of the Restructuring and related procurement process, we desire to share information with _____

(“**you**”) in order to facilitate (a) your participation in the procurement process generally, including the Request for Response Evaluation (“**RFRE**”) stage of the procurement process and, if applicable, the Request for Proposal (“**RFP**”) stage of the procurement process, (b) your evaluation of the Restructuring and the procurement process generally, including the RFRE stage of the procurement process and, if applicable, the RFP stage of the procurement process, (c) if applicable, feedback from you on the draft RFP, and (d) preparation of a Response and, if applicable, a Bid. Capitalized terms used in this Non-Disclosure Agreement and not otherwise defined herein shall have the respective meanings ascribed to them in the RFRE.

As part of the procurement process, you may receive information in connection with or relevant to the Restructuring, AECL, Canada, the RFRE, the RFP and the procurement process generally, which information is non-public, confidential or proprietary in nature, including (a) any such information that may have been provided previously to you by us, AECL or on our behalf by a third party, (b) any such information learned by you from employees or agents of Canada and/or AECL or through inspection of AECL's property or records that, in each case, relates to the Restructuring or the procurement process generally, or (c) third party confidential information disclosed to you by Canada or AECL and all such information, whether provided orally or in writing and in whatever medium (including information contained in the Data Room (defined below)), and regardless of whether specifically identified as “**CONFIDENTIAL**” or not, is collectively referred to as the “**Information**”. All Information furnished to you must be treated by you as set forth below unless we and AECL otherwise consent in writing.

For greater certainty, the content of any discussions between you, if applicable, your Representative(s) (as defined below) and Canada or you, your Representative(s) (if applicable) and AECL and all analysis, compilations, data, studies or other documents or records prepared by you or your Representatives containing or based, in whole or in part, upon any Information furnished to you or your Representatives shall, in each case,

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be deemed to be Information and subject to the terms of this Non-Disclosure Agreement.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby confirmed and acknowledged), the parties hereto agree as follows:

1. Confidentiality Obligation

(a) Subject to paragraph 4 below, the Information:

(i) must be kept strictly confidential by you and your Representatives and must not, without our prior written consent and that of AECL, be disclosed by you or your Representatives to any other person (as defined below), directly or indirectly, in whole or in part; and

(ii) must not be used by you or your Representatives directly or indirectly for any purpose other than to evaluate the Restructuring, prepare a Response and, if applicable, a Bid and any other use permitted by the RFRE, RFP or this Non-Disclosure Agreement.

(b) You agree to restrict access to the Information and to transmit the Information only to individuals designated by you who need to know the Information for the purposes set out in paragraph 1(a)(ii), who are informed of the confidential nature of the Information and who have the requisite security clearances required by Canada to obtain access to the classification of Information furnished by you to such individual (any such individual being referred to as a "Representative").

The term "**person**" as used in this Non-Disclosure Agreement shall be broadly interpreted to include, without limitation, the media, unions, any individual, corporation, partnership, joint venture, syndicate, association, trust, governmental authority or other form of legal entity.

2. Non-Disclosure of Discussions

Without our prior written consent and that of AECL, you and your Representatives will not disclose to any other person (i) the content of discussions between you, your Representative(s) (if applicable) and Canada or you, your Representative(s) (if

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applicable) and AECL relating to the Restructuring, the procurement process generally, including the RFRE stage of the procurement process or, if applicable, the RFP stage of the procurement process and (ii) the name of any other person that is participating in the discussions with you, your Representative(s) (if applicable) and Canada or you, your Representative(s) (if applicable) and AECL, unless and only to the extent that disclosure is required to be made under applicable laws by an order of a court or regulatory authority of competent jurisdiction, provided that you will provide us and AECL with reasonable advance notice prior to making such disclosure and paragraph 4 of this Non-Disclosure Agreement shall apply.

3. Limited Exceptions

This Non-Disclosure Agreement does not apply to any Information that:

- a) is or becomes generally available to the public other than as a result of a disclosure that is a breach of this Non-Disclosure Agreement;
- b) becomes available to you on a non-confidential basis from a source other than us or AECL, so long as that source is not, to your knowledge after reasonable inquiry, bound by a non-disclosure agreement with respect to the Information or otherwise prohibited from transmitting the Information to you by a contractual, legal or fiduciary obligation; or
- c) you are able to demonstrate was known to you on a non-confidential basis before it was disclosed to you by us or AECL.

4. Legal Compulsion

In the event that you or any of your Representatives becomes legally compelled to disclose any of the Information by an order, direction or similar action of a court or regulatory authority of competent jurisdiction, you must provide us with prompt written notice so that we or AECL may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Non-Disclosure Agreement. In the event that such protective order or other remedy is not obtained, or that we waive compliance with the provisions of this Non-Disclosure Agreement, you will furnish only that portion of the Information which is, in the written opinion of legal counsel, legally required to be disclosed and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

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For the purposes of this document, Canada takes a broad interpretation of "regulatory authority", and governmental, commercial and regulatory oversight bodies are included within the meaning of "regulatory authority".

5. Return or Destruction of Information

With respect to the Information, you must, within three business days of a request from us or AECL deliver to us or destroy, if so requested by us, all Information in your possession or in the possession of your Representatives without retaining copies thereof unless required by applicable law to do so (such destruction to be certified promptly in writing to us by your authorized officer supervising such destruction). In such event, within the same time period, you must ensure that all other documents or records (whether in writing or stored in computerized, electronic, disk, tape, microfilm or any other form) in your possession or in the possession of your Representatives constituting or containing Information created by or for you are destroyed or erased, as the case may be (such destruction to be certified promptly in writing to us by your authorized officer supervising such destruction). Notwithstanding any such return or destruction of the Information, you and your Representatives will continue to be bound by your and their obligation of confidentiality hereunder.

6. Obligations with respect to Information and Discussions

You acknowledge that neither we nor AECL hereby make any representation or warranty as to the accuracy or completeness of the Information and that we and AECL are under no obligation to update the Information or to correct any errors or inaccuracies in, or omissions from, any Information provided to you. You further agree that neither we nor AECL shall have any liability, direct or indirect, to you or to any of your Representatives as a result of the use of the Information by you or your Representatives.

7. Right to Injunctive Relief and Specific Performance

You acknowledge and agree that a breach of any of the covenants or provisions contained herein would cause Canada and AECL to suffer loss which could not be adequately compensated for by damages and that we may, in addition to any other remedy or relief, enforce the performance of this Non-Disclosure Agreement by injunction or specific performance or other equitable relief upon application to a court

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of competent jurisdiction without proof of actual damage to us or the requirement of posting a bond or security. Such equitable remedies shall be in addition to and not in lieu of any other appropriate relief available to us in law or equity. It is further understood and agreed that no failure or delay by us in exercising any right, power or privilege under this Non-Disclosure Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.

8. Effective Date of Agreement

This Non-Disclosure Agreement shall become effective on the last date it is executed by the parties hereto as indicated below.

9. Miscellaneous

a) This Non-Disclosure Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereby irrevocably attorn to the jurisdiction of the Federal Court of Canada with respect to any matter relating to this Non-Disclosure Agreement.

b) This Non-Disclosure Agreement may be validly executed by facsimile or email transmission and in any number of counterparts, all of which taken together shall constitute one and the same Non-Disclosure Agreement and each of which shall constitute an original.

BY: _____

NAME: _____

TITLE: _____

DATE ACCEPTED AND AGREED TO: _____

ATOMIC ENERGY OF CANADA LIMITED

BY: _____

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NAME: _____

TITLE: _____

DATE: _____

**HER MAJESTY IN RIGHT OF CANADA AS
REPRESENTED BY THE MINISTER OF
NATURAL RESOURCES**

BY: _____

NAME: _____

TITLE: _____

DATE: _____