

[PUBLIC PROSECUTION SERVICE OF CANADA LETTERHEAD]

[CORPORATE 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 -

[X LTD]

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 [X Ltd, as defined below] 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, eg, “production, marketing, distribution and sale”] of [insert description of the products].

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

The parties agree and undertake as follows:

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

“anticompetitive conduct” means that [X Ltd] [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 [X Ltd] 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 [X Ltd’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 paragraphs 3 and 5 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 paragraphs 3 and 5 of this agreement full, complete, frank and truthful disclosure of all non-privileged information, evidence or records relating to the anticompetitive conduct;

“person in breach” means any person granted immunity by this agreement who has failed to fulfil any one of the terms or conditions set out in this agreement;

“[X Ltd]” means [*as agreed by the parties to this agreement; here specify what other affiliates, etc may be included*].

2. **Representations:** [X Ltd] represents:

- a) that it has reported to the Commissioner and the DPP that it has engaged in the anticompetitive conduct which constitute(s) an offence under the Act;
- b) that it has taken effective steps to terminate its participation in the anticompetitive conduct;
- c) that it has not coerced others to be a party to the anticompetitive conduct; and
- d) 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:** [X Ltd] shall provide disclosure and cooperation to the DPP and the Commissioner, including, but not limited to:

- a) whether or not requested all non-privileged evidence, information and records in its possession, under its control or available to it, wherever located, that in any manner relate to the anticompetitive conduct;
- b) using all measures, lawful where taken, to secure the cooperation of the current [*and former (as appropriate)*] directors, officers and employees [*agents (if appropriate)*] of [X Ltd], and encouraging such persons to provide voluntarily to the DPP and the Commissioner all of their non-privileged evidence, information and records that in any manner relate to the anticompetitive conduct;
- c) facilitating, in accordance with the conditions set out in the Immunity Bulletin, the ability of current [*and former (as appropriate)*] directors,

officers and employees [agents (if appropriate)] to appear for interviews and to provide testimony in connection with the anticompetitive conduct as the DPP or the Commissioner may require, at the times and places designated by the DPP or the Commissioner; and

- d) revealing any and all conduct of which it becomes aware which may constitute an offence under the Act.

4. **Corporate 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 Desk Book, conditional upon:

- a) the veracity of the representations contained in paragraph 2 above; and
- b) the disclosure and cooperation of [X Ltd] as required pursuant this agreement;

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

5. **Immunity of Individuals Covered by Corporate Immunity Agreement:** Subject to the veracity of the representations contained in paragraph 2, the DPP grants to the current [and former (if appropriate)] directors, officers and employees [agent, if appropriate] [indicate "carve-outs" from agreement, eg "other than individual Y"] of [X Ltd] immunity from prosecution under the Act in respect of the anticompetitive conduct conditional on their admission of their knowledge of and participation in the anticompetitive conduct and on their continuing disclosure and cooperation with the DPP and the Commissioner. Such disclosure and cooperation shall include, but not be limited to:

- a) providing (whether or not requested) all non-privileged evidence, information and records (including personal records), known to them, in their possession, under their control or available to them, wherever located, and that in any manner relate to the anticompetitive conduct, without falsely implicating any person or withholding any information;
- b) making themselves available in Canada for interviews and to testify in judicial proceedings at times and places designated by the DPP or the Commissioner; and
- c) revealing any and all conduct which may constitute an offence under the Act.

If at any time the Commissioner or the DPP should determine that [X LTD.] does not satisfy the requirements of this agreement and its immunity under this agreement is revoked, individual protection under this agreement will continue, so long as the individual has and continues to comply fully with his/her obligations.

6. **Confidentiality:** The DPP and the Commissioner shall not disclose to any third party the identity of [X Ltd.], except where:
- a) disclosure is required by law, including:
 - i. in response to an order of a Canadian court of competent jurisdiction;
 - ii. to a person charged with an offence in Canada;
 - b) disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers;
 - c) disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers;
 - d) [X Ltd.] has agreed to disclosure;
 - e) there has been disclosure by [X Ltd.]; or
 - f) 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 [X Ltd.] 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 [X Ltd.], nor the information obtained from [X Ltd.], to any foreign law enforcement agency without the consent of [X Ltd.].

Unless made public by the DPP or the Commissioner, or as required by law, [X Ltd] and any individual covered by this agreement 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, [X Ltd] or any individual covered by this agreement 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, or any individual covered by this agreement, that party or individual shall give prompt notice to the parties to this agreement, and shall take all reasonable steps to resist disclosure unless the parties to this agreement consent to such disclosure.

7. **Failure to Comply with the Immunity Agreement:** The parties agree that full compliance with all the terms and conditions of this agreement by any person granted immunity 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 any person granted immunity by this agreement has failed to fulfil the terms and conditions set out in this agreement, the DPP may revoke the immunity granted to that person pursuant to paragraphs 4 or 5 of this agreement, after fourteen (14) days prior written notice to the person in breach and to counsel for [X Ltd].

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

8. **Use of Statements:** No information, record or statement provided during an interview by any person granted immunity pursuant to this agreement will be used in evidence against that person in any proceedings undertaken by or on behalf of the DPP except where the person granted immunity:
- a) subsequently gives in any trial, hearing, or judicial proceeding (including any proceeding in which the person is an accused) evidence that is materially different from the statement given in an interview;
 - b) is charged with perjury, giving contradictory evidence, fabricating evidence or obstructing justice; or
 - c) has had its 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 any person under this agreement in order to discover or acquire other evidence, information, or records from another source.

9. **Privilege and Jurisdiction:** Except for paragraph 7, nothing in this agreement, or any action taken pursuant to it, shall constitute:
- a) a waiver of any privilege by any party to this agreement;
 - b) a submission to the jurisdiction of the Canadian courts by any person, 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.
10. **Applicable Law:** This agreement shall be construed in accordance with the laws of Canada.

11. **Entire Agreement:** This agreement constitutes the entire agreement between the DPP and [X Ltd], including the individuals covered by this agreement, and supersedes all prior understandings or agreements, if any, whether oral or written, relating to the subject matter of this agreement.
12. **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) [X Ltd]

[Insert appropriate address & fax number]

Attention:

(c) With copy to:

Counsel for [X Ltd]

[Insert appropriate address & fax number]

Attention:

13. **Execution in Counterparts:** This agreement may be executed in counterparts.
14. **Authority and Capacity:** The DPP and [X Ltd] represent and warrant each to the other that the signatories to this agreement on behalf of each party to it have all the authority and capacity necessary to execute this agreement and to bind the respective parties to it. [X Ltd] represents that it 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 _____
_____ 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____.

[X Ltd]

Per: _____
[insert name and title of signing officer]

[insert name of counsel to [X LTD]]

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