**TERMS AND CONDITIONS OF USE**

These Terms and Conditions of Use (herein after "Agreement") govern the terms and conditions pursuant to which the Client through its User(s) will have access to the Internet-based application known as ACOA Direct.The purpose of ACOA Direct is to provide organizations the ability to

1. Electronically submit documents that may be required under the terms and conditions of an approved funding agreement,
2. Submit claims pursuant to a funding agreement,
3. Administer the organizations’ profile,
4. Access certain electronic copies of records, correspondence and other information held by ACOA with respect to the client, and
5. Any other transaction authorized by ACOA.

This Agreement contains a number of provisions that may affect the rights and obligations of the Account Holder.

**THE ENTIRETY OF THIS AGREEMENT MUST BE READ CAREFULLY**

This Agreement is made available to the Client through the Authorized Client Administrator who has the authority to accept this Agreement on behalf of the Client.

The continued access to and use of ACOA Direct are subject to (1) the acceptance of this Agreement, and (2) the Client's compliance with the terms and conditions contained in this Agreement.

**1. Definitions**

"ACOA Direct Enrolment" is the process by which an authorized individual is granted access to ACOA Direct as a User.

"Admin User" is an individual whose identity has been authenticated by the Authorized Client Administrator or by an Admin User and whose responsibility is to (a) view client or project information, (b) create and/or submit documents and claims on behalf of the Client, (c) identify and authenticate other individual(s) as Admin User(s), Edit User(s) or Read User(s), and (d) manage the access rights of these individuals. .

"Authorized Client Administrator", herein referred to as “ACA” is an individual who has been designated and authorized by the Client to act on its behalf for the purpose of using ACOA Direct and whose responsibility is to (a) view client or project information, (b) create and/or submit documents and claims on behalf of the Client, (c) identify and authenticate other individual(s) as Admin User(s), Edit User(s) or Read User(s), (d) manage the access rights of these individuals, and (e) administer and manage transactions related to the Client's ACOA Direct account.

"Client" is an individual or entity.

"Edit User" is an individual whose identity has been authenticated by the ACA or by an Admin User and whose responsibility is to (a) view client or project information, and (b) create or submit documents and claims on behalf of the Client.

"Main Business Address" means the physical location of the Client's business as specified on the registration form provided to ACOA.

"Read User" is an individual whose identity has been authenticated by the ACA or by an Admin User and whose responsibility is to view client or project information on behalf of the Client.

“Shared Secret” is a onetime password used to confirm the identity of a User, using a secure communication method.

"User(s)" is the generic term referring to the individual(s) authorized to act on behalf of the Client as ACA, Admin User(s), Edit User(s) or Read User(s). It is understood that each of these roles has specific access rights assigned to them within ACOA Direct.

"You" refers to the ACA.

**2. Acceptance of terms and conditions**

2.1 This Agreement sets out the terms and conditions pursuant to which ACOA will make ACOA Direct available to the Client.

2.2 By clicking "I Agree" at the end of this Agreement you

1. agree, for and on behalf of the Client, to be bound by the terms and conditions of this Agreement;
2. warrant that you have the power and capacity to execute this Agreement on behalf of the Client;
3. on behalf of the Client, acknowledge and agree that any previous ACOA Direct agreement the Client may have had with ACOA is immediately terminated upon accepting this Agreement.

**3. Amendment**

3.1 ACOA reserves the right to modify the terms and conditions of this Agreement at any time without prior notice. However, such modifications will only be effective after the expiry of a thirty day notice period commencing on the day the notice of the change is posted in ACOA Direct and on the ACOA website.

3.2 The access to or use of ACOA Direct after the expiry of the thirty day period will signify the acceptance of the modified agreement and ACOA will be entitled to rely on such access to and use of ACOA Direct as indicating agreement with the change.

3.3 It is the Client's responsibility to consult ACOA Direct on a regular basis to determine whether any modifications have been posted.

**4. Availability of ACOA Direct**

4.1 ACOA Direct will be available seven days a week, twenty-four hours a day, except

1. during regularly scheduled maintenance or repair; or
2. because of events beyond the control of ACOA, or that ACOA could not have reasonably prevented by means of controls, compromise, disaster recovery procedures or business continuity procedures.

4.2 ACOA makes no representations or warranties and disclaims all liability in regards to the availability of

1. ACOA Direct because of events beyond its control, or that ACOA could not have reasonably prevented by means of controls, compromise, disaster recovery procedures, or business continuity procedures; or
2. any related technology or intermediary Internet services or systems used to support or access ACOA Direct.

**5. No charge to use ACOA Direct**

ACOA Direct is free of charge.

**6. Responsibilities of the Client**

6.1 The Client is fully responsible for

1. any use of ACOA Direct that is in breach of this Agreement, including the use by any User(s) to whom access to ACOA Direct is granted; and,
2. ensuring that all information provided to ACOA through ACOA Direct is true, accurate, current, complete*.*

6.2 The Client certifies that the ACA and the Admin User(s) are authorized to use ACOA Direct and to identify and authenticate additional User(s) to act on behalf of the Client for the purpose of ACOA Direct.

6.3 The Client certifies and warrants that

1. identity information provided by User(s) for purposes of ACOA Direct Enrolment is accurate and complete;
2. in seeking enrolment to ACOA Direct for its User(s), that it has no information or knowledge that the identity information of these Users provided by the Client to ACOA is inaccurate, incomplete, has changed or has been altered, and;
3. Users are authorized to be enrolled and use ACOA Direct in accordance with the access rights assigned to them.

6.4 The Client must notify ACOA if it knows or suspects that

1. any User's username or password has been or may have been disclosed to anyone;
2. any User's username, password or account has been or may have been accessed or used without authorization;
3. any provision of this Agreement has been or may have been contravened whether by act or omission;
4. any breach of security that impacts or may impact on the security or integrity of ACOA Direct has occurred.

6.5 In accordance with the process established by ACOA and found on the ACOA website, the Client must

1. notify ACOA of any change of ACA;
2. have the incoming ACA identified and authenticated; and
3. ensure any new ACA appointed in the context of this Agreement is familiar with the terms and conditions of this Agreement.

**7. Accuracy**

The Client understands and agrees that unless the information contained within ACOA Direct is updated or ACOA is notified of any change, ACOA is entitled to rely on and act upon the information it receives through ACOA Direct in relation to the Client's account.

**8. Protection of Username and Password**

8.1 Subject to the terms of this Agreement, the Shared Secret assigned to each User is personal and not transferable.

8.2 The Client must ensure that prior to each User accessing or using ACOA Direct, Users understand and agree that their username and password used to access ACOA Direct are unique to them, and that they must maintain the confidentiality of their username and password at all times and must not let any other person use their username and password in order to preserve the security of their electronic communications.

8.3 ACOA disclaims all liability for any loss or damage arising from the failure by the Client or any User(s) to protect their onetime Shared Secret, usernames, passwords or account information.

**9. Protection of Client's Computer Networks**

The Client warrants that it will install, use and regularly update antivirus software and conduct malicious code scans on all computer equipment used to access ACOA Direct and further warrants that it will install new virus definitions as soon as practical.

**10. Revocation of Enrolment to** ACOA Direct

10.1 The Client must revoke a User's access to ACOA Direct when

1. the User ceases to be a representative of the Client;
2. there is any change in the User's identification or authentication information;
3. the User's username or password is compromised or insecure, or suspected of being compromised or insecure;
4. the User fails to meet their obligations under this Agreement.

10.2 For greater certainty, the revocation of a User's access to ACOA Direct does not affect the access of other Users, and does not terminate this Agreement. If the Client revokes the access of the ACA from ACOA Direct, the Client must replace the ACA and inform ACOA of the new ACA as per section 6.5 of this Agreement.

10.3 The Client hereby certifies the authority of User(s) identified and authenticated by the ACA or the Admin User(s) to act on its behalf and must inform them that their access to ACOA Direct will be revoked where there is reason to believe that any of the circumstances set out in section 10.1 occur.

10.4 ACOA may, in its sole and unfettered discretion and without prior notice, revoke a User's access to ACOA Direct where there is reason to believe that any of the circumstances set out in section 10.1 occur.

**11. Disclaimer**

11.1 ACOA Direct and all functionalities therein are provided on an "AS IS" and "AS AVAILABLE" basis. They are provided without warranties, representations, and conditions, express or implied, including, without limitation, warranties or conditions of accuracy, completeness, currency, merchantable quality, fitness for a particular purpose, or those arising by law or by statute, or by usage of trade or course of dealing. By accessing and using ACOA Direct through the Users the Client agrees that ACOA Direct use is entirely at its own risk.

11.2 Without limiting the generality of section 11.1, ACOA makes no warranties or representations, express or implied, with respect to

1. ACOA Direct;
2. the operations that will be conducted by the Client or any of its User(s) using or relying on ACOA Direct;
3. ACOA Direct being free of malware, including free of any virus, or other harmful component;
4. the non availability of ACOA Direct for reasons of maintenance or repair;
5. the non availability of ACOA Direct because of events beyond the control of ACOA including events that could not have reasonably been prevented by means of controls, compromise, disaster recovery procedures or business continuity procedures.

11.3 ACOA is not responsible and assumes no liability for the Client’s reliance on third party information provided by User(s) to ACOA through ACOA Direct.

**12. Limitation of Liability**

12.1 ACOA shall not be liable and expressly disclaims all liability whatsoever to any individual or to any entity who is not the Client under this Agreement, for any claims, actions, loss, damages (including special, direct, indirect, incidental or consequential damages) or expense, awards, including, without limitation, loss of revenue or profit or savings, lost or damaged data, or other commercial or economic loss, arising in any manner whatsoever from (i) the Client or any User acts, omissions or conduct; (ii) any use or inability to use ACOA Direct, and (iii) any lack of availability or delay in providing ACOA Direct, even if ACOA has been advised of the possibility of such damages, or for claims by a third party, nor shall ACOA’s contractors, suppliers, agents, employees or representatives have such liability. This section shall apply whether or not the liability results from tort (including negligence), contract (including breach of fundamental terms or conditions, a fundamental breach of this Agreement), criminal or otherwise from any other cause of action.

12.2 Notwithstanding anything in this Agreement ACOA’s maximum aggregate liability to the Client under this Agreement, or any third party, who reasonably uses or relies on ACOA Direct, for any claim whatsoever related to any service associated with ACOA Direct, shall not exceed $50,000.00 per award, judgment or negotiated settlement, even if ACOA has been advised of the possibility of such damages, or for claims by a third party, nor shall ACOA’s contractors, suppliers, agents, employees or representatives have such liability. This section shall apply whether or not the liability results from tort (including negligence), contract (including breach of fundamental terms or conditions, a fundamental breach of this Agreement), criminal or otherwise from any other cause of action.

**13. Indemnification**

13.1 The Client agrees to indemnify and hold harmless ACOA, its Assigns and Successors, officers, employees, or agents, from and against all claims, actions, losses, expenses, damages (direct, indirect, incidental or consequential), and costs, including reasonable attorneys' fees, resulting from

1. any breach by the Client or a User of this Agreement or other conduct giving rise to liability in tort (including negligence), contract or any other cause of action;
2. any breach by the Client or a User, whether deliberate, negligent or otherwise, of the obligations set out in section 8 "Protection of Username and Password";
3. the User's unauthorized or unreasonable use of or reliance on ACOA Direct;
4. the failure to request revocation in accordance with section 10 "Revocation of Enrolment to ACOA Direct ";
5. a determination, judgment or award finding ACOA to be liable. ACOA's liability shall be limited to $50,000 in accordance with section 12.2;
6. any breach by the Client of the "Client Responsibilities" (section 6 of this Agreement); or
7. inaccurate or incomplete information or documents submitted by the Client of which the Client has knowledge or should reasonably have had knowledge.

13.2 The Client must not hold ACOA liable for any damages, direct or indirect, incidental or consequential, arising from any lack of availability, or delay in providing ACOA Direct.

**14. Dispute Resolution**

The Parties hereby undertake to use their best efforts to resolve in an amicable and expeditious manner any dispute or difference that may arise between them under this Agreement, first by negotiation and, failing resolution, then through an independent mediator. Any dispute or difference that has not been resolved by either of these means shall be referred to binding arbitration under the *Commercial Arbitration Act* (R.S.C., 1985, c. 17 (2nd Supp.)) as amended from time to time.

**15. Privacy and Confidentiality**

15.1 The Client consents to and accepts that ACOA will collect and use identifying information, being the name of the Client and its province of operation, and if required, its Business Number, issued by the Canada Customs and Revenue Agency, for the purposes of communicating securely with ACOA and identifying any information submitted by the Client using ACOA Direct.

15.2 The Client will inform all Users that identifying information of Users collected and used by the Client for purposes of ACOA Direct Enrolment or for purposes of suspension or revocation of ACOA Direct Enrolment, will be provided to ACOA upon request, and the Client warrants that the all Users have consented to any such disclosure of identifying information prior to ACOA Direct Enrolment. The Client further warrants that any contractor acting on its behalf as a User has consented to the disclosure of identifying information to ACOA.

15.3 It is understood that the Client has the right to access and request correction of any identifying information from the records maintained by ACOA, and that a User has a right of access to their identifying information in accordance with the Privacy Act.

15.4 It is understood that the Client and the ACA may, at any time, by signed written notice, either electronically and digitally signed, in writing, or by facsimile, withdraw their consent as set out in sections 15.1 and 15.2, and if they do so, ACOA may not be able to provide them, or continue to provide them, with enrolment with ACOA Direct, in which case information may be submitted by other means by those individuals. Until receipt of such notification, ACOA is entitled to rely on section 15.2.

**16. No Partnership**

ACOA and the Client expressly disclaim any intention to create a partnership, employer /employee relationship, joint venture, joint enterprise or fiduciary relationship. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of ACOA or the Client or any relying party shall constitute or be deemed to constitute ACOA and the Client (or any relying party) as partners, employer and employee, joint venturers, principal and agent, trustee and beneficiary, or as in a fiduciary relationship of any kind, in any way or for any purpose.

**17. Assignment**

The Client may not assign this Agreement, in whole or in part. ACOA may assign any part or all of this Agreement, and may contract out any or all of its services, including those pertaining to ACOA Direct.

**18. Termination**

18.1 Either party may terminate this Agreement without cause upon a thirty day written notice.

18.2 ACOA will terminate this Agreement without notice if the Client fails to comply with any of their obligations under this Agreement. For greater clarity, the termination shall be effective on the date that the Client failed to comply with its obligations to any extent.

18.3 If, at any time and for any reason, the Client ceases to agree to be bound by this Agreement, the Client and every User(s) must immediately cease to access or use ACOA Direct and notify ACOA.

18.4 Upon termination of this Agreement, the Client's access to ACOA Direct will be terminated and all related Users' access revoked without notice.

**19. Notice**

19.1 Where this Agreement calls for notice, unless specified otherwise, such notice must be in writing and may be delivered by mail, by facsimile, by email, or any other means of communication approved by ACOA. A notice shall be deemed to have been received on the fifth business day after mailing if sent by regular mail or on the first business day after the date of transmission if sent by facsimile or electronic mail.

19.2 Notice shall be given to ACOA at

**To the attention of:**

Director of Programs

**By Mail:**   
Atlantic Canada Opportunities Agency  
P.O. Box 6051  
Moncton, NB E1C 9J8

**By Facsimile:**   
1-506-851-7403

**By Email:**   
gol-ged@acoa-apeca.gc.ca

**20. Severability**

If any provision of this Agreement is declared by an arbitrator or a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect.

**21. Successors and Assigns**

This Agreement shall ensure to the benefit of, and be binding upon, the successors and any permitted assigns of ACOA and of the Client, except that access rights to ACOA Direct are personal to the User(s) and are not transferable. These access rights are strictly for the use of ACOA Direct and are not for personal use.

**22. Survival**

Notwithstanding the termination of this Agreement, provisions concerning indemnity, liability, and dispute resolution shall survive.

**23. Entire Agreement**

This Agreement, as amended from time to time in accordance with its provisions, constitutes the entire and sole agreement between the parties with respect to ACOA Direct b and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in this Agreement. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in this Agreement.

**24. Governing Laws**

By accessing or using ACOA Direct the Client agrees that this Agreement and all matters relating to the access to, or use of, ACOA Direct shall be governed by the laws of the province in which the Client's Main Business Address is located and the laws of Canada, exclusive of their conflicts-of-laws principles. The Client agrees and hereby submits and attorns to the jurisdiction of the court in the applicable jurisdiction as determined herein.