

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND ICSID ARBITRATION (ADDITIONAL FACILITY) RULES**

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND

GOVERNMENT OF CANADA

Respondent

CONFIDENTIALITY ORDER

24 January 2013

TRIBUNAL:

**Mr. V.V. Veeder (Presiding)
Professor Zachary Douglas
Professor Francisco Orrego Vicuña**

1. For the purposes of this Confidentiality Order:
 - (a) “disputing party” means either Mercer International Inc. or the Government of Canada;
 - (b) “confidential information” means information designated by a disputing party as confidential on the grounds that it is:
 - (i) business confidential information of a disputing party,
 - (ii) business confidential information relating to a third party, and
 - (iii) information otherwise protected from disclosure by legislation, including, but not limited to and as amended, the *Access to Information Act*, R.S., 1985, c. A-1, the *Canada Evidence Act*, R.S., 1985, c. C-5, the *Privacy Act*, R.S. 1985, c. P-21, and the British Columbia *Freedom of Information and Protection of Privacy Act*, RSBC 1996, Chapter 165;
 - (c) “business confidential information” includes:
 - (i) trade secrets,
 - (ii) financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the disputing party, provincial, territorial or municipal governments, Crown corporations or their wholly-owned subsidiaries or third party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain,
 - (iii) information the disclosure of which could result in a financial loss or gain to the disputing party, provincial, territorial or municipal governments, Crown corporations or their wholly-owned subsidiaries or third party to which it relates, and
 - (iv) information the disclosure of which could interfere with contractual or other negotiations of the disputing party, provincial, territorial or municipal governments, Crown corporations or their wholly-owned subsidiaries or third party to which it relates; and
 - (d) “restricted access information” means confidential information within the meaning of paragraph 1(b) that is designated by a disputing party as restricted access on the grounds that:
 - (i) the disclosure of this information to the other disputing party could result in a

material gain or loss which could potentially prejudice the competitive position of the party or entity to whom that information belongs or relates; or

- (ii) the information is highly sensitive business confidential information that belongs or relates to Mercer International Inc., B.C. Hydro or wholly-owned subsidiaries of these corporations.

2. The disputing parties shall make good faith efforts to ensure that they do not unnecessarily designate information as either business confidential or restricted access under this Order.
3. In order to designate information in a document as confidential information, a disputing party must, at the time it produces the document or introduces it onto the record, clearly label each page of a document that it contends contains such information, “*Confidential Information – Unauthorized Disclosure Prohibited*”, or use equivalent measures with respect to information contained in material produced in electronic and similar media, and enclose the confidential information within a single set of brackets (“[]”). A disputing party that refers to confidential information in a written submission shall file a version of this submission with the confidential information identified and redacted.
4. In order to designate confidential information in a document as restricted access information, the disputing party must, at the time it produces the document or introduces it onto the record, clearly label each page of a document that it contends contains such information, “*Restricted Access – Dissemination Prohibited*” or use equivalent measures with respect to information contained in material produced in electronic and similar media, and enclose the restricted access information within a double set of brackets “[[]]”. A disputing party that refers to restricted access information in a written submission shall file a version of this submission with the restricted access information identified and redacted.
5. If upon receipt of a written submission, the receiving disputing party contends that it contains additional confidential or restricted access information that has not been appropriately identified and redacted by the submitting disputing party, it shall so inform the submitting disputing party and the Tribunal within ten (10) days of receipt, and within fifteen (15) days of receipt, the receiving disputing party shall provide an electronic copy of the written submission with the additional information which it contends is confidential or restricted access information appropriately identified and redacted.
6. In order to designate information as confidential information or restricted access information in a transcript, order or award, a disputing party must, within ten (10) days from its receipt of the transcript, order or award, notify the other disputing party and the Tribunal of its intent to do so, and within fifteen (15) days of receipt, provide the other disputing party and the Tribunal with an electronic copy of the transcript, order or award, with the information that it contends is confidential or restricted access information appropriately identified and redacted.
7. Materials already exchanged by the disputing parties before the execution of this Confidentiality Order can be designated as confidential by notifying the other disputing party of such designation within thirty (30) days of the execution of this Confidentiality Order. A redacted version of the materials shall also be provided to the other disputing party at that time.

8. Where a disputing party does not agree that information designated as confidential or restricted access information by the other disputing party is confidential or restricted access information under the terms of this Order, it shall submit the issue for resolution to the Tribunal. In the case of a dispute concerning the appropriateness of a designation of information as confidential, the information in question shall not be publicly disclosed until the dispute is resolved by the Tribunal. In the case of a dispute concerning the appropriateness of a designation of information as restricted access, the elapse of time periods in the Schedule of Proceedings shall be suspended until the dispute is resolved, unless the Tribunal decides that maintaining these time periods would not cause prejudice to either of the disputing parties.
9. Confidential information may be used only in these proceedings and may be disclosed only for such purposes to and among:
 - (a) Members of the Tribunal (and their assistants, if any), officials of the administrative authority and court reporters, to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
 - (b) counsel (and legal support staff) of the disputing parties, provincial, territorial, or municipal governments or Crown corporations whose involvement in the preparation or conduct of these proceedings is reasonably considered by the disputing party to be necessary;
 - (c) officials or employees of the disputing parties or of provincial, territorial, or municipal governments or Crown corporations to whom disclosure is reasonably considered by the disputing party to be necessary;
 - (d) independent experts or consultants (and their support staff) retained or consulted by the disputing parties or by provincial, territorial, or municipal governments, in connection with these proceedings; and
 - (e) witnesses, who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings, but only to the extent the material relates to their expected testimony.
10. Restricted access information may be used only in these proceedings and may be disclosed only to and among following people, where their access to the information is necessary for the preparation of the conduct of the case:
 - (a) Members of the Tribunal (and their assistants, if any) and officials of the administrative authority and court reporters, to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
 - (b) counsel (and legal support staff) of the disputing parties, the government of British Columbia or B.C. Crown corporations; and
 - (c) independent experts or consultants retained or consulted by the disputing parties or by provincial, territorial, or municipal governments in connection with these proceedings.

11. The restriction on the disclosure of confidential and restricted access information pursuant referred to in paragraphs 9 and 10 does not apply to counsel (and legal support staff), officials, employees, experts or consultants or witnesses of the disputing party that produced the confidential information (including with respect to the Government of Canada, counsel, officials employees, experts or consultants and witnesses of the Government of British Columbia and B.C. Hydro). A disputing party may also disclose confidential information and restricted access information where it obtains the prior written consent of third-party owner of the information.
12. No disputing party shall file any confidential material covered by the terms of this Confidentiality Order in any Court without first bringing this Confidentiality Order to the attention of the Court and seeking directions from the Court concerning the filing of such material in a manner that protects its confidentiality. A disputing party shall notify the other disputing party and any affected parties prior to requesting such direction from the Court.
13. All persons receiving confidential information pursuant to paragraphs 9 and 10 shall be bound by this Confidentiality Order. Each disputing party shall have the obligation of notifying all persons receiving confidential information of the obligations under this Confidentiality Order.
14. It shall be the responsibility of counsel for the disputing party wishing to disclose confidential information or restricted access information to any person described in paragraphs 9(c), (d) or (e) and 10(c) to ensure that such person executes a Confidentiality Undertaking in the form attached as Appendix A before gaining access to any such information. Each disputing party shall maintain copies of such Confidentiality Undertakings and shall make such copies available to the other disputing party upon order of the Tribunal.
15. Notwithstanding any other provision in this Confidentiality Order, any request for documents, or for the production of documents under the *Access to Information Act*, R.S., 1985, c. A-1, the *Canada Evidence Act*, R.S., 1985, c. C-5, the *Privacy Act*, R.S. 1985, c. P-21, and the B.C. *Freedom of Information and Protection of Privacy Act*, RSBC 1996, Chapter 165, or any other applicable federal, provincial, or territorial legislation, including documents produced to Canada in these proceedings, shall be wholly governed by the relevant legislation.
16. Notwithstanding any other provision in this Confidentiality Order, the disputing parties may make such disclosure of documents or information as is required by law, including disclosure pursuant to Articles 1127 and 1129 of the NAFTA.
17. Nothing in this Confidentiality Order shall be construed to abrogate or support a refusal to disclose any information on the basis of a privilege, confidentiality or other similar grounds arising at common law, or under national or provincial legislation.
18. A disputing party shall be free to disclose to the public, the redacted, public versions of all pleadings and submissions of the disputing parties, decisions of the Tribunal, and other relevant materials, including, but not limited to, the Request for Arbitration, Memorials, witness statements, correspondence to the Tribunal, transcripts of hearings, procedural rulings and Orders and Awards.
19. All hearings shall be public. At the request of one of the disputing parties, the Tribunal shall hold *in camera* sessions, as needed, to protect confidential information as defined in this

Confidentiality Order.

20. Where sessions are held *in camera*, the Tribunal shall make appropriate orders respecting witness exclusion from the hearings.
21. Consistent with paragraph 81 of Procedural Order No. 1, counsel from the Ministry of Justice of British Columbia may retain one complete copy of the record, including confidential information. In accordance with ICSID Administrative and Financial Regulation 28, one complete copy of the record, including confidential information, will be deposited in the archives of the Centre. The disputing parties agreed on a procedure for the release of documents deposited in the Centre's archives by communications of 13 December 2012. All other confidential or restricted access information shall be returned or otherwise destroyed, within sixty (60) days of the conclusion of any set aside proceedings or after the time to request set aside proceedings under Article 1136 of NAFTA has expired.
22. This Confidentiality Order shall be effective and binding upon a disputing party upon the signature of the Confidentiality Order by the Tribunal.
23. The obligations created by this Order shall survive the termination of these proceedings.

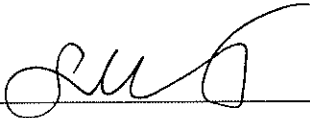
V. V. Veeder

V. V. Veeder
On behalf of the Tribunal

24 January 2013

Date

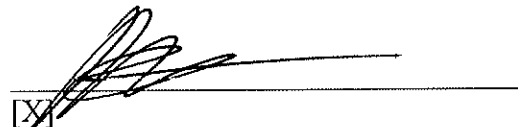
Signed by both disputing parties in acknowledgement of the obligation to abide by this Confidentiality Order:



[X]
On behalf of the Government of Canada
Ms. Sylvie Tabet
Mr. Michael Owen
Ms. Lori DiPierdomenico
Mr. Nick Gallus
Mr. Stephen Kurelek
Ms. Marie-Claude Boisvert

1/9/2013
Date

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[X]
On behalf of Mercer International Inc.
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1/4/13
Date

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CANADA

APPENDIX A

CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel) and Mercer International Inc. (and its legal counsel).

FROM: _____

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Mercer International Inc. and the Government of Canada, over which claims for confidentiality have been advanced (“confidential information”), I hereby agree to maintain the confidentiality of such material and further agree that any so obtained will not be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the disputing parties, a copy of which is attached to this Undertaking, and agree to be bound by it. In particular, I agree that any confidential information obtained by me shall not be copied or disclosed in any manner to any other person unless that person is entitled to receive such information under the Confidentiality Order and has signed a Confidentiality Undertaking.
3. Within 45 days after the conclusion of my involvement in these proceedings, or after the issuance by the Tribunal of a final award, whichever is earlier, I will return or destroy any confidential information received by me in any format to the disputing party that provided me with such materials or the information recorded in those materials, or the copies thereof, after the conclusion of my involvement in these proceedings.
4. I acknowledge and agree that either of the disputing parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Order, to enforce the terms and provisions hereof in addition to any other remedy to which any disputing party to this arbitration may be entitled at law or in equity.
5. I agree to submit to the jurisdiction of the courts of the Province of British Columbia (in the case of residents of Canada) or the District of Columbia (in the case of residents of the United States of America) to resolve any disputes under the Confidentiality Order.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20__.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)