



ACCOUNT PERFORMANCE SECURITY GUARANTEE

GENERAL TERMS AND CONDITIONS

DEFINITIONS

Definitions

1. In this Account Performance Security Guarantee ("Account PSG") and any Amendment or Schedule hereto, capitalized terms have the meanings ascribed to them below or in the Account PSG Certificate of Cover:
 - (1) "Account PSG Certificate of Cover" means the certificate issued by EDC in conjunction with these General Terms and Conditions for the purpose of setting out the details of cover for this Account PSG, together with any Special Conditions that amend or supplement the General Terms and Conditions;
 - (2) "Account PSG Fee(s)" means the fees, as determined pursuant to Section 4, to be paid by the Bank with respect to Bank Instruments or Bank Instructions for which Confirmations are issued;
 - (3) "Bank Instructions" means the Bank's written instructions requesting issuance of a Bank Instrument by a Foreign Bank;
 - (4) "Bank Instrument" means any standby letter of credit or letter of guarantee that is required (a) by a Contract or by a tender for a Contract, or (b) with respect to performance or financial obligations of the Customer or an Affiliate, and in either case, that has been or will be issued to the Beneficiary by the Bank or the Foreign Bank;
 - (5) "Beneficiary" means the entity who is entitled to make a demand under a Bank Instrument;
 - (6) "Business Day" means any day excluding Saturday, Sunday and any other day which is a legal holiday in Ottawa, Canada or in the Canadian province or territory in which the branch of the Bank that applied for this Account PSG is located;
 - (7) "Confirmation" means the acceptance by EDC of a Request for Cover, as evidenced by EDC's completion of the Confirmation section of the Request for Cover;
 - (8) "Contract" means any contract for the provision of goods and/or services that is to be awarded by an Obligor or that is entered into by the Customer or an Affiliate with an Obligor;
 - (9) "Covered Instrument Validity Period" means the validity period of a Bank Instrument or Bank Instructions covered under this Account PSG, as set out by EDC in the confirmed Request for Cover;
 - (10) "Demand Expiry Date" means, in the case of each Bank Instrument or Bank Instructions, the later of (a) the 90th day following the expiry date of the Bank Instrument or the Bank Instructions, as the case may be; and (b) the 30th day following the lifting of an Injunction;

- (11) "Eligibility Criteria" means the criteria set out in Schedule "B";
- (12) "Foreign Bank" means a bank that has issued a Bank Instrument at the request of the Bank and in accordance with the Bank Instructions;
- (13) "Guaranteed Amount" means the lesser of the following amounts:
 - (a) as applicable, (i) the amounts of principal and interest paid by the Bank, either to a Beneficiary or to such person as a Beneficiary may have directed in writing in accordance with applicable law, in either case, pursuant to and in strict compliance with the terms of a Bank Instrument, or (ii) the amounts, excluding inter-bank fees, costs and expenses or inter-bank interest charges, paid by the Bank to the Foreign Bank pursuant to and in strict compliance with the terms of the Bank Instructions;
 - (b) the maximum liability for the Bank Instrument or Bank Instructions, as the case may be, as set out by EDC in the confirmed Request for Cover; and
 - (c) the Maximum Guaranteed Amount, as set out in the Account PSG Certificate of Cover.
- (14) "Injunction" means any legal injunction or other court order, issued prior to the expiry of a Bank Instrument or Bank Instructions by a court of competent jurisdiction, which is enforceable against the Bank and which prohibits the Bank from complying, prior to the expiry of the Bank Instrument or Bank Instructions, with a demand for payment made pursuant to the Bank Instrument or Bank Instructions, as the case may be;
- (15) "Obligee" means an entity to which the Customer or an Affiliate owes a financial or performance obligation, including an entity that has issued an invitation to tender with respect to a Contract or that has entered into a Contract with the Customer or an Affiliate;
- (16) "Request for Cover" means a request made by the Bank, in the form attached hereto as Schedule "A", for the purpose of obtaining or amending cover under this Account PSG for a Bank Instrument or Bank Instructions.

GUARANTEE

- Guarantee**
- 2. In consideration of the Bank's undertaking to pay the Account PSG Fees as applicable and subject to the terms and conditions hereof, EDC hereby unconditionally and irrevocably guarantees to the Bank the payment of the Guaranteed Amount provided that:
 - (1) the payment or partial payment made by the Bank to the Beneficiary under the Bank Instrument or to the Foreign Bank under the Bank Instructions was made in strict compliance with the terms thereof and the demand for such payment was made within the Covered Instrument Validity Period;
 - (2) the Bank does not agree to any alteration to the terms of the Bank Instrument or the Bank Instructions without the prior written consent of EDC; and

- (3) the Bank submits a written request to EDC for payment of the Guaranteed Amount in accordance with the provisions of Section 6 of this Account PSG on or before the Demand Expiry Date.

EDC agrees that its obligations to the Bank hereunder shall not be adversely affected and that this Account PSG shall not be voided by reason of any statement, declaration, certification, representation or warranty, made or given by the Customer, being untrue, incomplete or incorrect in any way or to any extent or by reason of any breach or contravention by the Customer of any covenant or agreement in favour of EDC.

BANK'S OBLIGATIONS AND DECLARATIONS

- Applicability** 3. This Account PSG shall only apply to Bank Instruments or Bank Instructions for which a Request for Cover has been submitted and a Confirmation issued and for which the Account PSG Fees have been paid.

- Request for Cover and Fees** 4. (1) For any new Bank Instrument or Bank Instructions that have or will be issued and for any Bank Instrument or Bank Instructions that are already covered under this Account PSG and for which an amendment is to be made changing the value or the Covered Instrument Validity Period, the Bank shall submit a Request for Cover.
- (2) When completing the Request for Cover, the Bank must declare all of the principal and interest that is payable to the Beneficiary under the terms of the Bank Instrument or to the Foreign Bank under the terms of the Bank Instructions, as the case may be.
- (3) The Bank must attach to the Request for Cover a copy of each Bank Instrument listed in the Request for Cover and if applicable, a copy of the related Bank Instructions and in the case of an amendment to a Bank Instrument, a copy of the amended Bank Instrument or of the amended Bank Instructions.
- (4) If all of the Eligibility Criteria are met and EDC is prepared to provide cover for the Bank Instrument or Bank Instructions under this Account PSG, EDC shall insert the required information, sign the Confirmation and return a copy to the Bank within 3 Business Days of receipt of the Request for Cover. If any of the Eligibility Criteria is not met or if the amounts payable by the Bank under a Bank Instrument or Bank Instructions exceeds the Maximum Guaranteed Amount, EDC may request additional information which may lengthen the Confirmation process. EDC shall have sole and absolute discretion in determining whether or not to provide cover for a Bank Instrument or Bank Instructions and may decline to cover a Bank Instrument or Bank Instructions even if the Bank Instrument or Bank Instructions meet the Eligibility Criteria.
- (5) EDC shall compute the Account PSG Fees at the rate specified in the Account PSG Certificate of Cover. The Account PSG Fees shall be computed and paid in the Account PSG Currency for Bank Instruments or Bank Instructions denominated in any other currency. The Account PSG Fees will be calculated with respect to the maximum liability amount for the Bank Instrument or Bank Instructions as specified by EDC in the confirmed Request for Cover.

- (6) If a Bank Instrument is, or Bank Instructions are, cancelled and returned before its expiry, or amended to reduce its validity period or value, there shall be no refund of the Account PSG Fees.
- (7) At the time of a Request for Cover, EDC will determine EDC's aggregate exposure in accordance with Section 9 and where such exposure exceeds EDC's Maximum Aggregate Liability, EDC will not issue a Confirmation for such Request for Cover.

**Bank's
Obligations**

5. The Bank shall:

- (1) advise EDC forthwith of any demand under any Bank Instrument or Bank Instructions or any notice of intention to demand under any Bank Instrument or Bank Instructions; and
- (2) at the request of EDC and subject to any legal or confidentiality restrictions affecting the Bank:
 - (a) provide EDC with all information in its possession with respect to any matter under this Account PSG;
 - (b) take all reasonable steps to allow EDC to obtain any information or to review any document that relates to this Account PSG and that is in the possession of a third party; and
 - (c) permit EDC, at its cost, to make copies of all letters, communications, accounts with respect to any Bank Instrument, Bank Instructions, or other documents in the possession or control of the Bank relating to any matter under this Account PSG.

REQUEST FOR PAYMENT

**Request for
Payment**

6. (1) If the Bank makes a full or partial payment to the Beneficiary or to the Foreign Bank under the terms of any Bank Instrument or Bank Instructions, as the case may be, the Bank may submit a payment request to EDC under this Account PSG. The Bank is not required to, before submitting a payment request hereunder, (a) demand payment of the Guaranteed Amount from the Customer or from any other person who is required to reimburse the Bank under a reimbursement agreement, guarantee or security agreement ("Other Person"), or (b) pursue any rights or remedies against, or take any action against, the Customer or any Other Person, including enforcing any security interest held by the Bank against the Customer or any Other Person or filing any claim in the bankruptcy, insolvency, reorganization or winding-up proceedings of the Customer or any Other Person. If the Bank has made partial payments, the Bank may submit a payment request hereunder for each such partial payment.
- (2) Any request for payment submitted hereunder shall be in writing and must be made no later than the relevant Demand Expiry Date by delivery to EDC of a completed Account PSG payment request form. In completing the form, the Bank is entitled to rely on information provided by the Foreign Bank in circumstances where payment under the Bank Instrument was made by the Foreign Bank.

- (3) Notwithstanding anything to the contrary hereunder, when a demand for payment is made to the Bank under the Bank Instrument or the Bank Instructions, as the case may be, in strict accordance with the terms thereof, and the Bank is prohibited from making payment in response to such demand as a result of an Injunction, then any payment by the Bank, after the lifting of the Injunction, in accordance with its obligations under the Bank Instrument or the Bank Instructions, as the case may be, or according to its obligations under applicable law, will be deemed to be a payment made by the Bank under Section 2(1).

Payment

7. Within five Business Days of receipt of an Account PSG payment request form and subject to the Maximum Aggregate Liability, EDC shall pay the Guaranteed Amount to the Bank. In computing the amount to be paid to the Bank, EDC may deduct from the amount paid by the Bank with respect to the Bank Instrument or Bank Instructions, as the case may be, any amount that the Bank may have received as a return or repayment with respect to such amount during the interim between the date on which the payment request was made hereunder by the Bank and the date of payment by EDC.

CURRENCY OF PAYMENT**Currency
of Payment**

8. Payments by EDC shall be made in the Account PSG Currency. For the purpose of determining the amount to be paid by EDC if the Bank Instrument or Bank Instructions are not denominated in the Account PSG Currency, the amount paid by the Bank shall be converted to the Account PSG Currency at the lesser of the daily noon mid-market rate for such conversions applicable at EDC's bank on:
- (1) the date of EDC's Confirmation of coverage to the Bank; and
 - (2) the date on which the Bank made the payment to the Beneficiary or to the Foreign Bank.

EDC'S AGGREGATE EXPOSURE**EDC's
Aggregate
Exposure**

9. For the purpose of determining if any further Requests for Cover can be considered, EDC will track its aggregate exposure in the Account PSG Currency. At any time, EDC's aggregate exposure shall be equal to the aggregate amount of all Bank Instruments and Bank Instructions for which EDC has issued Confirmations less Bank Instrument or Bank Instructions amounts:
- (1) for which EDC has not made a payment hereunder and the Bank can no longer submit a payment request because the Demand Expiry Date has been reached; and
 - (2) for which the Bank has advised EDC that EDC is released from liability because the Bank Instrument or Bank Instructions have been cancelled and returned by the Beneficiary or the Foreign Bank, as the case may be.

MAXIMUM AGGREGATE LIABILITY**Maximum
Aggregate
Liability**

10. Notwithstanding the aggregate of the maximum liability amounts for Bank Instruments and Bank Instructions set out by EDC in the confirmed Requests for Cover, EDC's maximum aggregate liability under this Account PSG is limited to the Maximum Aggregate Liability specified in the Account PSG Certificate of Cover.

REIMBURSEMENT**Reimbursement**

11. If EDC has paid a Guaranteed Amount and the Bank subsequently receives any monies, from any person, as a full or partial return or repayment in respect of the amount paid by the Bank under the Bank Instrument or the Bank Instructions, the Bank shall remit such funds to EDC up to the amount paid by EDC to the Bank. Any such sums shall be held by the Bank for the benefit of EDC until remitted to EDC.

GENERAL**Notice**

12. Every notice, demand, request, consent, approval, waiver or agreement to be given or made hereunder shall be in writing and shall be delivered to the other party by hand, sent by electronic mail or by mail, or transmitted by fax and shall be deemed to have been given and received, if delivered by hand, upon delivery; if sent by mail, the earlier of the actual receipt and seven (7) days after posting; and if transmitted by fax or sent by electronic mail, the earlier of the actual receipt and the second day following the date of transmission, in each case excluding Saturdays and Sundays and those statutory holidays upon which the offices of EDC and the Bank are normally closed for business. The mailing addresses and fax numbers of EDC and the Bank for such purposes shall be those specified in the Account PSG Certificate of Cover or such other address or fax number as EDC or the Bank may from time to time notify the other party in writing.

Termination

13. (1) This Account PSG shall terminate on the last day of the Account PSG Validity Period or on such earlier date as may be specified in a notice of termination. Either party may terminate this Account PSG at any time by providing not less than fifteen (15) days notice.
- (2) Notwithstanding any termination under Section 13(1), this Account PSG shall continue in full force and effect with respect to any Bank Instruments or Bank Instructions for which a Request for Cover has been submitted prior to the date of termination and for which a Confirmation has been issued.

**Changes to
Schedules**

14. EDC may revise the Schedules at any time. A revised Schedule shall be effective as of the date on which it is deemed to have been received by the Bank.

**Entire
Agreement**

15. The Account PSG contract between EDC and the Bank consists of the Account PSG Certificate of Cover, the General Terms and Conditions, the Requests for Cover and the Confirmations and any attachments or Schedules to those documents.

Assignment

16. The Bank shall not assign this Account PSG or any right, title or interest herein, without the prior written approval of EDC which will not be unreasonably withheld.

- Severability** 17. If any provision of this Account PSG or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Account PSG and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Account PSG shall be separately valid and enforceable to the fullest extent permitted.
- Interpretation** 18. The marginal notes and headings in this Account PSG have been inserted for convenience of reference only and do not form part of this Account PSG, and shall not be referred to in the interpretation of this Account PSG. All references herein to "Section" shall refer to sections of this Account PSG. Unless the context requires otherwise, the singular shall include the plural and vice versa.
- Governing Law** 19. This Account PSG shall be governed by the laws of the Canadian province or territory in which the branch of the Bank is located (as set out in the Address for Notices) and by the laws of Canada as applicable therein. If the Bank does not have a branch in Canada, this Account PSG shall be governed by the laws of the province of Ontario and by the laws of Canada applicable therein.

EXPORT DEVELOPMENT CANADA



SCHEDULE "A" Part "A"

REQUEST FOR COVER FORM

(Please access the Request for Cover form on the following web page:

<http://www.edc.ca/apsg>)

* mandatory information

[Privacy Policy](#)

Schedule "A"- Request for Cover

Please complete the required fields (*) and attach the Bank Instrument(s) (**), if available, when submitting.

This document forms Part "A" of the Request for Cover. Any Confirmation of Request for Cover issued in response to this request will form Part "B" of the Request for Cover.

* Bank:

* First Name:

* Last Name:

* E-mail Address:

* Confirm E-mail:

* Customer Name:

* Account PSG Number :

* Are you requesting cover for an amendment to an existing Confirmation of Request for Cover?

* Do you have Bank Instrument(s) and/or other documents to attach?

Special Remarks:

--select--

Yes ☐ No ☐

Yes ☐ No ☐

The Bank hereby declares that the Customer has requested that the Bank issue or amend the Bank Instrument(s) in the form(s) attached hereto or that the Bank request the issuance or amendment of the Bank Instrument(s) in accordance with the Bank Instructions in the form(s) attached hereto, and the Bank hereby requests cover under the Account PSG for such Bank Instrument(s).

The Bank declares and warrants that it is not aware of any circumstances likely to give rise to a demand for payment under the Account PSG.

For the purposes of this Request for Cover, EDC waives compliance with Section 4(2) of the Account PSG General Terms and Conditions and therefore the Bank is not required to declare the principal and interest that is payable to the Beneficiary under the terms of the Bank Instrument or to the Foreign Bank under the terms of the Bank Instructions, as the case may be.

**For the purposes of this Schedule "A", any reference to Bank Instrument(s) shall be deemed to refer to Bank Instrument(s) and/or Bank Instructions, as applicable.

Submit

**SCHEDULE "A" Part "B"**

TO BE COMPLETED BY EDC

CONFIRMATION OF REQUEST FOR COVER**Customer:****Account PSG No.****Confirmation Date:**

This Confirmation of Request for Cover forms Part "B" of the Request for Cover and is issued with respect to the following Bank Instrument(s) :

	Bank Instrument #1	Bank Instrument #2	Bank Instrument #3	Bank Instrument #4
Bank Instrument Reference No.:				
Type of Bond:				
EDC Reference No.:				
Amendment No.:				
Principal and Interest Amount (Currency):				
FX Rate at Date of Confirmation:				
Maximum Liability for Bank Instrument:				
Covered Instrument Validity Period:				
Demand Expiry Date:				
Account PSG Fee:				

Total Amount Due:

EDC hereby confirms that the Bank Instrument(s) and/or Bank Instructions, for which an EDC Reference No. has been assigned, are covered under the Account PSG, subject to payment by the Bank of the required Account PSG Fee(s) within fifteen (15) days of the date of this Confirmation. If the Account PSG Fee(s) is not received within that time, EDC shall have no liability with respect to such Bank Instrument(s) or Bank Instructions. Bank Instruments or Bank Instructions for which an EDC Reference No. has not been assigned are not covered under the Account PSG.

EDC OFFICER SIGNATURE

EDC OFFICER SIGNATURE

SCHEDULE "B"

ELIGIBILITY CRITERIA

The Eligibility Criteria, listed below, are for the Bank's information only. The Bank has no obligation to monitor or confirm compliance with the Eligibility Criteria. EDC has sole and absolute discretion in determining whether or not to provide cover for a Bank Instrument or Bank Instructions and may decline to cover a Bank Instrument or Bank Instructions, even if the Bank Instrument or Bank Instructions meet the Eligibility Criteria. If any of the following Eligible Criteria have not been met, EDC reserves the right to request additional information or to decline cover a Bank Instrument or Bank Instructions.

(1) To be eligible for coverage under this Account PSG, a Bank Instrument or Bank Instructions must be:

- (a) issued during the Account PSG Validity Period;
- (b) a bid guarantee, advance payment guarantee, performance guarantee, warranty guarantee, maintenance guarantee, supplier guarantee*, a guarantee to secure a license, permit, customs, carnet or regulatory obligations;

*For supplier guarantee, the following conditions precedent to payment under the Bank Instrument must be included in the Bank Instrument: (1) receipt by the Bank or Foreign Bank of a copy of the applicable unpaid invoice, and (2) where applicable, receipt by the Bank or Foreign Bank of proof of delivery of the applicable goods delivered under the Contract.

- (c) issued to, or issued in respect of, a Beneficiary, or issued on behalf of an Affiliate, who is, in any case, located in a country acceptable to EDC. For greater certainty, a Beneficiary or an Affiliate must be located outside the following countries and outside such other countries as EDC may determine from time to time:

Belarus
Iran
Myanmar (Burma)
North Korea
Zimbabwe

- (d) issued to, or issued in respect of a Beneficiary, or issued on behalf of an Affiliate who is not an entity or person listed or published on the Anti-Terrorism Act (S.C. 2001, Chapter 41, as amended) and Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (SOR/2001-360, as amended) or on any other applicable anti-terrorism legislation and regulations on the issuance date of the Bank Instrument or Bank Instructions;
- (e) for an amount that does not exceed the Maximum Guaranteed Amount when the Bank Instrument is or Bank Instructions are expressed in the Account PSG Currency and for an amount that must be written alphanumerically;
- (f) for a term of not more than thirty-six months and have a fixed expiry date that is expressed as a calendar date;
- (g) in the Account PSG Currency or in any other currency that is acceptable to EDC;
- (h) operative only as of the date on which the Customer receives the advance payment or progress payment if the Bank Instrument or Bank Instructions have been issued with respect to an advance payment or a progress payment;

- (i) written in English or in French.
- (2) To be eligible for coverage under this Account PSG, a Bank Instrument or Bank Instructions must not:
 - (a) permit automatic extensions to the expiry date;
 - (b) be transferable or assignable; or
 - (c) contain provisions that would require the Bank or the Foreign Bank, to make payment or reimbursement under the Bank Instrument or the Bank Instructions, as applicable, notwithstanding (A) any legal injunction or court order or any law, act, regulation, order or decree of a Government restraining, forbidding or otherwise enjoining such payment or reimbursement or (B) any defense to payment or reimbursement that the Bank or Foreign Bank may have based on fraud, forgery, lack of authority or any other defect not apparent on the face of the documents presented for payment or reimbursement.