

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made as of <DATE>, 2021 between **CANADA DEPOSIT INSURANCE CORPORATION** (“**CDIC**”), a federal crown corporation established by an Act of Parliament, the *Canada Deposit Insurance Corporation Act*, and **[INSERT LEGAL NAME OF BIDDER]** (“**Bidder**”).

BACKGROUND:

- A. CDIC and Bidder wish to engage in discussions concerning Request for Proposals identified as Reference Number [Insert] (the “RFP”) (the “**Discussions**”).
- B. As part of the Discussions, the parties intend to exchange and discuss certain information, including Confidential Information which includes, but is not limited to, CDIC’s disclosure of the full RFP to the Bidder (as defined below).
- C. CDIC and Bidder wish to protect the Confidential Information in accordance with this agreement.

IN CONSIDERATION of the Background, the mutual covenants set out in this agreement, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the undersigned parties agree as follows:

- 1. “**Confidential Information**” means all tangible and intangible information and materials, in any form or medium, received (directly or indirectly) by one party (the “**Receiving Party**”) from the other party (the “**Disclosing Party**”), or collected by the Receiving Party on behalf of the Disclosing Party, in connection with the Discussions that is:
 - (a) related to the Disclosing Party’s, or any of its affiliates’ or members, finances, assets, pricing, purchases, products, sales, business or operational plans, strategies, forecasts or forecast assumptions, operations, stakeholders, clients, members and personnel (including, without limitation, their respective officers, directors, employees and agents, as applicable), trade secrets, technology, data or other information that reveal the research, technology, processes, methodologies, know how, or other systems or controls by which the Disclosing Party’s existing or future products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
 - (b) designated as confidential in writing by the Disclosing Party, whether by letter or an appropriate stamp or legend, prior to or at the time such information is disclosed by the Disclosing Party to the Receiving Party;
 - (c) apparent to a reasonable person, familiar with the Disclosing Party’s operations, business and the sector in which it operates, to be of a confidential nature; and/or
 - (d) related to the existence or content of the parties’ current communications, discussions, evaluations or negotiations in connection with the Discussions;

and without regard to whether that information and materials are owned by a party to this contract or by a third party.

“**Confidential Material**” means any notes or other documents relating to the Confidential Information.

2. **Use and Non-Disclosure of Confidential Information.** The Receiving Party agrees not to:
 - (a) use Confidential Information for any purpose except to carry out the Discussions; or
 - (b) grant access or disclose Confidential Information to any person except to those agents, directors, officers, and employees of the Receiving Party who are required to have access to the information as part of the Discussions, and who are bound by obligations to protect the Confidential Information that are substantially similar to those set out in this agreement.
3. **Protection.** The Receiving Party agrees that it will take all reasonable measures to protect the Confidential Information from any use or disclosure not permitted under this agreement, which measures shall include:
 - (a) taking reasonable measures to ensure that only those agents, directors, officers, and employees of the Receiving Party who are required to have access to the Confidential Information in order to carry out the Discussions have access to such limited Confidential Information as may be necessary for their duties; and
 - (b) taking the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but no less than a reasonable degree of care, given the nature of the Confidential Information.
4. **Mandatory Disclosure.** Notwithstanding Section 2(b), the Disclosing Party acknowledges and agrees that the Receiving Party may be required to disclose Confidential Information in certain circumstances, namely where the disclosure:
 - (a) in the case of CDIC, is compelled by the access regime in the *Access to Information Act* or the *Privacy Act*;
 - (b) is compelled by law in connection with proceedings before a court, commission of inquiry or other public tribunal of competent jurisdiction, or at the request of any regulatory or supervisory authority having jurisdiction;
 - (c) is of information that is in the public domain or has come into the public domain other than by reason of a breach of this agreement;
 - (d) is of information that has been, or is hereafter, received by that Receiving Party other than from or at the request of the Disclosing Party, and other than during or as a result of carrying out the Discussions; or

- (e) is made with the prior written consent of the Disclosing Party.
5. **Notice of Mandatory Disclosure.** If the Receiving Party believes that the disclosure of Confidential Information is or is about to be required in one of the circumstances described in Subsection 4(a) or 4(b), or in any circumstances not referred to in Section 4, it shall notify the Disclosing Party of the circumstances and scope of the disclosure – with an oral notice provided as soon as reasonably possible and as much in advance of the impending disclosure as possible, and such oral notice confirmed in writing promptly thereafter – in order for the Disclosing Party to have the opportunity to prevent the disclosure of its Confidential Information or to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, the Receiving Party shall produce only that portion of the Confidential Information that it is legally required to disclose.
 6. **Notice of Unauthorized Use or Disclosure.** The Receiving Party agrees to notify the Disclosing Party of any actual or reasonably suspected instance of loss, theft, or unauthorized use or disclosure of Confidential Information that may come to its attention – with an oral notice provided immediately, and confirmed in writing promptly thereafter. The Receiving Party agrees to cooperate with the Disclosing Party in promptly containing, investigating and remediating any such incident, and to meeting any obligations that the Disclosing Party may have to notify third parties of the incident.
 7. **No Proprietary Right.** The Receiving Party agrees that it acquires no right, title or interest to the Confidential Information, except a limited right to use that Confidential Information in connection with carrying out the Discussions. All Confidential Information shall remain the property of the Disclosing Party (to the extent possible) and no licence or other right, title or interest in the Confidential Information is granted hereby.
 8. **Return and Non-Use of Confidential Information and Other Related Materials.** On receipt of a written demand from the Disclosing Party, and in any event within 10 days after the conclusion of the Discussions (as evidenced by either party notifying the other party in writing that the Discussions are concluded), the Receiving Party shall immediately return all Confidential Information, including any related Confidential Material, to the Disclosing Party, or, if instructed by the Disclosing Party to destroy any Confidential Information, shall securely destroy that Confidential Information and related Confidential Material and provide a written certificate to the Disclosing Party certifying the destruction of such Confidential Information and Confidential Material. This Section 8 shall not apply to routinely made back-up copies of Confidential Information in electronic form, or to archival copies required to be retained under the applicable law, provided that the Receiving Party shall comply with this agreement in respect of such copies.
 9. **Liability for Breach.** The Receiving Party shall be responsible for any breach of this agreement by its directors, officers, employees, advisors and agents (as applicable) and others to whom it discloses the Confidential Information.
 10. **Equitable Relief.** The Receiving Party acknowledges and agrees that, in the event of any breach or anticipated breach of this agreement, damages alone would not be an adequate remedy, and agree that the Disclosing Party shall be entitled to equitable relief, such as an

injunction, in addition to or in lieu of damages and without being required to prove that it has suffered or is likely to suffer damages.

11. **Notices.** Any notice required or permitted to be given hereunder in writing may be delivered (including by commercial courier) or sent by facsimile, email or other electronic transmission. Delivered notices shall be deemed received upon delivery during business hours. Notices sent by facsimile, email or other electronic transmission or delivered outside of business hours shall be deemed received on the next Business Day following the day of transmission or delivery. The addresses to be used for any deliveries or transmissions may be changed by notice given in accordance with this Section and, until so changed, shall be as follows:

if to the Bidder:

<*name + address*>

Attention: <*name*>, <*title*>

Fax: <*>

Telephone: <*>

Email: <*>

and if to CDIC:

Canada Deposit Insurance Corporation
50 O'Connor Street, 17th Floor
Ottawa, Ontario K1P 6L2

Attention: <*name*>, <*title*>

Fax: (613) <*>

Telephone: (613) <*>

Email: <*>@cdic.ca

12. **No Implied Relationship.** Nothing in this agreement shall be construed as creating an agency, joint venture, partnership or other formal business relationship or association between the parties. If there is to be any definitive agreement concerning the performance of the subject matter of the Discussions, it shall be set forth in a separate written agreement between the parties.
13. **Amendment, Waiver.** This agreement may be amended, modified or supplemented only by a written agreement signed by each of the parties. Any waiver of, or consent to depart from, the requirements of any provision of this agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this agreement will operate as a waiver of such

right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

14. **Severability.** If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of this agreement is not affected in any manner materially adverse to any of the undersigned. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the undersigned hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the undersigned as closely as possible in order that the terms of this agreement remain as originally contemplated to the fullest extent possible.
15. **Assignment and Successors.** No party may assign this agreement or any part hereof without the prior written consent of the other party. All terms and conditions of this agreement shall be binding on and enure to the benefit of the successors and permitted assigns of the parties.
16. **Governing Law, Attornment.** This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to the principles of conflicts of laws thereof. Each party hereby irrevocably and unconditionally attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of all matters arising under or in relation to this agreement.
17. **Entire Agreement.** Subject to the parties entering into a definitive agreement concerning the subject matter of the Discussions, this agreement contains the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Except as expressly provided in this agreement, any waiver, modification or amendment of any provision of this agreement will be effective only if in writing and signed by duly authorized representatives of the parties.
18. **Survival.** The provisions of this agreement shall apply during the Discussions, and shall continue to apply despite any termination or conclusion of the Discussions or execution of a contract in connection with the RFP.
19. **Counterparts.** This agreement may be executed in any number of counterparts. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement. Delivery of an executed counterpart of a signature page of this agreement by facsimile or by electronic means shall be as effective as delivery of a manually executed counterpart of this agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties have executed this agreement as of the date set forth above.

CANADA DEPOSIT INSURANCE CORPORATION

By: COPY NOT FOR EXECUTION
Name: <*>
Title: <*>
Date: <*>

[INSERT BIDDER LEGAL NAME]

By: COPY NOT FOR EXECUTION
Name: <*>
Title: <*>
Date: <*>

DRAFT