

## DISCLOSURE OF INFORMATION AGREEMENT

THIS AGREEMENT made as of the 7 day of February 2005.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA** (“Her Majesty”) as represented by the Minister of Transport (“Minister”)

**OF THE FIRST PART**

**AND:**

**THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN** (“Proposed Port Operator”)

**OF THE SECOND PART**

**WHEREAS** the Proposed Port Operator and Her Majesty wish to commence negotiations relating to the transfer of the assets, management, operation, maintenance and development of the port, known as Port Stanley, that is owned and operated by Her Majesty (“Port Operations”) at Port Stanley, Ontario;

**AND WHEREAS** for the purpose of such negotiations, it may be necessary for the Proposed Port Operator to prepare or cause to be prepared and to disclose certain information and Records pertaining to Port Stanley to Her Majesty;

**AND WHEREAS** for the purpose of such negotiations, it may be necessary for Her Majesty to prepare or cause to be prepared and to disclose certain information and Records pertaining to Port Stanley to the Proposed Port Operator;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, in consideration of entering into good faith negotiations, providing access to certain information and Records and the covenants and agreements herein set out, the parties agree as follows:

### ARTICLE 1 - DEFINITIONS

1.1 For the purposes of this Agreement, the term:

“**Agreement**” means this Disclosure of Information Agreement;

“**Confidential Information**” includes:

- (i) any information or Record which may be provided by either party to the other

(whether oral, written or computerized) and which, prior to its disclosure by one party, is identified to the other party orally or in writing as being information of a “confidential”, “restricted” or “protected” nature and includes any excerpts of or copies made of such information (“**Primary Confidential Information**”),

- (ii) any notes, analyses, compilations, forecasts or studies made from the review of or as a result of the Primary Confidential Information the disclosure of which would disclose Primary Confidential Information (“**Secondary Confidential Information**”), and
- (iii) any information which may be provided orally by either party to the other party during a visit or inspection of Port Operations or other port sites; if there is doubt whether such information is confidential, the recipient shall treat such information as confidential until advised in writing to the contrary by the party who disclosed the information,

but does not include information or a Record that is already known to a party to this Agreement from a source other than the other party to this Agreement or its representatives; that is available from other sources otherwise accessible by the public or obtainable by observation or independent study by a member of the public acting on his or her own and through no act of Her Majesty or the Proposed Port Operator, as the case may be; that is rightfully received by Her Majesty or the Proposed Port Operator without restriction of confidentiality or breach of obligation of confidentiality; or that is approved for release by written authorization of either Her Majesty or the Proposed Port Operator, as the case may be;

“**Need to Know**” principle means to limit access to Confidential Information to the person whose duties require such access;

“**Person**” means any individual, acting in his or her individual capacity, or any company, corporation, partnership, firm, trust, sole proprietorship, authority or other entity, howsoever designated or constituted; and

“**Record**” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof relating to any part or aspect of the Port Operations, whether such Record is assembled or prepared by:

- (i) an employee or agent of the Proposed Port Operator or by any other Person acting on behalf of the Proposed Port Operator, pursuant to any contract of any nature or kind whatsoever, or
- (ii) an employee or agent of Her Majesty or by any other Person acting on behalf of Her Majesty, pursuant to any contract of any nature or kind whatsoever,

whether such Record is provided before or after the date of this Agreement.

## **ARTICLE 2 - CONFIDENTIAL INFORMATION**

- 2.1 This Agreement does not oblige Her Majesty to disclose or provide access to any information or record,
- (a) if such information or record is a confidence of the Queen's Privy Council for Canada;
  - (b) the disclosure of which is prohibited or protected by law or by an agreement with a third party;
  - (c) the disclosure of which is, under applicable law, at the discretion of Her Majesty; or
  - (d) which Her Majesty, in Her sole and unfettered discretion, deems irrelevant or immaterial.
- 2.2 All Confidential Information, other than Confidential Information that is authorized by law to be disclosed by Her Majesty or by the Proposed Port Operator, shall be held in confidence and shall not, subject to paragraphs 3.1 and 3.2, be disclosed.

## **ARTICLE 3 - DISCLOSURE**

- 3.1 Confidential Information may be disclosed on a Need to Know basis in relation to the purposes mentioned in this Agreement to:
- (a) the officers and employees of the Proposed Port Operator and to the officers and employees of Her Majesty;
  - (b) the auditors, accountants, potential lenders, lenders, legal counsel, and other consultants, including financial and technical advisers retained by the Proposed Port Operator or Her Majesty for such purposes, as well as legal counsel retained by the aforementioned potential lenders and lenders for such purposes and credit rating agencies; and
  - (c) any Person, other than the persons referred to in paragraphs 3.1 (a) and (b), provided that the Proposed Port Operator or Her Majesty, as the case may be, has first received the written consent of the other party, which consent Her Majesty may withhold in Her Majesty's sole and unfettered discretion,

provided that disclosure may be made to the Persons mentioned in paragraph (c) if and only to the extent that disclosure of such Confidential Information is necessary for the

purposes of discussions between such Persons, the Proposed Port Operator or Her Majesty in relation to the purposes mentioned in this Agreement.

3.2 In the event that:

- (a) the Proposed Port Operator discloses or authorizes the disclosure of any Confidential Information to any Person other than its officers and employees; or
- (b) Her Majesty discloses or authorizes the disclosure of any Confidential Information to any Person other than its officers and employees,

the Proposed Port Operator or Her Majesty, as the case may be, shall, prior to such disclosure, enter into a confidentiality agreement with such Person requiring such Person to maintain the confidentiality of such Confidential Information on terms no less stringent than those contained in this Agreement and the Proposed Port Operator or Her Majesty, as the case may be, and shall take reasonable action, including legal proceedings, to ensure compliance with such confidentiality agreement.

#### **ARTICLE 4 - RECORD**

- 4.1 The Proposed Port Operator acknowledges that Her Majesty, by assembling or providing any Records which may be relevant to the proposed transfer, is not warranting or representing as to the completeness, accuracy or any other matter relating to the Records nor is Her Majesty assuming any responsibility with respect to any such Record.
- 4.2 The Proposed Port Operator assumes all liability and risk with respect to the completeness, accuracy or any other matter relating to the Records which it uses or relies upon or with respect to any use whatsoever it makes of any such Records.
- 4.3 Her Majesty acknowledges that the Proposed Port Operator, by assembling or providing any Records which may be relevant to the proposed transfer, is not warranting or representing as to the completeness, accuracy or any other matter relating to the Records nor is the Proposed Port Operator assuming any responsibility with respect to any such Record.
- 4.4 Her Majesty assumes all liability and risk with respect to the completeness, accuracy or any other matter relating to the Records which it uses or relies upon or with respect to any use whatsoever it makes of any such Records.
- 4.5 The Proposed Port Operator releases and forever discharges:
  - (a) Her Majesty;
  - (b) any and all Persons who may have prepared or assembled the Record; and

- (c) any and all Persons for whom any of the Persons mentioned in paragraphs 4.5(a) or 4.5(b) may be responsible in law,

and the heirs and successors of any of them, from any and all claims whatsoever, and howsoever arising, relating to any use of or reliance whatsoever on any Record, and the Proposed Port Operator hereby further agrees that this section may be pleaded as an estoppel against any action commenced by the Proposed Port Operator relating to the Record or any use thereof or reliance thereon made by the Proposed Port Operator. This release does not apply if the claims whatsoever made or advanced against Her Majesty, or the Persons referred to in paragraphs 4.5 (b) or (c), and the heirs and successors or any of them, are due to the fraudulent or negligent misrepresentation on the part of Her Majesty or any such Person.

- 4.6 The Proposed Port Operator shall obtain, from any Person to whom access to the Record is provided or permitted by Her Majesty under paragraph 3.1 (c), a release discharging forever the Persons referred to in paragraph 4.5, of any and all claims in terms no less stringent than those expressed in paragraph 4.5, and shall provide Her Majesty with an original of any such release.

- 4.7 The Proposed Port Operator shall indemnify and hold harmless Her Majesty, any Person mentioned in paragraphs 4.5 (b) or (c), and the heirs or successors of any of them, of and from any and all claims, demands, expenses and costs whatsoever made or advanced against Her Majesty, any Person mentioned in paragraphs 4.5 (b) or (c), and the heirs and successors of any of them, as a result of any use of or reliance on any Record whatsoever made or placed by the Proposed Port Operator or by any Person to whom access to such Record has been given by the Proposed Port Operator. This indemnification does not apply if the claims, demands, expenses and costs made or advanced against Her Majesty, or any of the Persons mentioned in paragraphs 4.5 (b) or (c), are due to the fraudulent or negligent misrepresentation on the part of Her Majesty or any such Person.

- 4.8 Her Majesty releases and forever discharges:

- (a) the Proposed Port Operator;
- (b) any and all Persons who may have prepared or assembled the Record; and
- (c) any and all Persons for whom any of the Persons mentioned in paragraphs 4.8 (a) or 4.8 (b) may be responsible in law,

and the heirs and successors of any of them, from any and all claims whatsoever, and howsoever arising, relating to any use of or reliance whatsoever on any Record, and Her Majesty hereby further agrees that this section may be pleaded as an estoppel against any action commenced by Her Majesty relating to the Records or any use thereof or reliance thereon made by Her Majesty. This release does not apply if the claims whatsoever made or advanced against the Proposed Port Operator, or the Persons referred to in paragraphs

4.8 (b) or (c), and the heirs and successors or any of them, are due to the fraudulent or negligent misrepresentation on the part of the Proposed Port Operator or any such Person.

- 4.9 Her Majesty shall obtain, from any Person to whom access to the Record is provided or permitted by the Proposed Port Operator under paragraph 3.1 (c), a release discharging forever the Persons referred to in paragraph 4.8, of any and all claims in terms no less stringent than those expressed in paragraph 4.8, and shall provide the Proposed Port Operator with an original of any such release.

#### **ARTICLE 5 - INDEMNIFICATION**

- 5.0 The Proposed Port Operator expressly covenants and agrees to indemnify and save harmless Her Majesty from loss or damage arising out of or pursuant to:
- (a) any breach of its undertakings, hereunder, by the Proposed Port Operator or any of the Persons in paragraphs 3.1 (a) and (b); or
  - (b) any breach of confidentiality by a Person in paragraph 3.1 (c) to whom the Proposed Port Operator disclosed any Confidential Information.

#### **ARTICLE 6 - RETURN OF CONFIDENTIAL INFORMATION**

- 6.1 Subject to paragraph 6.2, in the event that the Proposed Port Operator and Her Majesty agree to terminate negotiations in respect of the transfer of the Port Operations from Her Majesty to the Proposed Port Operator because the transfer will not take place, the party to whom Confidential Information has been given shall, without demand and within thirty (30) days of the date of termination of such negotiations, return all Records containing Confidential Information to the other party.
- 6.2 Any Person who is in possession of Secondary Confidential Information prepared by that Person in the course of providing advice to the Proposed Port Operator or Her Majesty, as the case may be, may retain such Secondary Confidential Information for the sole purpose of responding to any potential claim or litigation provided that the Person enters into a disclosure of information agreement with the party who has control of the Primary Confidential Information, in terms no less stringent than those in this Agreement, and the owner of the Primary Confidential Information shall execute such disclosure of information agreement.

#### **ARTICLE 7 - TERM OF AGREEMENT**

- 7.1 This Agreement is effective on and from the date of execution.
- 7.2 The parties agree that the agreements and obligations in this Agreement shall survive the termination of the negotiations referred to in paragraph 6.1 or the execution of the Agreement to Transfer of the Port Operations from Her Majesty to the Proposed Port

Operator, as the case may be.

## ARTICLE 8 - NOTICE

8.1 All notices or other communications necessary for the purpose of this Agreement shall be in writing and delivered by courier, or sent by registered mail or by priority post, postage prepaid or by facsimile, addressed,

(a) in the case of the Proposed Port Operator to:

The Corporation of the Municipality of Central Elgin  
450 Sunset Drive  
First Floor  
St. Thomas, Ontario N5R 5V1

Attention: Donald N. Leitch

Telephone: (519) 631-4860 extension 276

Facsimile: (519) 631-4036

or to such other address or facsimile number or addressed to such other Person as the Proposed Port Operator may, from time to time, designate in writing to Her Majesty; and

(b) in the case of Her Majesty to:

Regional Director, Programs and Divestiture  
Ontario Regional Office  
Transport Canada  
4<sup>th</sup> Floor  
4900 Yonge St.  
Toronto, Ontario M2N 6A5

Telephone: (416) 952-0489

Facsimile: (416) 952-0516

or to such other address or facsimile number or addressed to such other Person as Her Majesty may, from time to time, designate in writing to the Proposed Port Operator.

8.2 Any notice or other communication is considered to have been received:

(a) in the case of facsimile, on actual receipt, and

(b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially

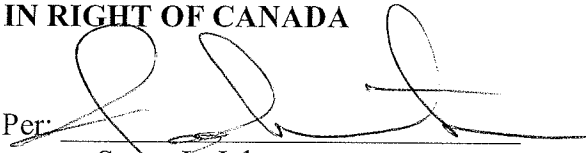
**ARTICLE 9 - GENERAL**

- 9.1 This Agreement shall be binding upon, and enure to the benefit of, the parties and their heirs and successors, and shall be read with all changes in number and gender as may be required by the context. This Agreement is not assignable.
- 9.2 The division of this Agreement into articles, clauses and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 9.3 This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by the laws in force in the Province of Ontario.


**IN WITNESS WHEREOF** the Proposed Port Operator and Her Majesty have executed this Agreement as evidenced by the signatures of their duly authorized directors, officers or representatives as of the day and year hereinabove first written.

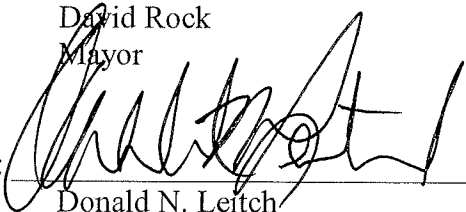
  
Witness

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

Per:   
Susan L. Johnston  
Regional Manager, Port Operations  
Divestiture and Property Programs

**THE CORPORATION OF THE  
MUNICIPALITY OF CENTRAL ELGIN**

Per:   
David Rock  
Mayor

Per:   
Donald N. Leitch  
Chief Administrative Officer and  
Clerk