

TERMS AND CONDITIONS (the "Terms and Conditions")

1. DEMAND AND PAYMENT

- 1.1 a) **Guarantee** – The Guarantor shall, forthwith upon demand by the Financial Institution, pay to the Financial Institution the Guaranteed Liabilities.
- b) **Indemnity** – The Guarantor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Guaranteed Liabilities when due and those Guaranteed Liabilities are not recoverable from the Guarantor for any reason under Section 1.1 a), Guarantee, the Guarantor shall indemnify the Financial Institution immediately on demand against any cost, loss, damage, expense, or liability suffered by the Financial Institution as a result of the Borrower's failure to do so.
- c) **Separate Liabilities** – The liabilities of the Guarantor under Sections 1.1 a), Guarantee, and 1.1 b), Indemnity, are separate and distinct from each other, but the provisions of this Guarantee shall apply to the liabilities under both of those Sections unless the context otherwise requires.
- 1.2 **ENTITLED TO DEMAND** – The Financial Institution shall be entitled to make demand hereunder upon any default by the Borrower in respect of the Guaranteed Liabilities (whether in repayment thereof or otherwise) and a new right to demand shall arise in respect of each and every default by the Borrower.
- 1.3 **NO NOTICE OF DEFAULT** – The Guarantor waives notice of default by the Borrower and acknowledges that the Financial Institution shall not be obliged to give any such notice or notices.
- 1.4 **NO SET-OFF** – The Guarantor shall not, as a defence to payment to the Financial Institution of the Guaranteed Liabilities, claim any set-off or counterclaim in respect of any liability of the Borrower to the Guarantor.
- 1.5 **NOT BOUND TO EXHAUST RECOURSES** – The Financial Institution shall not be bound to exhaust the Financial Institution's recourses against the Borrower or any other party, or any security or securities or evidence of indebtedness which the Financial Institution may hold before requiring payment by the Guarantor.
- 1.6 **LIMIT ON LIABILITY** – The liability of the Guarantor under this Guarantee is unlimited.
- 1.7 **IRREVOCABILITY AND NOTICE OF TERMINATION** – If the Loan forming part of the Guaranteed Liabilities relates to a fixed sum loan, the Guarantor agrees that this Guarantee is irrevocable by it and the Guarantor expressly and unconditionally waives any right to terminate this Guarantee. If the Loan forming part of the Guaranteed Liabilities relates to a line of credit loan, the Guarantor may terminate the Guarantor's further liability under this Guarantee by giving written notice to the Financial Institution and this Guarantee will not apply to, and the Guaranteed Liabilities will not include, any advances or readvances of the principal sum made after the expiry of 30 days from the date of the Financial Institution's receipt of the notice or any interest on such advances or readvances, provided that the Guarantor shall remain liable in respect of Guaranteed Liabilities incurred or arising before the expiration of that 30-day period.

2. UNCONDITIONAL GUARANTEE

- 2.1 **GUARANTEE NOT AFFECTED** – This Guarantee is absolute and unconditional and the Guarantor's liability hereunder shall not be released, lessened, or adversely affected by anything whatsoever, including any of the following:
- a) if the Borrower is an individual, the lack of capacity or disability of the Borrower;
- b) if the Borrower is a partnership or a limited partnership, any change in the members, limited partners, general partner, name, partnership units or interests, partnership agreement, or other governing document of the partnership or limited partnership;
- c) if the Borrower is a corporation
- any change in the directors, shareholders, name, objects, share capital, memorandum, articles, or other organizational documents of the Borrower, or
 - any incapacity or disability of the directors, partners, or agents of the Borrower, or
 - the amalgamation of the Borrower with any other corporation, or
 - the continuance of the Borrower, or
 - the winding-up, liquidation, or dissolution of the Borrower, or
 - that the liabilities incurred by the Borrower in connection with the Loan were incurred irregularly, defectively, or informally, or in excess of the powers of the Borrower or of its directors or other agents notwithstanding that the Financial Institution may have had specific notice of the extent of the relevant powers of the Borrower or of its directors or agents;
- d) the bankruptcy or insolvency of the Borrower or of the Guarantor;
- e) the inability of the Financial Institution by reason of law or otherwise to enforce any security instrument, or any of the terms, conditions, or other provisions contained in any security instrument, for the Loan against the security which is subject to such security instrument or against the Borrower or any other person;
- f) the novation of any agreement or security instrument in respect of the Loan;
- g) that the obligations of the Borrower to the Financial Institution in respect of the Loan or any security in respect thereof may be invalid, void, voidable, or unenforceable;

- h) the release in whole or in part of any security given by the Borrower or any other person to the Financial Institution;
- i) the sale by the Borrower of any of the Borrower's assets, including any assets in which the Financial Institution has taken a security interest as security for the Loan;
- j) the failure of the Financial Institution to fully advance the Loan;
- k) the failure of any proposed signatory or signatories to execute this Guarantee;
- l) if more than one person constitutes the Guarantor, the release by the Financial Institution of any of those persons from their obligations hereunder and this Guarantee shall remain a valid and enforceable obligation of the persons not released by the Financial Institution; or
- m) that the Financial Institution may have
- granted time or other indulgences to the Borrower or any other person liable to the Financial Institution in respect of the Loan, or
 - given up, modified, exchanged, renewed, or abstained from perfecting or taking advantage of any security or securities in whole or in part now or hereafter held by the Financial Institution in respect of the Loan, or
 - accepted any compromise, composition, proposal, or arrangement offered by the Borrower, or
 - agreed with the Borrower to amend, restate, supplement, and/or vary the principal amount, interest rate, terms of repayment, or any other terms of, or relating to, the Guaranteed Liabilities or any loan document applicable thereto.

3. GUARANTOR'S ACKNOWLEDGEMENTS

- 3.1 **NO REPRESENTATIONS ETC.** – The Guarantor acknowledges
- that the Financial Institution has made no representations or warranties of any kind to the Guarantor,
 - that there are no collateral agreements of any kind between the Guarantor and the Financial Institution with respect to this Guarantee, and
 - that all covenants and agreements of the Borrower and all conditions with respect to the Loan contained in any agreement between the Borrower and the Financial Institution (and regardless of whether the Guarantor is a party thereto) are for the sole benefit of the Financial Institution and compliance therewith may be waived in whole or in part by the Financial Institution without affecting the Guarantor's liability hereunder (the "Terms and Conditions").

4. GENERAL

- 4.1 **ASSIGNMENT** – The Financial Institution may assign this Guarantee in whole or in part, absolutely or by way of security without the Guarantor's consent or notice to the Guarantor.
- 4.2 **REMEDIES** – In enforcing this Guarantee the Financial Institution can use any and all remedies available at law or in equity, and no single or partial exercise of any right or remedy shall preclude any other or further exercise thereof, nor shall the failure of the Financial Institution or any delay in exercising the Financial Institution's rights under this Guarantee operate as a waiver.
- 4.3 **GUARANTEE IN ADDITION** – This Guarantee is in addition to, and not in substitution for, any securities or other guarantees which the Financial Institution may at any time possess, and the Financial Institution shall not be required to marshal for the Guarantor's benefit any securities or assets which the Financial Institution has or has a claim upon.
- 4.4 **NO SUBROGATION** – The Guarantor will not claim to be subrogated in any manner to the Financial Institution's position and will not claim the benefit of any security at any time held by the Financial Institution until the Guaranteed Liabilities have been paid in full by the Guarantor, and upon the Guarantor paying to the Financial Institution all of the Guaranteed Liabilities then the Guarantor shall on demand in writing to the Financial Institution be entitled to the assignment of any securities then held by the Financial Institution as security for the Guaranteed Liabilities but nothing in this Guarantee shall be taken or construed as a representation or warranty by the Financial Institution as to the enforceability of any such securities.
- 4.5 **CORPORATE GUARANTOR** – If the Guarantor is a corporation, the Guarantor represents and warrants to the Financial Institution that all action required to authorize this Guarantee has been taken by the Guarantor or its directors or shareholders, and all required disclosure with respect to this Guarantee has been made.
- 4.6 **RECORDS** – The Financial Institution's records shall be *prima facie* evidence as to the amount outstanding on account of the Loan and as to the Borrower being in default in respect of the Loan.
- 4.7 **CONTINUING GUARANTEE** – This Guarantee is a continuing guarantee and indemnity for a current or running account and will extend to the ultimate balance of the Guaranteed Liabilities, regardless of any intermediate payment or discharge of the Guaranteed Liabilities in whole or in part (and regardless of advances and readvances under any Loan that is a revolving line of credit loan).

TERMS AND CONDITIONS (CONTINUED)

- 4.8 PAYMENTS IN GROSS** – Until this Guarantee has been terminated by the Financial Institution, all amounts of any kind received by the Financial Institution from any source in respect of the Guaranteed Liabilities shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim the benefit of those amounts in reduction of its liabilities under this Guarantee.
- 4.9 REINSTATEMENT** – If at any time any payment of the Guaranteed Liabilities is or must be rescinded or returned by the Financial Institution as a result of insolvency or reorganization of the Borrower or any other person, or for any other reason whatsoever, the Guaranteed Liabilities will be deemed to have continued in existence and this Guarantee shall continue to be effective, or be reinstated, as if the payment had not occurred. The Financial Institution may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Guarantor under this Section.
- 4.10 INTEREST** – The Guarantor's liabilities under this Guarantee shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Guaranteed Liabilities.
- 4.11 LIMITATION PERIODS** – To the extent that any limitation period applies to any claim for payment of the Guaranteed Liabilities or remedy for enforcement of the Guaranteed Liabilities, the Guarantor agrees that
- any limitation period is expressly excluded and waived entirely if permitted by applicable law;
 - if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;
 - any applicable limitation period shall not begin before an express demand for payment of the Guaranteed Liabilities is made in writing by the Financial Institution to the Guarantor;
 - any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Guaranteed Liabilities by the Guarantor; and
 - this Guarantee is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

5. NOTICES

- 5.1 NOTICE AND DEMANDS** – Any notice or demand to be given under this Guarantee must be in writing and must be
- delivered;
 - sent by mail;
 - transmitted by facsimile; or
 - sent by email

to the respective party to be served at their respective address, fax number, or email address set out on page 1 of this Guarantee or otherwise provided to the other parties in writing.

Any party may change its address, fax number, or email address for purposes of this Guarantee by notice as provided in this Section 5.1, Notices and Demands. Except as provided below and in Section 5.2, Delays, each notice and demand will be deemed to have been received by the person to whom it was addressed

- on the date of receipt if delivered;
- five days from the date of mailing if sent by mail; or
- the date of transmission if transmitted by facsimile or email.

Regardless of any other provisions of this Guarantee, any notice or demand received or otherwise deemed received

- outside the business hours of the branch office of the Financial Institution set out on page 1, or
- on a day that is not a Business Day

will be deemed to have been received on the next Business Day.

In this Part 5, Notices, "Business Day" means a day, Monday through Friday inclusive, on which the office of the Financial Institution located at the address on page 1 is open for business.

- 5.2 DELAYS** – In the event that, at the time a notice or demand is mailed as provided in Section 5.1, Notices and Demands, or at any time during the period of two Business Days following such mailing, postal, or airline or airport employees are engaged in a strike, work slowdown, other work stoppage at the place at which the notice or demand is mailed, or at the place to which the notice or demand is mailed, or at any point through which such notice or demand must pass, such notice or demand shall be deemed to have been given and received at the time when such notice or demand would be received in the ordinary course of the mails, allowing for such strikes, work slowdown, or other work stoppage.

6. CONSTRUCTION AND INTERPRETATION

- 6.1 HEADINGS** – The headings herein are inserted for convenience of reference only and shall not affect the construction or interpretation of this Guarantee.
- 6.2 GOVERNING LAW** – This Guarantee shall be governed by, and construed in accordance with, the laws of the Province where the branch office of the Financial Institution set out on page 1 of this Guarantee is located.
- 6.3 SUBMISSION TO JURISDICTION** – The Guarantor submits to the jurisdiction of the Courts of the Province where the branch office of the Financial Institution set out on page 1 of this Guarantee is located, and agrees to be bound by any suit, action, or proceeding commenced in such Courts and by any order or judgment resulting from such suit, action or proceeding, provided that the foregoing shall in no way limit the Financial Institution's right to commence suits, actions, or proceedings based on this Guarantee in any jurisdiction.
- 6.4 INVALIDITY OF ANY PROVISION** – If, in any jurisdiction, any provision in this Guarantee shall be restricted, invalid, or unenforceable, the remainder of this Guarantee shall, as to that jurisdiction only, not be affected thereby and each covenant, obligation, or provision of this Guarantee shall separately be valid and enforceable to the fullest extent permitted by law, and without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.
- 6.5 JOINT OBLIGATIONS** – If the Guarantor is more than one person, the obligations and agreements of each Guarantor shall be joint and several and this Guarantee shall be read and construed accordingly with all necessary grammatical changes.
- 6.6 ENTIRE AGREEMENT** – This Guarantee constitutes the entire agreement between the Guarantor and the Financial Institution with respect to the guarantee of the Guaranteed Liabilities and there are no representations, warranties, or collateral agreements, expressed or implied between the Guarantor and the Financial Institution save as herein contained.
- 6.7 AMENDMENTS** – No provisions of this Guarantee may be amended, modified, or waived except in writing signed by the Financial Institution.
- 6.8 ENUREMENT** – This Guarantee shall extend to, and enure to the benefit of the Financial Institution, the Financial Institution's successors and assigns and shall be binding upon the Guarantor and the Guarantor's heirs, executors, administrators, successors, and assigns and each of them.