

This confidentiality agreement (the "**Agreement**") is entered into and is effective as of December 1, 2021 (the "**Effective Date**") between EXFO Inc. ("**EXFO**"), a Canadian corporation having its head office located at 400 Godin Avenue, Quebec, Quebec, Canada, G1M 2K2 on behalf of itself and its Affiliates, and [Company] ("**Company**"), having a place of business at [Click or tap here to enter text.](#)

1. EXFO and Company intend to disclose and exchange certain information which is non-public, confidential and/or proprietary in nature to each other, namely but not limited to, information in order to establish and maintain a potential business relationship (the "**Purpose**"). All information (whether written, visual, oral or stored in any computer or any other electronic, magnetic or optical storage system) exchanged by the parties (whether before or after the Effective Date), together with all data, notes, analyses, compilations, forecasts, reports, studies, interpretations and other documents containing or based upon such information prepared by the parties is herein referred to collectively as the "**Confidential Information**".

2. Each party may either be a party disclosing (a "**Discloser**") or a party receiving (a "**Recipient**") Confidential Information, or both. Affiliates of either party may also be considered as a Discloser or a Recipient under this Agreement, provided that each party shall be responsible for the use of the Confidential Information by their Affiliates.

3. For the purposes of this Agreement, "**Affiliate**" means any person, corporation, business or other legal entity that is directly or indirectly controlled by, in control of, or under common control with any party to this Agreement. For purposes of this definition of "Affiliate," the term "control" means legal power to direct or cause the direction of management and policies of a legal entity, or possession of more than fifty percent (50%) of the voting securities (whether directly or pursuant to any option or other similar arrangement) or the power to elect more than fifty percent (50%) of such other corporation's business or other legal entity's board of directors or other managing authority, or other comparable equity.

4. Each party shall only furnish Confidential Information to those of its legal, financial or technical advisors, its employees and the employees of its Affiliates (collectively, "**Advisors and Affiliates**") who need to know the Confidential Information for the Purpose and who agree to receive the Confidential Information under terms at least as restrictive as those specified in this Agreement, provided that each party shall be responsible for the use of the Confidential Information by their Advisors and Affiliates.

5. The Recipient and its Advisors and Affiliates shall keep the Confidential Information confidential and shall not, without the Discloser's prior written consent, in any manner whatsoever, in whole or in part, disclose the Confidential Information, nor use the Confidential Information other than for the Purpose. The Recipient shall not reverse-engineer or remanufacture the Confidential Information. In addition, the Recipient shall not copy, reproduce or in any way duplicate the Confidential Information, except as may be required for the use of its Advisors and Affiliates for the

Purpose. Without the prior written consent of the other party, except as required by law, neither party, nor its Advisors and Affiliates, will disclose to any person the fact that the Confidential Information has been made available, or that discussions or negotiations are taking place or have taken place concerning the Purpose.

6. The term "Confidential Information" shall not include such portions of the Confidential Information which (a) are rightfully in a Recipient's possession before receipt from the Discloser; (b) are or become a matter of public knowledge other than as a result of disclosure by a Recipient; (c) are rightfully received by a Recipient from a third party who has no duty of confidentiality; or (d) are independently developed by a Recipient without use of the Discloser's Confidential Information.

7. All copies of the Confidential Information, except for that portion which consists of data, notes, analyses, compilations, forecasts, studies, interpretations or other documents prepared by the Recipient and its Advisors and Affiliates (collectively, "**Work Product**"), will be returned to the Discloser immediately at the Discloser's written request. That portion of the Confidential Information which consists of Work Product will be destroyed upon the written request of the Discloser and, if requested by the Discloser, the Recipient shall provide a certificate testifying to the complete return and destruction of all Confidential Information in accordance herewith. The obligation to erase as specified herein shall not apply to Confidential Information retained as part of computer backup procedures, provided that any such retained Confidential Information remains subject to a duty of confidentiality.

8. The disclosure of the Confidential Information to a Recipient does not confer on the Recipient any license, interest or rights of any kind in the Confidential Information.

9. If either party, or its Advisors and Affiliates, become legally compelled to disclose any of the Confidential Information, such party will provide the other party with prompt notice in order that it may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that compliance herewith is waived, only that portion of the Confidential Information that is legally required (as determined by written opinion of counsel addressed to both parties) will be furnished and the party compelled to disclose shall exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so furnished.

10. This Agreement shall have a term of five (5) years from the Effective Date and any disclosure of information subsequent to this date shall not be considered as Confidential Information under this Agreement. Either party may terminate this Agreement at any time without cause upon ten (10) calendar days written notice to the other party. Notwithstanding expiration or termination of this Agreement, a Recipient's duty to protect the Confidential Information expires three (3) years from the date of disclosure of the Confidential Information, or five (5) years from



the Effective Date, whichever is later, except that with respect to trade secrets of the Discloser, the protection period shall continue indefinitely until such time as such trade secrets are no longer subject to protection under applicable law.

**11.** Each Discloser warrants that it has the right to disclose the Confidential Information to a Recipient. NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED IS PROVIDED "AS IS".

**12.** Each Discloser understands that a Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to the Discloser's Confidential Information. Accordingly, subject to the obligations of this Agreement, neither party shall be precluded from independently developing technology or pursuing business opportunities similar to or in competition with the Purpose.

**13.** Each party acknowledges that breach of this Agreement by a party would cause the other party immediate and irreparable harm for which payment of money would not adequately compensate the other party. Therefore, each party shall be entitled, in addition, to any other remedies available at law or in equity, to seek injunctive relief for any such breach without proof of actual damages or the posting of bond or other security in any court of competent jurisdiction under the laws of such jurisdiction.

**14.** This Agreement imposes no obligation on either party to purchase, sell, license and transfer or otherwise dispose of any technology, services or products or enter into any business relationship.

**15.** This Agreement does not create any agency, partnership, joint venture or temporary association between the parties.

**16.** This document constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all previous written or oral communications, representations and understandings regarding the subject matter of this Agreement. Furthermore, this Agreement shall not be assignable or transferable without the written consent of the other party and no addition or modification made to this Agreement

shall be binding upon the parties unless the same is made in writing and signed by both parties.

**17.** The failure upon occasion by one of the parties to exercise one or more rights under the Agreement shall not be interpreted as a renunciation of such rights, nor affect in any way the present Agreement nor the right by either party to subsequently exercise any right expressed in this Agreement.

**18.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assignees, heirs and legal representatives.

**19.** Neither party shall export, directly nor indirectly, any Confidential Information obtained from the other that is subject to export control laws, to any country for which any government agency at the time of export requires an export license or other governmental approval, without first obtaining such license and approval. In addition, the Recipient hereby acknowledges that it is aware (and that its Advisors and Affiliates have been or will be advised) that Canadian, United States and other applicable securities laws prohibit any person who has material, non-public information about an issuer obtained directly or indirectly from that company, from purchasing or selling securities of such company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

**20.** Subject to section 13 above, this Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada, and the laws of Canada applicable therein, without regard to its rules of conflict of laws.

**21.** If a court of competent jurisdiction declares any provision of this Agreement invalid, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

**22.** An electronic or facsimile signature of this Agreement by an authorized signatory of each party shall have the same force and effect as an original signature and may be used as evidence of execution thereof.

The parties agree that this Agreement and any document referenced herein or attached hereto to be drafted in English.

The parties have caused this Agreement to be signed by their duly authorized representatives.

[Company]

Signature:

Name & Title:

Date:

EXFO Inc.

Signature:

Name & Title:

Date: