

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N

THE BANK OF NOVA SCOTIA

Applicant

- and -

CINDERGIRLS INC.

Respondent

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**APPLICATION RECORD**

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January 13, 2020

**HARRISON PENZA LLP**

Barristers & Solicitors  
450 Talbot Street  
London Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel: (519) 679-9660  
Fax: (519) 667-3362

Solicitors for the Applicant

TO: Service List Attached

## SERVICE LIST

TO: **Cindergirls Inc.**  
214 Ontario St.  
Brighton, ON K0K 1H0

**Attention: Dorne Wilson**

AND

TO: **msi Spergel Inc.**  
505 Consumers Road, Suite 200  
Toronto, ON M2J 4V8

**Mukul Manchanda**  
Tel: (416) 498-4314  
Fax: (416) 494-7199  
Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

Proposed Receiver

AND

TO: **Canada Revenue Agency**  
c/o Department of Justice  
Ontario Regional Office  
120 Adelaide St. W., Suite 400  
Toronto, ON M5H 1T1

**Attention: Rakhee Bhandari**  
Tel: (416) 952-8563  
Email: [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca)

AND

TO: **Her Majesty the Queen in Right of Ontario**  
as represented by Ministry of Finance  
Legal Services Branch  
33 King Street West, 6th Floor  
Oshawa, ON L1H 8E9

**Attention: Kevin O'Hara**  
Senior Counsel, Ministry of Finance  
Tel: (905) 433-6934  
Fax: (905) 436-4510  
Email: [kevin.ohara@fin.gov.on.ca](mailto:kevin.ohara@fin.gov.on.ca)



AND

TO : **Municipality of Brighton**  
35 Alice Street, P.O. Box 189  
Brighton, ON K0K 1H0

**Cathy Kelly**  
Tel: (416) 457-0670, ext 201  
Fax: (513) 475-3453

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# Tab 1

CV-20-00634214-00

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

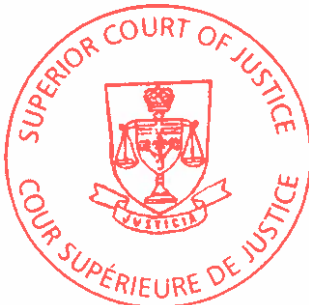
THE BANK OF NOVA SCOTIA

Applicant

-and-

CINDERGIRLS INC.

Respondent



**NOTICE OF APPLICATION**

**APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT,  
R.S.O. 1990, C.C.43**

**TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge on a date to be set by the Court at the Court House, 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant do not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.


**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer, or where the applicant do not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

CV-20-00634214-  
00CL

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: January 10<sup>th</sup>, 2020

Issued by

  
Registrar  
Superior Court of Justice  
Commercial List  
9th Floor, 330 University  
Avenue, Toronto M5G 1R7

TO: Service List

**Conrad Diamante**

**Service List**

TO: **CINDERGIRLS INC.**  
214 Ontario St.  
Brighton, ON  
K0K 1H0

**Attention: Dorne Wilson**

AND

TO: **MSI Spergel Inc.**  
505 Consumers Road., Suite 200  
Toronto, ON M2J 4V8

**Mukul Manchanda**  
Tel: (416) 498-4314  
Fax: (416) 494-7199  
Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

Proposed Receiver

AND

TO: **Canada Revenue Agency**  
c/o Department of Justice  
Ontario Regional Office  
120 Adelaide St. W., Suite 400  
Toronto, ON M5H 1T1

**Attention: Rakhee Bhandari**  
Tel: (416) 952-8563  
Email: [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca)

AND

TO: **Her Majesty the Queen in Right of Ontario**  
as represented by Ministry of Finance  
Legal Services Branch  
33 King Street West, 6th Floor  
Oshawa, ON L1H 8E9

**Attention: Kevin O'Hara**  
Senior Counsel, Ministry of Finance  
Tel: (905) 433-6934  
Fax: (905) 436-4510  
Email: [kevin.ohara@fin.gov.on.ca](mailto:kevin.ohara@fin.gov.on.ca)

AND

TO: **Municipality of Brighton**  
35 Alice Street, P.O. Box 189  
Brighton, Ontario K0K 1H0

**Attention: Cathy Kelly**  
Tel: 613-475-0670, ext 201  
Fax: 613-475-3453



**THE APPLICATION IS FOR:**

The Applicant, The Bank of Nova Scotia (the "**Bank**"), seeks the following relief:

1. An order (the "**Appointment Order**") substantially in the form attached hereto as Schedule "A", *inter alia*, appointing msi Spergel Inc. ("**Spergel**"), as Receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of the Respondent, Cindergirls Inc. (the "**Debtor**"), including the real property described at Schedule "B" hereto, acquired for, or used in relation to a business or businesses carried on by the Debtor;
2. That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and
3. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

**The Debtor**

1. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario which carried on business in and around the town of Brighton, Ontario as a garden center.
2. The Debtor owns the real property and premises municipally known as 214 Ontario Street, Brighton, Ontario (the "**Property**"), which is legally described as:

Part Lot 3 Con Broken Front Designated as Part 1 Plan 39R13426; Municipality of Brighton (PIN 51154-0553LT).

3. The Debtor is insolvent and no longer operating.
4. The Debtor operated as a greenhouse and there are potential environmental issues.
5. A demand for payment, a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* ("**BIA**"), and a Notice of Intent to Realize on Security pursuant to section 21 of the *Farm Debt Mediation Act* (the "**FDMA**") (collectively the "**Demands**") were delivered to the Debtor and all applicable notice periods have expired. The Bank is entitled to seek the appointment of a Receiver over the property of the Debtor.

#### **The Financing and the Bank's Security**

6. As of January 2, 2020, the Debtor was indebted to the Bank in the amount of \$403,127.98, plus costs, accruing interest and the Bank's continuing costs of enforcement (the "**Indebtedness**") in respect of financing advanced to the Debtor as further detailed below.
7. Pursuant to a Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan (Canadian Agricultural Loan)) (the "**Term Loan No. 1 Agreement**"); Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan (Canadian Agricultural Loan)) (the "**Term Loan No. 2 Agreement**") and Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa) (the "**Visa Agreement**") the Bank agreed to provide financing to the Debtor as follows:
  - a. A Term Loan in the sum of \$45,000 with interest due on the monies advanced at the Bank's interest prime plus 1.0% per annum (the "**Term Loan No. 1**");
  - b. A Term Loan in the sum of \$378,000 with interest due on the monies advanced at the Bank's interest prime plus 1.0% per annum (the "**Term Loan No. 2**"); and

- c. A Visa in the sum of \$10,000 with interest on the amount at the rate of 24.99% per annum (the "**Visa**").

(6 (a) to (c) collectively the "**Financing**").

- 8. The Bank holds the following as security for the Financing:

- a. First Charge/Mortgage of Land in favour of the Bank in the principal amount of \$378,000 granted by the Debtor, which mortgage was registered as Instrument Number ND143083 on December 6, 2016 in the Land Registry Office for Northumberland (No. 39) in Cobourg, Ontario (the "**Mortgage**") against title to the Property, as governed by Standard Charge Terms 20012 (the "**Standard Charge Terms**"); and

- b. A General Security Agreement in relation to Term Loan 1 dated December 2, 2016 ("**GSA**").

(7 (a) and (b) collectively, the "**Security**")

#### **The Bank's Security Interest in The Personal Property of the Debtor**

- 9. The GSA secures all present and after-acquired personal property of the Debtor.
- 10. The Bank has registered a Financing Statement against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) (the "**PPSA**") to perfect its security interest in the personal property of the Debtor secured under the GSA.
- 11. The Personal Property Security Registration System Search Results for the Debtor confirm that the Bank has a perfected security interest in the personal property of the

Debtor secured by the GSA. No other party has made a registration as against the Debtor under the PPSA.

#### **Default and Demand**

12. The Debtor has failed to make payments as required pursuant to the terms of the Financing, and has ceased operations.
13. Her Majesty the Queen in the Right of Canada as represented by the Minister of National Revenue has made a registration as against the Property on June 19, 2019 in the amount of \$34,295 in relation to the property tax arrears (the "Tax Lien").
14. The above-noted events constitute defaults under the Financing (collectively, the "Defaults").
15. As a result of the above-noted Defaults, the Bank did deliver the Demands to the Debtor.

#### **The Forbearance Agreement**

16. Following the expiry of the Demands, the Debtor requested and the Bank agreed to enter into a Forbearance Agreement to allow the Debtor an opportunity to market and sell the Property (the "Forbearance Agreement").
17. The Forbearance Agreement terminated on December 31, 2019. The Bank is advised that no offers were received for the Property.
18. A term of the Forbearance Agreement required the Debtor to provide a Consent to the appointment of a Receiver (the "Consent").
19. The Bank is not willing to provide any further forbearance to the Debtor.

### **The Rationale and Authority for the Appointment Order**

20. The Debtor is in default of the Financing and is insolvent. No further credit is available to the Debtor from the Bank. The Demands have expired.
21. The provisions of the Mortgage and GSA provide for the appointment of a Receiver over the personal property of the Debtor on default.
22. The appointment of a Receiver is necessary to safeguard the interests of the Bank with respect to the assets and the Property and to ensure the orderly sale of same.
23. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estates of the Debtors, and the interests of the Bank, as secured creditor, and other stakeholders.
24. The Bank proposes that Spergel be appointed as Receiver over the Property as secured by the Mortgage and all personal property of the Debtor as secured by the GSA.
25. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
26. Section 243 of the *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended*.
27. Section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*.
28. Rule 3, 14, 38 and any other applicable Rule of the *Rules of Civil Procedure*.
29. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

1. The Notice of Application and all Schedules thereto;
2. The Affidavit of Judy Vielle sworn January 10, 2020, and all Exhibits thereto;
3. The Consent of the Receiver; and
4. Such further and other material as counsel may advise and this Honourable Court may permit.

January 10, 2020

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
[mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)

Lawyers for the Applicant  
The Bank of Nova Scotia

To: Service List

**Schedule "A" – Appointment Order**

**SCHEDULE "A"**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 29TH
	)	
JUSTICE	)	DAY OF JANUARY, 2020

**THE BANK OF NOVA SCOTIA**

**Plaintiff**

- and -

**CINDERGIRLS INC.**

**Defendant**

**ORDER  
(appointing Receiver)**

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel Inc. ("Spergel") as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties, including the real property detailed at Schedule "A", of Cindergirls Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Judy Vielle sworn [DATE] and the Exhibits thereto and on hearing the submissions of counsel for The Bank of Nova Scotia, no one appearing for Cindergirls Inc. although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of Spergel to act as the Receiver,



## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Spergel is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and the real property described at Schedule "A" (the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act* and section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required, and in each case the *Ontario Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to

whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order



shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and

is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile

transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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DOCSTOR: 1771742/8

**SCHEDULE "A"**

Part Lot 3 Con Broken Front Designated as Part 1 Plan 39R13426; Municipality of Brighton (PIN 51154-0553LT).

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the assets, undertakings and properties Cindergirls Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NOVA SCOTIA

and

CINDERGIRLS INC.

Plaintiff

Defendant

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT TORONTO  
COMMERCIAL LIST

**ORDER**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 661-6725  
Fax: (519) 667-3362

Lawyers for the Plaintiff



**Schedule "B" - Property**

Part Lot 3 Con Broken Front Designated as Part 1 Plan 39R13426; Municipality  
of Brighton (PIN 51154-0553LT).

THE BANK OF NOVA SCOTIA  
Plaintiff

and

CINDERGIRLS INC.  
Defendant

CV-20-00634214-00CL  
Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 661-6725  
Fax: (519) 667-3362

Lawyers for the Plaintiff

# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

THE BANK OF NOVA SCOTIA

Plaintiff

-and-

CINDERGIRLS INC.

Defendant

**AFFIDAVIT OF JUDY VIELLE**  
(sworn January 10, 2020)

I, **Judy Vielle**, of the City of Toronto, in the Province of Ontario, **MAKE OATH**  
**AND SAY:**

1. I am a Litigation Officer with the Canada Collections – Small Business Centre at the Bank of Nova Scotia (the “**Bank**”) and as such have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.

**The Debtor**

2. The Defendant, Cindergirls Inc. (the “**Debtor**”), is a company incorporated pursuant to the laws of the Province of Ontario which carried on business in and around the town of Brighton, Ontario as a garden center. Attached hereto to this

my affidavit and marked as **Exhibit “A”** is a true copy of the Corporate Profile report of the Debtor.

3. The Debtor owns the real property and premises municipally known as 214 Ontario Street, Brighton, Ontario (the “**Property**”), which is legally described as:

Part Lot 3 Con Broken Front Designated as Part 1 Plan 39R13426;

Municipality of Brighton (PIN 51154-0553LT).

Attached hereto to this my affidavit and marked as **Exhibit “B”** is a true copy of the parcel abstract for the Property.

4. The Bank has conducted searches as against the Debtor under the *Personal Property Security Act* (the “**PPSA**”) and the *Bank Act*. Attached hereto to this my affidavit and marked as **Exhibit “C”** is a true copy of the *PPSA* search results for the Debtor current to January 6, 2020. Attached hereto to this my affidavit and marked as **Exhibit “D”** is a true copy of the *Bank Act* search results for the Debtor.
5. The Bank is the only party that has made a registration as against the Debtor pursuant to the *PPSA*.

#### **The Financing and the Mortgage**

6. As of January 2, 2020, the Debtor was indebted to the Bank in the amount of \$403,127.98, including costs paid to date, plus accruing interest and the Bank’s continuing costs of enforcement (the “**Indebtedness**”) in respect of financing advanced to the Debtor as further detailed below. Attached hereto to this my affidavit and marked as **Exhibit “E”** is a true copy of the account statements.

7. Pursuant to a Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan (Canadian Agricultural Loan)) (the “**Term Loan No. 1 Agreement**”); Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan (Canadian Agricultural Loan)) (the “**Term Loan No. 2 Agreement**”) and Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa) (the “**Visa Agreement**”) the Bank agreed to provide financing to the Debtor as follows:

- a) A Term Loan in the sum of \$45,000 with interest due on the monies advanced at the Bank’s interest prime plus 1.0% per annum (the “**Term Loan No. 1**”);
- b) A Term Loan in the sum of \$378,000 with interest due on the monies advanced at the Bank’s interest prime plus 1.0% per annum (the “**Term Loan No. 2**”); and
- c) A Visa in the sum of \$10,000 with interest on the amount at the rate of 24.99% per annum (the “**Visa**”).

(6 (a) to (c) collectively the “**Financing**”). Attached hereto to this my affidavit and marked as **Exhibit “F”** are true copies of the Term Loan No. 1 Agreement, the Term Loan No. 2 Agreement and the Visa Agreement.

8. The Bank holds the following as security for the Financing:

- a) Charge/Mortgage of Land in favour of the Bank in the principal amount of \$378,000 granted by the Debtor, which mortgage was registered as Instrument Number ND143083 on December 6, 2016 in the Land Registry Office for Northumberland (No. 39) in Cobourg, Ontario (the “**Mortgage**”)

against title to the Property as governed by Standard Charge Terms 20012 (the “**Standard Charge Terms**”); and

- b) A General Security Agreement in relation to Term Loan 1 dated December 2, 2016 (“**GSA**”).

Attached hereto to this my affidavit and marked as **Exhibit “G”** is a true copy of the Mortgage. Attached hereto to this my affidavit and marked as **Exhibit “H”** is a true copy of the Standard Charge Terms. The GSA can be found at page two (2) of the Term Loan No. 1 Agreement at Exhibit F.

### **The Property**

- 9. The Property is located in the County of Northumberland. Located on the Property is a greenhouse structure which has not been regularly maintained.
- 10. Her Majesty the Queen in the Right of Canada as represented by the Minister of National Revenue has made a registration as against the Property on June 19, 2019 in the amount of \$34,295 in relation to the property tax arrears (the “**Tax Lien**”).

### **The Bank’s Security Interest in the Property**

- 11. The Bank’s interest in the Property is secured by the Mortgage, as governed by the Standard Charge Terms, and the Mortgage is a first charge upon the Property.
- 12. The Standard Charge Terms include, *inter alia*, the following terms (emphasis added):

#### **2. COLLATERAL SECURITY**

The Chargor [The Debtor] has at the request of the Chargee [the Bank] agreed to give the Charge as a continuing collateral security for payment and satisfaction to the Chargee of all obligations, debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, at any time owing by the Chargor to the Chargee incurred or arising either before or after the delivery for registration of the Charge and whether incurred by or arising from agreement or dealings between the Chargor and the Chargee or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Chargor or however otherwise incurred or arising anywhere within or outside Canada and whether the Chargor be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such obligations, debts and liabilities being herein called the "Liabilities"). It is agreed by the Chargor and the Chargee that the Charge at any one time will secure only that portion of the aggregate principal component of the Liabilities outstanding at such time which does not exceed the sum set out in the Computer Field in the Charge entitled "Principal" (herein called the "Principal Amount"), together with any interest or compound interest accrued on the portion of the Principal Amount outstanding at such time at the Charge Rate, as hereinafter defined, plus such costs and expenses to which the Chargee is entitled pursuant to the Charge.

### 3. COVENANTS REGARDING LIABILITIES

The Chargor and the Chargee agree as follows: (a) That the Chargor covenants to pay to the Chargee each and every amount, indebtedness, liability and obligation forming part of the Liabilities in the manner agreed to in respect of such amount, indebtedness, liability or obligation. (b) That no part of the Liabilities existing at the date of the Charge or incurred or arising thereafter, shall be deemed to be unsecured by the Charge. (c) That the Charge is and shall be a continuing collateral security to the Chargee for the amount of the Liabilities and interest and costs as provided in the Charge and shall be deemed to be taken as security for the ultimate balance of the Liabilities; and the Charge shall not, nor shall anything therein contained operate so as to create any merger or discharge of any debt owing to the Chargee or of any lien, bond, promissory note, bill of exchange or other security held by the Chargee either before or after registration of the Charge from the Chargor or from any other person or persons and the Charge shall not in any way prejudicially affect any security held either before or after the registration of the Charge by the Chargee for the Liabilities or any part thereof, or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the Liabilities or any part or parts thereof, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of the Charge.

### COVENANTS IN LIEU OF STATUTORY COVENANTS

The Chargor does hereby covenant, promise and agree to and with the Chargee as follows: (a) To Pay and Observe Covenants That the Chargor shall pay or cause to be paid to the Chargee, without deduction or abatement, the Principal Amount secured by the Charge with interest at the Charge Rate at the times and in the manner limited for payment thereof in the Charge, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations particularly set forth in the Charge, and, without limitation, shall pay any taxes, rates, levies, charges or assessments including, without limitation, utility charges, upon the Charged Premises or in respect thereof, no matter by whom or by what authority imposed, which the Chargee has paid or has been rendered liable to pay and shall also pay all other sums as the Chargee may be entitled to under the Charge.



13. Pursuant to the Standard Charge Terms, the Mortgage secures payment of the Indebtedness.

**The Bank's interest in the Personal Property of the Debtor**

14. The GSA is further governed by the Business Banking Service Agreement. Attached hereto to this my affidavit and marked as **Exhibit "I"** is a true copy of the Business Banking Service Agreement.
15. The GSA and Business Banking Service Agreement includes, *inter alia*, the following terms:

- a) All present property and property acquired in the future, including inventory, furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable;
- b) We [the Bank] have the right to require immediate payment at any time if the agreement specifies that a credit facility must be paid on demand. If a credit facility is not a demand loan, we still have the right to demand immediate payment of the entire amount if any of the following events happen. These events are called default events:
  - i. You fail to pay, when its due, any payment required by the agreement;
  - ii. In our opinion, there is any material unfavourable change in your financial condition, the financial condition of any guarantor or the operation of your business;

- iii. Any property secured is in danger of being lost, damaged or confiscated

**Default and Demands and the Prospective Sale**

- 16. The Debtor has defaulted on the terms of the Financing by failing to make payments as required and by ceasing to operate. Failure to pay the Indebtedness owing under the Financing as it becomes due constitutes a Default under the Standard Charge Terms (the “**Default**”).
- 17. Further, the registration of the Tax Lien is a default pursuant to the terms of the Financing.
- 18. As a result of the Default, the Bank did deliver to the Debtor the following:
  - a) A demand for payment, a Notice of Intention to Enforce Security pursuant to section 244(1) of the Bankruptcy and Insolvency Act (“**BIA**”), and a Notice of Intent to Realize on Security pursuant to section 21 of the Farm Debt Mediation Act (the “**FDMA**”) each dated January 30, 2019 in relation to the Financing (collectively, the “**Demands**”).

Attached hereto to this my affidavit and marked as **Exhibit “J”** are true copies of the Demands.

- 19. All notice periods under the Demands have expired.
- 20. Following the expiry of the Demands, the Bank issued a Statement of Claim on March 12, 2019 against the Debtor for payment of the Indebtedness and possession of the Property. No Statement of Defence was received and the Bank

obtained default Judgment on June 20, 2019 (the “**Judgment**”). Attached hereto to this my affidavit and marked as **Exhibit “K”** is a true copy of the Judgment.

### **The Forbearance Agreement**

21. Following the expiry of the Demands, the Debtor requested and the Bank agreed to enter into a Forbearance Agreement to allow the Debtor an opportunity to market and sell the Property (the “**Forbearance Agreement**”). Attached hereto to this my affidavit and marked as **Exhibit “L”** is a true copy of the Forbearance Agreement dated August 2, 2019.
22. The Forbearance Agreement terminated on December 31, 2019. We are advised that no offers were received for the Property.
23. A term of the Forbearance Agreement required the Debtor to provide a Consent to the appointment of a Receiver (the “**Consent**”). The Consent can be found at page seventeen (17) of the Forbearance Agreement at Exhibit L.
24. The Bank is not willing to provide any further forbearance to the Debtor.

### **The Appointment of a Receiver**

25. The Indebtedness due pursuant to the Demands has not been paid. The period under section 244 of the BIA and the period under section 21 of the FDMA have each expired. The Bank is in a position to appoint a receiver over the Property as secured by the Mortgage, pursuant to section 243 of the BIA.
26. The Standard Charge Terms grant the Bank the power to appoint a Receiver over the Property as a result of the Default, and state, in part (emphasis added):

#### **4. OUR SECURITY**

*(a) What the mortgage does*

Except where your interest in the property is as a tenant under a lease, you hereby grant and mortgage your entire interest in the property to us, as security for the payment of the obligations secured. This means you give your entire interest in the property to us and our successors and assigns (called our legal representatives) and which includes anyone to whom this mortgage is transferred in any way.

The mortgage secures a current or running account. Although the mortgage is not satisfied or discharged by any intermediate payment of all or part of the obligations secured but is a continuing security for payment of the obligations secured, our interest in the property under the mortgage will end when:

- (i) you have repaid the obligations secured on our demand and repaid all additional amounts to which we may become entitled under the mortgage, and,
- (i) you have fulfilled all of your other obligations to us under the mortgage, and,
- (ii) we have delivered to you a discharge of the mortgage. You may remain in possession of the property as long as you are not in default under any of the obligations secured or under any agreements evidencing or securing the obligations secured and as long as you meet all your other obligations to us under the mortgage.

## **7. ENFORCING OUR RIGHTS**

If you fail to comply with any of your obligations under the mortgage, or if any part of the obligations secured is not paid when due, or if an event of default occurs under any agreement that relates to the obligations secured, we may enforce our rights in any of the ways set out below. These provisions do not limit any other rights given to us by law or the mortgage. We may enforce this and any other security we may have for any of the obligations secured, and enforce our rights under the mortgage, at the same time or at different times and in any order we choose.

...

### **(f) We may appoint a receiver**

We may appoint in writing a receiver (or receiver and manager), on any terms (including remuneration) that we think are reasonable, to collect any income from the property. We may make the appointment even if we have taken possession of the property. We may also, in writing, remove a receiver appointed by us and appoint a new receiver.

The receiver is considered to be your agent and not ours; his defaults are considered your defaults and not ours.

Nothing done by the receiver puts us in possession of the property or makes us accountable for any money except money we actually receive.

The receiver has the right to use any legal remedy (taken in your name or our name) to collect the income from the property; take possession of the property or part of it; manage the property and any business conducted on the property and maintain the property in good condition; lease the property or any part of it; enforce any of our other rights under the mortgage which we delegate to him; and borrow money on the security of the property in priority to the mortgage for these purposes.

27. The GSA and Business Banking Service Agreement grant the Bank the power to appoint a Receiver upon default and includes the following, *inter alia*, terms:

- a) We may appoint a receiver or a receiver-manager if we choose to do so. The receiver or receiver-manager will have all our rights, benefits and powers provided by these terms and conditions or any law, including the right to sell or lease property;
- b) Once the receiver or receiver-manager has been appointed, he or she has the power, but not the obligation, to operate your business, and may borrow money for that purpose. The receiver or receiver-manager will be your agent, however, and we will not be responsible for any misconduct or negligence on his or her part. If we appoint a receiver or receiver-manager, we will charge the costs to your account, and they will be added to the amount you owe us. The security you grant us will cover these costs and any money borrowed by the receiver or receiver-manager;
- c) We are entitled to seize or foreclose and take the property which is the security for your indebtedness. If we do, we will consider the indebtedness to be repaid to the extent required by law;
- d) We can choose how to deal with the property once we can realize. We are entitled to realize at any time after you default on any of the requirements of the agreement or we have demanded payment and you have failed to pay in full. We are only required to give you the notice required by law;
- e) We can sell the property in any way we choose, including private sales and auctions. We may purchase the property ourselves in any sale process and we can accept deferred payment terms in any sale;
- f) If we sell the property, we may apply the proceeds of the sale to the costs and expenses including without limitation receivership costs and legal fees on

a solicitor and his/her own client basis, and then to repay your obligation to us as we determine. After that, we will pay you any remaining amount as required by law;

- g) You must pay any remaining amount if the proceeds from the sale or the value of the property seized or foreclosed is not enough to repay your entire obligation to us. We are only required to be reasonable in the sale, seizure or foreclosure process. We are not required to get the best price or wait to sell if the market isn't good.

- 28. The Debtor is in Default of the Financing, and the loans advanced thereunder are due and payable in full. The Bank is entitled to seek the appointment of a Receiver over the Property and personal property of the Debtor as a result thereof, and the terms of the Mortgage and the GSA provide the Bank with the power to appoint a Receiver over the Property and personal property of the Debtor.

#### **The Bank's Position**

- 29. The Debtor is in default of the Financing. No further credit is available to the Debtor from the Bank.
- 30. The Debtor is insolvent and no longer operating. The Demands have expired and the Bank is in a position to seek the order appointing the Receiver. The Bank is unwilling to provide the Debtor with any further forbearance.
- 31. As a result of the nature of the Debtor's business the Bank is concerned about potential environmental issues.
- 32. The Bank states that a Receiver is required to ensure that any sale of the Property and personal assets of the Debtor are completed in an orderly and

provident manner, and to ensure that the proceeds of same are applied to the Indebtedness; further, a Receiver will be necessary to ensure that any additional encumbrances on the Property, such as the Tax Lien, are dealt with equitably and with the approval of this Honourable Court.

33. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estates of the Debtor, and the interests of the Bank, as secured creditor, and other stakeholders.
34. The Bank proposes that msi Spergel Inc. ("Spergel") be appointed as Receiver, without security, of the Property, as secured by the Mortgage and the personal property of the Debtor as secured by the GSA.
35. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
36. This affidavit is made in support of the within application for the appointment of Spergel as Receiver of the Property and personal property of the Debtor, and for no other improper purpose.

SWORN BEFORE me at the  
City of Toronto, in the Province  
of Ontario, this 10 day  
of January, 2020

  
A Commissioner, etc.

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\_\_\_\_\_  
JUDY VIELLE

**Scott Michael Gordon Murphy, a  
Commissioner, etc., Province of Ontario,  
for The Bank of Nova Scotia.  
Expires July 18, 2022.**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**BETWEEN:**

**THE BANK OF NOVA SCOTIA**

**Plaintiff**

**-and-**

**CINDERGIRLS INC.**

**Defendant**

**ATTACHED HERETO ARE EXHIBITS "A" TO "L"  
AS REFERRED TO IN THE AFFIDAVIT OF JUDY VEILLE,  
SWORN BEFORE ME ON JANUARY 10, 2020.**

  
\_\_\_\_\_  
A Commissioner, etc.

**Scott Michael Gordon Murphy, a  
Commissioner, etc., Province of Ontario,  
for The Bank of Nova Scotia.  
Expires July 18, 2022.**



# EXHIBIT "A"

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2548150	CINDERGIRLS INC.	2016/11/25
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
214 ONTARIO ST	NOT APPLICABLE	NOT APPLICABLE
	New Amal. Number	Notice Date
BRIGHTON ONTARIO CANADA K0K 1H0	NOT APPLICABLE	NOT APPLICABLE
		Letter Date
Mailing Address		NOT APPLICABLE
DORNE WILSON 214 ONTARIO STREET	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
BRIGHTON ONTARIO CANADA K0K 1H0	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Commenced in Ontario
	00001 00010	NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
Activity Classification		
NOT AVAILABLE		

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2548150

**Corporation Name**

CINDERGIRLS INC.

**Corporate Name History**

CINDERGIRLS INC.

**Effective Date**

2016/11/25

**Current Business Name(s) Exist:**

YES

**Expired Business Name(s) Exist:**

NO

**Administrator:  
Name (Individual / Corporation)**

DORNE  
WILSON

**Address**

214 ONTARIO STREET  
  
BRIGHTON  
ONTARIO  
CANADA K0K 1H0

**Date Began**

2016/11/25

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2548150

**Corporation Name**

CINDERGIRLS INC.

**Administrator:  
Name (Individual / Corporation)**

DORNE  
WILSON

**Address**

214 ONTARIO STREET  
  
BRIGHTON  
ONTARIO  
CANADA K0K 1H0

**Date Began**

2016/11/25

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:  
Name (Individual / Corporation)**

DORNE  
WILSON

**Address**

214 ONTARIO STREET  
  
BRIGHTON  
ONTARIO  
CANADA K0K 1H0

**Date Began**

2016/11/25

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2548150

**Corporation Name**

CINDERGIRLS INC.

**Administrator:  
Name (Individual / Corporation)**

DORNE  
WILSON

**Address**

214 ONTARIO STREET  
  
BRIGHTON  
ONTARIO  
CANADA K0K 1H0

**Date Began**

2016/11/25

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

TREASURER

**Resident Canadian**

Y

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2548150

**Corporation Name**

CINDERGIRLS INC.

**Last Document Recorded**

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2016	1C	2017/09/10 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

# EXHIBIT "B"

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

<u>PROPERTY DESCRIPTION:</u>				PART LOT 3 CON BROKEN FRONT DESIGNATED AS PART 1 PLAN 39R13426; MUNICIPALITY OF BRIGHTON				
<u>PROPERTY REMARKS:</u>				PLANNING ACT CONSENT IN DOCUMENT ND143082.				
<u>ESTATE/QUALIFIER:</u>				<u>RECENTLY:</u>				
FEE SIMPLE				DIVISION FROM 51154-0491				
LT CONVERSION QUALIFIED				<u>CAPACITY</u> <u>SHARE</u>				
OWNERS' NAMES				CINDERGIRLS INC.				
CINDERGIRLS INC.				PIN CREATION DATE: 2016/12/16				
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM		PARTIES TO		CERT/ CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND		DELETED INSTRUMENTS SINCE 2016/12/16 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE		LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES		*					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.							
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF							
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY							
**	CONVENTION.							
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.							
**DATE OF CONVERSION TO	LAND TITLES: 2008/11/24 **							
39R13426	2016/09/08	PLAN REFERENCE						C
ND143082	2016/12/06	TRANSFER	\$378,000	WAIN, GARY WAIN, PAUL STANLEY		CINDERGIRLS INC.		C
REMARKS: PLANNING ACT STATEMENTS.								
ND143083	2016/12/06	CHARGE	\$378,000	CINDERGIRLS INC.		THE BANK OF NOVA SCOTIA		C
ND182931	2019/06/19	LIEN	\$34,295	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE				C
REMARKS: TAX LIEN								

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



# EXHIBIT "C"

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 1/7/2020  
File Currency Date: 01/06/2020  
Family(ies): 1  
Page(s): 1

SEARCH : Business Debtor : CINDERGIRLS INC.

The attached report has been created based on the data received by Cyberbahn, a Thomson Reuters business from the Province of Ontario, Ministry of Government Services. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 1/7/2020  
File Currency Date: 01/06/2020  
Family(ies): 1  
Page(s): 1

SEARCH : Business Debtor : CINDERGIRLS INC.

FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 1  
SEARCH : BD : CINDERGIRLS INC.

00 FILE NUMBER : 723114234 EXPIRY DATE : 05DEC 2021 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20161205 1517 1532 2975 REG TYP: P PPSA REG PERIOD: 5  
02 IND DOB : IND NAME:  
03 BUS NAME: CINDERGIRLS INC

OCN :

04 ADDRESS : 214 ONTARIO STREET  
CITY : BRIGHTON PROV: ON POSTAL CODE: K0K 1H0  
05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
THE BANK OF NOVA SCOTIA

09 ADDRESS : 4715 TAHOE BLVD  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4W 0B4  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X X  
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: CSRS

17 ADDRESS : 4126 NORLAND AVE  
CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

# EXHIBIT "D"

## Confirmation Letter / Lettre de confirmation

**Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties**

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la *Loi sur les banques*.

2020/01/08 12:37:12 PM PST

Dye & Durham Corporation  
130 King Street West, Suite 501  
Toronto, Ontario  
M5X 1E4

Ref / Objet: 04677224

Tel/Tél: 1-416-964-2677  
Fax/Télécopie: 1-416-923-1077  
e-Mail/Courriel:

Acct#: 7129

Dear Sir / Madam

Monsieur / Madame

Re: **Bank Act Security - Section 427**

Objet: **Garanties données en vertu de la *Loi sur les banques* - article 427**

We have processed your request(s) and hereby confirm the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (\* voir ci-dessous).

### REFERENCE

(2) A search has been made of the [notices of intention to give security](#) under the Bank Act registered in the province of [Ontario](#). As at the date and time above, our records indicate the following.

### REFERENCE

(2) Nous avons examiné [les préavis](#) qui se rapportent aux garanties données en vertu de la *Loi sur les banques* et qui sont enregistrés pour la province de: [Ontario](#). À la date et à l'heure indiquées ci-dessus.

### Your search for the company

[CINDERGIRLS INC.](#)

returns the following results:

### Votre recherche pour la société

[CINDERGIRLS INC.](#)

révèle les résultats suivants:

Type	Registration Name Enregistrement au nom de	Address Adresse	Date	Number Numéro	Bank Banque
(2)	No matches were found / Aucune donnée correspondante au registre				



For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les montants s'établissent comme suit:

Type	Fee Tarif	GST/HST TPS/TVH	Qty Qté	TOTAL	Receipt No. Numéro du reçu
(2)	\$14.00	\$0.78	1	\$14.78	04677224 - R-R-SN-W
				<b>\$14.78</b>	

GST-HST / TPS-TVH #: 713 901 494 RT0001

# EXHIBIT "E"

[Quick Tools](#)[Rates](#)[Scotiabank](#) 

## Scotia Momentum VISA Account Inquiry - Profile

[Help](#)

**Sub Product : for business**

**Account Number : 4538 270 552  
198**

**Status : CLOSED -  
Derogatory**

**Expiry Date :  
2021/01**

### Customer Details

Customer Name: MR DORNE J  
WILSON

CRI: E

Account Title: MR DORNE J  
WILSON

Business Legal  
Name : CINDERGIRLS INC.

### Servicing Details

BLT : 23952

Relationship Manager  
Code :

### Balance Details

Credit Limit : \$1,957.00

Credit Limit Date :

Available Credit : ▼

Payout Amount : \$2,449.82

Outstanding Balance : \$1,956.40

**CLOSE LOAN INQUIRY****Page:** 1**Date:** 1/2/2020**Account Number:** 239520000162**BLT:** 23952**Short Name:** CINDERGIRLS**Step** N**Loan No:** 01**Loan Currency:** CAD**Status:** Delinquent**Type:** 3091**Description:** FIMCLA Loans (Feb 1/88 - extend'd  
indefly ); Farm Improvement Loans**Close Loan Inquiry**

<b>O/S Amount:</b>	\$37,125.00 CAD	<b>Closing Amount:</b>	\$39,587.36
<b>Uncollected Interest:</b>	\$0.00		
<b>Interest Rebate:</b>	\$0.00	<b>Arrears Amount:</b>	\$39,587.36
<b>Interest to Date:</b>	\$2,462.36	<b>No. of Payments Remaining:</b>	39
<b>Payment Amount:</b>	\$375.00	<b>No. of Days Late:</b>	491
<b>Payment Due Date:</b> 2018-09-28		<b>No. of Times Delinquent:</b>	2
<b>Last Activity Date:</b> 2018-08-28			

**Message**



**CLOSE LOAN INQUIRY****Page:** 1**Date:** 1/2/2020**Account Number:** 239520000162**BLT:** 23952**Short Name:** CINDERGIRLS**Step** N**Loan No:** 02**Loan Currency:** CAD**Status:** Delinquent**Type:** 3091**Description:** FIMCLA Loans (Feb 1/88 - extend'd  
indefly ); Farm Improvement Loans**Close Loan Inquiry**

<b>O/S Amount:</b>	\$338,100.00 CAD	<b>Closing Amount:</b>	\$361,090.80
<b>Uncollected Interest:</b>	\$0.00		
<b>Interest Rebate:</b>	\$0.00	<b>Arrears Amount:</b>	\$361,090.80
<b>Interest to Date:</b>	\$22,990.80	<b>No. of Payments Remaining:</b>	39
<b>Payment Amount:</b>	\$2,100.00	<b>No. of Days Late:</b>	542
<b>Payment Due Date:</b> 2018-09-15		<b>No. of Times Delinquent:</b>	2
<b>Last Activity Date:</b> 2018-08-15			

**Message**

# EXHIBIT "F"

**Credit Agreement for business**

In this form, you and your mean the business customer and we, our, us and the Bank mean Scotiabank, The Bank of Nova Scotia

This Credit Agreement, together with the Credit Agreement section of the Business Banking Services Agreement, all certifications and consents provided in any application for any banking services, and any schedules attached hereto, is the complete agreement between you and the Bank for the loans described here. Security for all loans is set out under the heading "Security".

**Business Customer Information**

Date (mm/dd/yyyy)  
12/02/2016

Business Customer's Full Legal Name (Name of Individual Unless a Registered Partnership or Corporation) CINDERGIRLS INC.			
Trading As			
Main Business Address 2207 EMBLETON RD ATW	City or Town BRAMPTON ATW	Province ON	Postal Code L6Y0G2 ATW
Deposit Account Number	Branch 66662 - BRAMPTON BUSINESS BANKING CENTRE 284 QUEEN STREET EAST BRAMPTON, ON L6V 1C2		

**Your Loans With Us Credit Line**

The completed sections describe the loan or loans you requested and we approved.

Limit \$50,000	Interest Prime plus 3.250%
Application Fee	Monthly Monitoring Fee
	\$25

Your Credit Line must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Credit Line must be paid on demand.

**Overdraft Protection**

Limit	Interest Prime plus	Monthly Availment Fee \$
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Your Overdraft Protection credit must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Overdraft Protection credit must be paid on demand.

**ScotiaLine® for business VISA® Card**

Limit	Interest Prime plus	Monthly Payment/Option <input type="checkbox"/> 3% <input type="checkbox"/> 2% <input type="checkbox"/> Interest Only
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Your ScotiaLine for business VISA card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your ScotiaLine for business VISA card.

**Scotiabank VISA® Business Card**

Limit
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Your Scotiabank VISA Business Card must be paid as set out in the Scotiabank VISA Business Card Agreement which is provided to you prior to program implementation.

**Credit Card for business**

Credit Card	Limit
-------------	-------

Your card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your Credit card.

**Term Loan**

Is the loan guaranteed under the Canada Small Business Financing Act (CSBFA) or the Canadian Agriculture Loans Act (CALA)?

- ☐ Yes If Yes, you confirm that you make the declarations in section 10 of the Credit Agreement contained within the Business Banking Services Agreement and that they are true and correct.
- ☐ No

Amount of Loan	Term of Loan months	Amortization months	Government Registration/Application Fee
Purpose of Loan			

**Advance Arrangement**

--

**Principal Repayment Arrangements for your Term Loan**

You will make your first principal payment on (mm/dd/yyyy)	Approved interest only period months
--	---

Check and complete one of the three options below.

- ☐ Floating rate, principal payments plus variable rate interest payments.

Interest Prime plus	Principal Payment \$	Principal Payment Frequency
------------------------	-------------------------	-----------------------------

- ☐ Fixed rate, blended payments of interest and principal.

Interest %	Payment Amount \$	Final Payment \$	Payment Frequency
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- ☐ Fixed rate, principal plus variable interest payments.

Interest %	Principal Payment \$	Final Payment \$	Principal Payment Frequency
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**Other Fees**

These fees do not apply for CSBFA or CALA loans.

Fee Type	Payment	Payment Frequency
Fee Type	Payment	Payment Frequency

**Amendments to a Previous Agreement**

If this agreement amends a previous agreement, complete the following.  
This Credit Agreement amends the previous Customer or Credit Agreement dated but does not create a new loan.

(mm/dd/yyyy)

**Other Conditions**

Please initial if there is a Schedule of Conditions and Reporting Requirements for your loan attached to this Credit Agreement. Your initial is your agreement to be bound by the terms of this schedule.

Initials N/A
-----------------

Initials  
ATW

**Security**

Please read and initial the completed sections for the property you are granting to the Bank as security for your obligations under this Credit Agreement and the Credit Agreement section of the Business Banking Services Agreement. Your initials confirm that you are hereby granting the mortgage, security interest, assignment and hypothec outlined in section 12 of the Credit Agreement section of the Business Banking Services Agreement on the property described beside your initials (notwithstanding any limitations contained in any Application(s) - Banking Services for business). If any of the property is located in Quebec, the mortgage and security includes a hypothec for an amount equal to 150 percent of the aggregate of the initial limits described in the first page hereof.

Initials  
N/A

**General Security** All present property and property acquired in the future, including inventory, furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable.

**Equipment or Goods** Equipment or goods include furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools and vehicles, but not inventory. Attach a schedule if you need more room to describe your equipment or goods.

Initials  
N/A

Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$

Initials  
N/A

**Leaseholds** Leasehold improvements, as specifically described.

Description	
Legal Description of Premises	Value
	\$

Initials  
JTW

**Other Security** Other property, specified below

Type	Scotiabank Non-redeemable GIC for \$50,000	Particulars
		Owned by CINDERGIRLS INC.
Type		Particulars
Type		Particulars

Initials  
N/A

**Other Agreements** You must provide the following other agreements to the Bank.

Type	Particulars
Type	Particulars
Type	Particulars

Initials  
N/A

**Third Party Security** You must make sure that the following security from other persons is provided to the Bank. Third party guarantors and corporate guarantors must sign the Bank's standard guarantee form.

Type	Particulars
Type	Particulars

**Personal Guarantees** By signing this Credit Agreement, the guarantor agrees to be bound by this agreement and the Credit Agreement section of the Business Banking Services Agreement, and is responsible for the repayment of the customer's obligations to the Bank, to the amount noted below. The guarantor also acknowledges having received and read the Business Banking Services Agreement, in particular, the section of the Credit Agreement, which outlines the guarantor's obligations.

Guarantor Name	DORNE WILSON	Guarantee Amount	Unlimited.
Guarantor Signature	<i>Dorne Jonathan Wilson</i>	Witness	<i>[Signature]</i>
Guarantor Name		Guarantee Amount	
Guarantor Signature		Witness	
Guarantor Name		Guarantee Amount	
Guarantor Signature		Witness	

**Signatures**

By signing below, you agree that this Credit Agreement for business:

- is a binding agreement and incorporates the Credit Agreement section of the Business Banking Services Agreement.
  - Your signature also confirms that:
  - you will provide us with evidence of insurance for your property granted as security with loss payable to the Bank.
  - you have received a copy of the Business Banking Services Agreement and you have read and understood the Credit Agreement section before signing this Credit Agreement.
  - you have received a copy of the Scotiabank Group Privacy Agreement
  - you and the Bank require that this agreement and all related documents be drawn up and executed only in English.
- Les parties conviennent et exigent expressément que ce contrat et tous documents et avis émis en vertu de celui-ci ou s'y rattachant soient rédigés en anglais.
- you are aware of the information disclosure authorized by the Credit Agreement section of the Business Banking Services Agreement and the applicable loan request or credit application.

Customer - Individual

Signature	Witness
-----------	---------

Partnership or Corporation

Business Name			
CINDERGIRLS INC.			
Signature	Title	Signature	Title
<i>Dorne Jonathan Wilson</i>	President		

The Bank of Nova Scotia

Per (Authorized Signing Office)

DATE RECEIVED  
RECORDED  
APPROVED  
E.O. AUDITOR

# Credit Agreement for business

In this form, you and your mean the business customer and we, our, us and the Bank mean Scotiabank, The Bank of Nova Scotia

This Credit Agreement, together with the Credit Agreement section of the Business Banking Services Agreement, all certifications and consents provided in any application for any banking services, and any schedules attached hereto, is the complete agreement between you and the Bank for the loans described here. Security for all loans is set out under the heading "Security".

## Business Customer Information

Date (mm/dd/yyyy)  
12/02/2016

Business Customer's Full Legal Name (Name of Individual Unless a Registered Partnership or Corporation) CINDERGIRLS INC.			
Trading As 214 ONTARIO ST BRAMPTON ON L6Y0G6			
Main Business Address 2207 EMBLETON RD	City or Town BRAMPTON	Province ON	Postal Code L6Y0G6
Deposit Account Number		Branch 66662 - BRAMPTON BUSINESS BANKING CENTRE 284 QUEEN STREET EAST BRAMPTON, ON L6V 1C2	

## Your Loans With Us Credit Line

The completed sections describe the loan or loans you requested and we approved.

Limit	Interest Prime plus
Application Fee	Monthly Account Fee
	Monthly Monitoring Fee

Your Credit Line must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Credit Line must be paid on demand.

## Overdraft Protection

Limit	Interest Prime plus	Monthly Availment Fee \$
-------	------------------------	-----------------------------

Your Overdraft Protection credit must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Overdraft Protection credit must be paid on demand.

## ScotiaLine® for business VISA® Card

Limit	Interest Prime plus	Monthly Payment/Option <input type="checkbox"/> 3% <input type="checkbox"/> 2% <input type="checkbox"/> Interest Only
-------	------------------------	--

Your ScotiaLine for business VISA card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your ScotiaLine for business VISA card.

## Scotiabank VISA® Business Card

Limit
-------

Your Scotiabank VISA Business Card must be paid as set out in the Scotiabank VISA Business Card Agreement which is provided to you prior to program implementation.

## Credit Card for business

Credit Card	Limit
-------------	-------

Your card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your Credit card.

## Term Loan

Is the loan guaranteed under the Canada Small Business Financing Act (CSBFA) or the Canadian Agriculture Loans Act (CALA)?

☐ Yes If Yes, you confirm that you make the declarations in section 10 of the Credit Agreement contained within the Business Banking Services Agreement and that they are true and correct.  
☒ No

Amount of Loan \$45,000	Term of Loan 60 months	Amortization 120 months	Government Registration/Application Fee \$450
Purpose of Loan Equipment Purchased			

## Advance Arrangement

Advances to be made against the eligible invoice approved by the Bank
---

## Principal Repayment Arrangements for your Term Loan

You will make your first principal payment on (mm/dd/yyyy) 12/30/2016	Approved interest only period months
--	---

Check and complete one of the three options below.

☒ Floating rate, principal payments plus variable rate interest payments.

Interest Prime plus 1.000%	Principal Payment \$375	Principal Payment Frequency Monthly
-------------------------------	----------------------------	--

☐ Fixed rate, blended payments of interest and principal.

Interest %	Payment Amount \$	Final Payment \$	Payment Frequency
---------------	----------------------	---------------------	-------------------

☐ Fixed rate, principal plus variable interest payments.

Interest %	Principal Payment \$	Final Payment \$	Principal Payment Frequency
---------------	-------------------------	---------------------	-----------------------------

## Other Fees

These fees do not apply for CSBFA or CALA loans.

Fee Type	Payment	Payment Frequency
Fee Type	Payment	Payment Frequency

## Amendments to a Previous Agreement

If this agreement amends a previous agreement, complete the following.  
This Credit Agreement amends the previous Customer or Credit Agreement dated but does not create a new loan.

(mm/dd/yyyy)

## Other Conditions

Initials  
N/A Please initial if there is a Schedule of Conditions and Reporting Requirements for your loan attached to this Credit Agreement. Your initial is your agreement to be bound by the terms of this schedule.

**Security**

Please read and initial the completed sections for the property you are granting to the Bank as security for your obligations under this Credit Agreement and the Credit Agreement section of the Business Banking Services Agreement. Your initials confirm that you are hereby granting the mortgage, security interest, assignment and hypothec outlined in section 12 of the Credit Agreement section of the Business Banking Services Agreement on the property described beside your initials (notwithstanding any limitations contained in any Application(s) - Banking Services for business). If any of the property is located in Quebec, the mortgage and security includes a hypothec for an amount equal to 150 percent of the aggregate of the initial limits described in the first page hereof.

**General Security** All present property and property acquired in the future, including inventory, furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable.

**Equipment or Goods** Equipment or goods include furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools and vehicles, but not inventory. Attach a schedule if you need more room to describe your equipment or goods.

Initials  
N/A

Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$

**Leaseholds** Leasehold improvements, as specifically described.

Initials  
N/A

Description	
Legal Description of Premises	Value
	\$

**Other Security** Other property, specified below

Initials  
N/A

Type	Particulars
Type	Particulars
Type	Particulars

**Other Agreements** You must provide the following other agreements to the Bank.

Initials  
N/A

Type	Particulars
Type	Particulars
Type	Particulars

**Third Party Security** You must make sure that the following security from other persons is provided to the Bank. Third party guarantors and corporate guarantors must sign the Bank's standard guarantee form.

Initials  
N/A

Type	Particulars
Type	Particulars

**Personal Guarantees** By signing this Credit Agreement, the guarantor agrees to be bound by this agreement and the Credit Agreement section of the Business Banking Services Agreement, and is responsible for the repayment of the customer's obligations to the Bank, to the amount noted below. The guarantor also acknowledges having received and read the Business Banking Services Agreement, in particular, the section of the Credit Agreement, which outlines the guarantor's obligations.

Guarantor Name DORNE WILSON	Guarantee Amount Unlimited.
Guarantor Signature <i>Dorne Jonathan Wilson</i>	Witness <i>[Signature]</i>
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness

**Signatures**

By signing below, you agree that this Credit Agreement for business:

- is a binding agreement and incorporates the Credit Agreement section of the Business Banking Services Agreement.

Your signature also confirms that:

- you will provide us with evidence of insurance for your property granted as security with loss payable to the Bank.
- you have received a copy of the Business Banking Services Agreement and you have read and understood the Credit Agreement section before signing this Credit Agreement.
- you have received a copy of the Scotiabank Group Privacy Agreement
- you and the Bank require that this agreement and all related documents be drawn up and executed only in English.  
Les parties conviennent et exigent expressément que ce contrat et tous documents et avis émis en vertu de celui-ci ou s'y rattachant soient rédigés en anglais.
- you are aware of the information disclosure authorized by the Credit Agreement section of the Business Banking Services Agreement and the applicable loan request or credit application.

Customer - Individual

Signature	Witness

Partnership or Corporation

Business Name CINDERELLA INC.	
Signature <i>Dorne Jonathan Wilson</i>	Title President

The Bank of Nova Scotia

Per (Authorized Signatory Officer)

# Credit Agreement for business

In this form, you and your mean the business customer and we, our, us and the Bank mean Scotiabank, The Bank of Nova Scotia

This Credit Agreement, together with the Credit Agreement section of the Business Banking Services Agreement, all certifications and consents provided in any application for any banking services, and any schedules attached hereto, is the complete agreement between you and the Bank for the loans described here. Security for all loans is set out under the heading "Security".

## Business Customer Information

Date (mm/dd/yyyy)  
12/02/2016

Business Customer's Full Legal Name (Name of Individual Unless a Registered Partnership or Corporation) CINDERGIRLS INC.			
Trading As			
Main Business Address 2207 EMBLETON RD 214 ONTARIO ST	City or Town BRAMPTON	Province ON	Postal Code L6Y0G2
Deposit Account Number		Branch 66662 - BRAMPTON BUSINESS BANKING CENTRE 284 QUEEN STREET EAST BRAMPTON, ON L6V 1C2	

## Your Loans With Us Credit Line

The completed sections describe the loan or loans you requested and we approved.

Limit	Interest Prime plus
Application Fee	Monthly Account Fee
	Monthly Monitoring Fee

Your Credit Line must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Credit Line must be paid on demand.

## Overdraft Protection

Limit	Interest Prime plus	Monthly Availment Fee \$
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Your Overdraft Protection credit must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Overdraft Protection credit must be paid on demand.

## ScotiaLine® for business VISA® Card

Limit	Interest Prime plus	Monthly Payment/Option <input type="checkbox"/> 3% <input type="checkbox"/> 2% <input type="checkbox"/> Interest Only
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Your ScotiaLine for business VISA card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your ScotiaLine for business VISA card.

## Scotiabank VISA® Business Card

Limit
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Your Scotiabank VISA Business Card must be paid as set out in the Scotiabank VISA Business Card Agreement which is provided to you prior to program implementation.

## Credit Card for business

Credit Card Scotia Momentum for business VISA	Limit \$10,000
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Your card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your Credit card.

## Term Loan

Is the loan guaranteed under the Canada Small Business Financing Act (CSBFA) or the Canadian Agriculture Loans Act (CALA)?

- ☐ Yes If Yes, you confirm that you make the declarations in section 10 of the Credit Agreement contained within the Business Banking Services Agreement and that they are true and correct.
- ☐ No

Amount of Loan	Term of Loan months	Amortization months	Government Registration/Application Fee
Purpose of Loan			

## Advance Arrangement

--

## Principal Repayment Arrangements for your Term Loan

You will make your first principal payment on (mm/dd/yyyy)	Approved interest only period months
--	---

Check and complete one of the three options below.

- ☐ Floating rate, principal payments plus variable rate interest payments.

Interest Prime plus	Principal Payment \$	Principal Payment Frequency
------------------------	-------------------------	-----------------------------

- ☐ Fixed rate, blended payments of interest and principal.

Interest %	Payment Amount \$	Final Payment \$	Payment Frequency
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- ☐ Fixed rate, principal plus variable interest payments.

Interest %	Principal Payment \$	Final Payment \$	Principal Payment Frequency
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## Other Fees

These fees do not apply for CSBFA or CALA loans.

Fee Type	Payment	Payment Frequency
Fee Type	Payment	Payment Frequency

## Amendments to a Previous Agreement

If this agreement amends a previous agreement, complete the following.  
This Credit Agreement amends the previous Customer or Credit Agreement dated but does not create a new loan.

(mm/dd/yyyy)

## Other Conditions

Initials  
N/A Please initial if there is a Schedule of Conditions and Reporting Requirements for your loan attached to this Credit Agreement. Your initial is your agreement to be bound by the terms of this schedule.

**Security**

Please read and initial the completed sections for the property you are granting to the Bank as security for your obligations under this Credit Agreement and the Credit Agreement section of the Business Banking Services Agreement. Your initials confirm that you are hereby granting the mortgage, security interest, assignment and hypothec outlined in section 12 of the Credit Agreement section of the Business Banking Services Agreement on the property described beside your initials (notwithstanding any limitations contained in any Application(s) - Banking Services for business). If any of the property is located in Quebec, the mortgage and security includes a hypothec for an amount equal to 150 percent of the aggregate of the initial limits described in the first page hereof.

Initials  
N/A

**General Security** All present property and property acquired in the future, including inventory, furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable.

**Equipment or Goods** Equipment or goods include furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools and vehicles, but not inventory. Attach a schedule if you need more room to describe your equipment or goods.

Initials  
N/A

Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$

**Leaseholds** Leasehold improvements, as specifically described.

Initials  
N/A

Description	
Legal Description of Premises	Value
	\$

**Other Security** Other property, specified below

Initials  
N/A

Type	Particulars
Scotiabank Non-redeemable GIC for \$10,000	Owned by CINDERGIRLS INC.
Type	Particulars
Type	Particulars

**Other Agreements** You must provide the following other agreements to the Bank.

Initials  
N/A

Type	Particulars
Type	Particulars
Type	Particulars

**Third Party Security** You must make sure that the following security from other persons is provided to the Bank. Third party guarantors and corporate guarantors must sign the Bank's standard guarantee form.

Initials  
N/A

Type	Particulars
Type	Particulars

**Personal Guarantees** By signing this Credit Agreement, the guarantor agrees to be bound by this agreement and the Credit Agreement section of the Business Banking Services Agreement, and is responsible for the repayment of the customer's obligations to the Bank, to the amount noted below. The guarantor also acknowledges having received and read the Business Banking Services Agreement, in particular, the section of the Credit Agreement, which outlines the guarantor's obligations.

Guarantor Name	Guarantee Amount
DORNE WILSON	Unlimited.
Guarantor Signature	Witness
<i>Dorne Jonathan Wilson</i>	<i>[Signature]</i>
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness

**Signatures**

By signing below, you agree that this Credit Agreement for business:

- is a binding agreement and incorporates the Credit Agreement section of the Business Banking Services Agreement.
- Your signature also confirms that:
- you will provide us with evidence of insurance for your property granted as security with loss payable to the Bank.
- you have received a copy of the Business Banking Services Agreement and you have read and understood the Credit Agreement section before signing this Credit Agreement.
- you have received a copy of the Scotiabank Group Privacy Agreement
- you and the Bank require that this agreement and all related documents be drawn up and executed only in English. Les parties conviennent et exigent expressément que ce contrat et tous documents et avis émis en vertu de celui-ci ou s'y rattachant soient rédigés en anglais.
- you are aware of the information disclosure authorized by the Credit Agreement section of the Business Banking Services Agreement and the applicable loan request or credit application.

Customer - Individual

Signature	Witness

Partnership or Corporation

Business Name			
CINDERGIRLS, INC.			
Signature	Title	Signature	Title
<i>[Signature]</i>	<i>President</i>	<i>[Signature]</i>	

The Bank of Nova Scotia

Per (Authorized Signing Officer)



# Credit Agreement for business

In this form, you and your mean the business customer and we, our, us and the Bank mean Scotiabank, The Bank of Nova Scotia

This Credit Agreement, together with the Credit Agreement section of the Business Banking Services Agreement, all certifications and consents provided in any application for any banking services, and any schedules attached hereto, is the complete agreement between you and the Bank for the loans described here. Security for all loans is set out under the heading "Security".

## Business Customer Information

Date (mm/dd/yyyy)  
12/02/2016

Business Customer's Full Legal Name (Name of Individual Unless a Registered Partnership or Corporation) CINDERGIRLS INC.			
Trading As			
Main Business Address 214 ONTARIO ST 2307 EMBLETON RD		City or Town BRAMPTON	Province ON
Deposit Account Number		Branch 66662 - BRAMPTON BUSINESS BANKING CENTRE 284 QUEEN STREET EAST BRAMPTON, ON L6Y 1C2	

## Your Loans With Us Credit Line

The completed sections describe the loan or loans you requested and we approved.

Limit	Interest Prime plus
Application Fee	Monthly Account Fee
	Monthly Monitoring Fee

Your Credit Line must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Credit Line must be paid on demand.

## Overdraft Protection

Limit	Interest Prime plus	Monthly Availment Fee \$
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Your Overdraft Protection credit must be repaid as set out in the Credit Agreement section of the Business Banking Services Agreement. Your Overdraft Protection credit must be paid on demand.

## ScotiLine® for business VISA® Card

Limit	Interest Prime plus	Monthly Payment/Option <input type="checkbox"/> 3% <input type="checkbox"/> 2% <input type="checkbox"/> Interest Only
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Your ScotiLine for business VISA card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your ScotiLine for business VISA card.

## Scotiabank VISA® Business Card

Limit
-------

Your Scotiabank VISA Business Card must be paid as set out in the Scotiabank VISA Business Card Agreement which is provided to you prior to program implementation.

## Credit Card for business

Credit Card	Limit
-------------	-------

Your card must be paid as set out in the Revolving Credit Agreement which will be delivered to you when you receive your Credit card.

## Term Loan

Is the loan guaranteed under the Canada Small Business Financing Act (CSBFA) or the Canadian Agriculture Loans Act (CALA)?

- ☐ Yes If Yes, you confirm that you make the declarations in section 10 of the Credit Agreement contained within the Business Banking Services Agreement and that they are true and correct.
- ☒ No

Amount of Loan \$378,000	Term of Loan 60 months	Amortization 180 months	Government Registration/Application Fee \$3,780
Purpose of Loan Real Estate			

## Advance Arrangement

Advances to be made against the eligible invoice approved by the Bank
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## Principal Repayment Arrangements for your Term Loan

You will make your first principal payment on (mm/dd/yyyy) 02/15/2017	Approved interest only period 2 months
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Check and complete one of the three options below.

- ☒ Floating rate, principal payments plus variable rate interest payments.

Interest Prime plus 1.000%	Principal Payment \$2,100	Principal Payment Frequency Monthly
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- ☐ Fixed rate, blended payments of interest and principal.

Interest %	Payment Amount \$	Final Payment \$	Payment Frequency
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- ☐ Fixed rate, principal plus variable interest payments.

Interest %	Principal Payment \$	Final Payment \$	Principal Payment Frequency
---------------	-------------------------	---------------------	-----------------------------

## Other Fees

These fees do not apply for CSBFA or CALA loans.

Fee Type	Payment	Payment Frequency
Fee Type	Payment	Payment Frequency

## Amendments to a Previous Agreement

If this agreement amends a previous agreement, complete the following.  
This Credit Agreement amends the previous Customer or Credit Agreement dated but does not create a new loan.

(mm/dd/yyyy)
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## Other Conditions

Initials Please initial if there is a Schedule of Conditions and Reporting Requirements for your loan attached to this Credit Agreement. Your initial is your agreement to be bound by the terms of this schedule.

Initials N/A
-----------------

**Security**

Please read and initial the completed sections for the property you are granting to the Bank as security for your obligations under this Credit Agreement and the Credit Agreement section of the Business Banking Services Agreement. Your initials confirm that you are hereby granting the mortgage, security interest, assignment and hypothec outlined in section 12 of the Credit Agreement section of the Business Banking Services Agreement on the property described beside your initials (notwithstanding any limitations contained in any Application(s) - Banking Services for business). If any of the property is located in Quebec, the mortgage and security includes a hypothec for an amount equal to 150 percent of the aggregate of the initial limits described in the first page hereof.

Initials  
N/A

**General Security** All present property and property acquired in the future, including inventory, furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable.

**Equipment or Goods** Equipment or goods include furniture, fixtures, office equipment, industrial equipment, manufacturing equipment, machinery, plant, tools and vehicles, but not inventory. Attach a schedule if you need more room to describe your equipment or goods.

Initials  
N/A

Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$
Description	Serial Number	Value
		\$

**Leaseholds** Leasehold improvements, as specifically described.

Initials  
N/A

Description	
Legal Description of Premises	Value
	\$

**Other Security** Other property, specified below

Initials  
N/A

Type	Particulars
Type	Particulars
Type	Particulars

**Other Agreements** You must provide the following other agreements to the Bank.

Initials  
N/A

Type	Particulars
Farm Real Estate	1st Collateral Charge for \$378,000 over 214 Ontario Street, Brighton, Ontario, K0K1H0
Type	Particulars
Type	Particulars

**Third Party Security** You must make sure that the following security from other persons is provided to the Bank. Third party guarantors and corporate guarantors must sign the Bank's standard guarantee form.

Initials  
N/A

Type	Particulars
Type	Particulars

**Personal Guarantees** By signing this Credit Agreement, the guarantor agrees to be bound by this agreement and the Credit Agreement section of the Business Banking Services Agreement, and is responsible for the repayment of the customer's obligations to the Bank, to the amount noted below. The guarantor also acknowledges having received and read the Business Banking Services Agreement, in particular, the section of the Credit Agreement, which outlines the guarantor's obligations.

Guarantor Name	Guarantee Amount
DORNE WILSON	Unlimited.
Guarantor Signature	Witness
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness
Guarantor Name	Guarantee Amount
Guarantor Signature	Witness

**Signatures**

By signing below, you agree that this Credit Agreement for business:

- is a binding agreement and incorporates the Credit Agreement section of the Business Banking Services Agreement.

Your signature also confirms that:

- you will provide us with evidence of insurance for your property granted as security with loss payable to the Bank.
- you have received a copy of the Business Banking Services Agreement and you have read and understood the Credit Agreement section before signing this Credit Agreement.
- you have received a copy of the Scotiabank Group Privacy Agreement
- you and the Bank require that this agreement and all related documents be drawn up and executed only in English. Les parties conviennent et exigent expressément que ce contrat et tous documents et avis émis en vertu de celui-ci ou s'y rattachant soient rédigés en anglais.
- you are aware of the information disclosure authorized by the Credit Agreement section of the Business Banking Services Agreement and the applicable loan request or credit application.

Customer - Individual

Signature	Witness
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Partnership or Corporation

Business Name	
Signature	Title
Signature	Title

The Bank of Nova Scotia

Per (Authorized Signatory)

# EXHIBIT "G"

**Properties**

**PIN** 51154 - 0491 **LT** **Interest/Estate** Fee Simple ☒ **Redescription**  
**Description** PART OF LOT 3 CON BROKEN FRONT, PART 1, PLAN 39R-13426; MUNICIPALITY OF BRIGHTON  
**Address** 214 ONTARIO STREET  
BRIGHTON

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

**Name** CINDERGIRLS INC.  
**Address for Service** 214 Ontario Street  
Brighton, Ontario  
K0K 1H0

I, Dorne Wilson (President), have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Chargee(s)****Capacity****Share**

**Name** THE BANK OF NOVA SCOTIA  
**Address for Service** 284 Queen Street  
Suite 101  
Brampton, Ontario  
L6V 1C2

**Provisions**

**Principal** \$378,000.00 **Currency** CDN  
**Calculation Period**  
**Balance Due Date**  
**Interest Rate** Prime Rate plus 6.00%  
**Payments**  
**Interest Adjustment Date**  
**Payment Date** Payable on demand  
**First Payment Date**  
**Last Payment Date**  
**Standard Charge Terms** 200012  
**Insurance Amount** See standard charge terms  
**Guarantor**

**Signed By**

Elizabeth Anne Waid 200-39 Lakeshore Rd. E. acting for Signed 2016 12 06  
Mississauga  
L5G 1C9  
Chargor(s)

Tel 905-891-5750

Fax 905-891-6070

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

KERR WAID PROFESSIONAL CORPORATION 200-39 Lakeshore Rd. E. 2016 12 06  
Mississauga  
L5G 1C9

Tel 905-891-5750

Fax 905-891-6070

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.35
Total Paid	\$63.35

**File Number**

Chargor Client File Number :	35,228
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# EXHIBIT "H"

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE

Filing No. 200012 Cote

Filing Date 23 FEB 2000 Date de Dépôt

Page 1 of/de 8 (EIGHT) Pages

*Jan Veitch*  
DIRECTOR OF LAND REGISTRATION  
DIRECTEUR DE L'ENREGISTREMENT DES IMMEUBLES

The Bank of Nova Scotia

Collateral Mortgage  
(Land Titles Act and Registry Act)

Form 1

Land Registration Reform Act

SET OF STANDARD CHARGE TERMS

Filed by The Bank of Nova Scotia.

The following set of standard charge terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

1. DEFINITIONS

In this set of standard charge terms, in any schedules attached to a Charge/Mortgage of Land (Form 2) and in any charge registered electronically pursuant to the Land Registration Reform Act of Ontario, **mortgage** means the Charge/Mortgage of Land (Form 2) in which this set is referred by its filing number, any schedules attached to the Charge/Mortgage of Land and this set of standard charge terms or the charge electronically registered in which this set is referred by its filing number and this set of standard charge terms. **You and Your** mean each person who has signed the mortgage as Chargor. **We, our and us** mean The Bank of Nova Scotia, the Chargee. **Obligations secured** means the debts and liabilities described in these standard charge terms under the heading **Payment Provisions**. **Prime** means our Prime Lending Rate being a variable per annum reference rate of interest as announced and adjusted by us from time to time for loans made by The Bank of Nova Scotia in Canada in Canadian dollars. **Property** means the property described in the mortgage and anything else included under the heading **Description of Property Covered** in these standard charge terms. The mortgage is made in pursuance of the Mortgages Act and is registered in accordance with the Land Registration Reform Act of Ontario. **Sign** includes becoming a party to a document registered electronically.

2. PAYMENT PROVISIONS

- (a) You charge the property covered by the mortgage with payment to us on demand of all of the debts and liabilities described in paragraph (e).
- (b) Where the mortgage sets out a principal amount that applies to all of the debts and liabilities described in paragraph (e), the charge is limited, as to amounts other than interest, to a maximum of the principal amount so set out, plus the additional amounts payable under the heading **We may recover our expenses** in this set of standard charge terms.
- (c) Where the mortgage sets out an interest rate that applies to all of the debts and liabilities described in paragraph (e), the charge is limited, as to interest, to a maximum of the interest at the rate so set out, and interest on overdue interest at the same rate. If the mortgage sets out how that interest rate is calculated or payable, the interest and overdue interest will be calculated and payable in that way, both before and after maturity, default and judgment. If the mortgage does not set out how that interest rate is calculated or payable, the interest and overdue interest will be calculated and payable monthly, both before and after maturity, default and judgment. The interest will be calculated for the actual number of days elapsed. The interest rate under the heading **We may recover our expenses** does not apply to all of the debts and liabilities described in paragraph (e).
- (d) If the debts and liabilities described in paragraph (e) exceed any limits set out in paragraph (b) or (c), we may decide what part of them is secured by the mortgage.
- (e) The debts and liabilities referred to above are all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by you to us or remaining unpaid by you to us, in any currency, whether arising from dealings between you and us or from any other dealings or proceedings by which we may be or become in any manner whatever your creditor, and wherever incurred, and whether incurred by you alone or with another or others and whether as principal or surety.

### 3. DESCRIPTION OF PROPERTY COVERED

Any buildings on the property described in the mortgage and any other property that is at any time attached or fixed to the land or buildings or placed on and used in connection with them is covered by the mortgage. Additions, alterations and improvements to the buildings are also covered by the mortgage.

### 4. OUR SECURITY

#### (a) What the mortgage does

Except where your interest in the property is as a tenant under a lease, you hereby grant and mortgage your entire interest in the property to us, as security for the payment of the obligations secured. This means you give your entire interest in the property to us and our successors and assigns (called our legal representatives) and which includes anyone to whom this mortgage is transferred in any way.

Where your interest in the property is as a tenant under a lease, you give us the following security. You charge the leasehold interest to us, where you can do so without assigning it to us. You sublease the property to us for and during the unexpired residue of the term of years of the lease, except the last day of the term. You will hold every other interest of yours under the lease in trust for us, including any right of renewal or right to purchase. You will transfer the interest to us or anyone we may name, if we ask you to do so. We may at any time in writing and without cause remove any trustee and appoint a new trustee or trustees of the trust of the interest, and vest the interest to the new trustee. You will not, without our prior written consent, allow your interest to become merged in the landlord's interest, and if you acquire that interest you will give us security over it. You will exercise any option granted by the lease to purchase the property or renew the lease if and when we ask you to do so, and thereafter do everything needed to complete the purchase of the property or renew the lease. You will give us security over the property purchased or the renewed lease. Where you are to give us security under this paragraph, it must be on the same terms as the mortgage. You irrevocably appoint us your attorneys to do any of the things you must do under this paragraph, but we are under no obligation to do them. We may authorize anyone to exercise this power for us.

The mortgage secures a current or running account. Although the mortgage is not satisfied or discharged by any intermediate payment of all or part of the obligations secured but is a continuing security for payment of the obligations secured, our interest in the property under the mortgage will end when:

- (i) you have repaid the obligations secured on our demand and repaid all additional amounts to which we may become entitled under the mortgage, and
- (ii) you have fulfilled all of your other obligations to us under the mortgage, and
- (iii) we have delivered to you a discharge of the mortgage.

You may remain in possession of the property as long as you are not in default under any of the obligations secured or under any agreements evidencing or securing the obligations secured and as long as you meet all your other obligations to us under the mortgage.

#### (b) Your title to the property

Except where you have provided to us a copy of a lease showing that your interest in the property is as a tenant under a lease, and we have accepted that the mortgage is of your interest under the lease, you certify that you own the property; that you have the right to charge the property to us; and that there are no restrictions, limitations or encumbrances on your title to the property or on your ability to charge the property to us, except as set out in this mortgage or as disclosed by the records of the land registry office and accepted by us. You agree not to do anything that will interfere with our interest in the property, and to sign or otherwise execute any other documents which we think are necessary to charge to us your interest in the property.

Where you have provided to us a copy of a lease showing that your interest in the property is as a tenant under a lease, and we have accepted that the mortgage is of your interest under the lease, you certify as follows. You are entitled to the term of years created by the lease, and any options to purchase or renew granted by the lease. The lease is valid and in force. The person that created every interest on which the lease depends had a good title to the interest required to create a valid interest, free from encumbrances. The tenant's obligations are complied with. You have the right to sublease the property to us and create a trust of every other interest under the lease, including any right of renewal or right to purchase. You have obtained the necessary consent to do so. There are no restrictions, limitations or encumbrances on your title to the term and options or on your ability to sublease the property to us or create the trust of every other interest under the lease, including any right of renewal or right to purchase, except as set out in the lease or in the mortgage. You agree not to do anything that will interfere with our interest in the property,

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE

Filing No. 200012 Cote



and to sign or otherwise execute any other documents which we think are necessary to sublease the property to us and create the trust set out above.

(c) **Effect of the mortgage on other obligations**

The mortgage does not release you from or alter any of your other obligations to us or agreements with us. The mortgage does not affect any other security we hold for the payment of the obligations secured, or any other right we may have to enforce the payment of the obligations secured. Our acceptance of the mortgage or our giving credit secured by the mortgage does not mean we must make credit available or continue to do so.

(d) **Effect of sale or transfer of property**

If you sell or transfer the property or any part of it or any interest in the property or any part of it, then, at our option, you will immediately pay to us all of the obligations secured under the mortgage and, if we do not require you to pay to us the obligations secured under the mortgage, your continued liability and responsibilities under the mortgage and our rights against either you or anyone else who is liable for the payment of any of the obligations secured are not affected.

(e) **Effect of subdivision**

If the property is subdivided, each part of the property will secure payment of the total amount of the obligations secured.

5. **YOUR RESPONSIBILITIES AS TO THE PROPERTY**

(a) **Taxes and other charges**

You will pay all taxes on the property when they are due. You will immediately give us a receipt showing that they have been paid if we ask for it. You will pay all charges, mortgages, liens and other encumbrances on the property when they are due and comply with your other obligations under them. If you do not pay any taxes, charges, mortgages, liens or other encumbrances when they are due, we may pay them and charge to you the amount paid as an additional amount secured under the mortgage. In this paragraph, "taxes" include all present and future taxes, rates, levies, charges, rents, assessments, statute, labour or other impositions on the property or on any person in respect of the property.

(b) **Insurance**

You will insure with an insurer satisfactory to us and under a policy satisfactory to us all buildings covered by the mortgage against loss or damage by fire, extended perils and other perils usually covered in fire insurance policies. If there is a boiler or a sprinkler system in those buildings, your insurance must cover loss or damage caused by the boiler and equipment operated by it or caused by the sprinkler system. You will insure against any other risks which we require you to insure against. The buildings must be insured for their replacement cost in Canadian dollars.

If we think it is necessary we can require you to cancel any existing insurance on the property, and to provide other insurance which meets our approval. You will assign any insurance you have on the property, or the proceeds of that insurance, to us at our request. You must give us proof that you have insured as required above and you must at least 10 days before any insurance expires or is terminated give us proof that you have renewed or replaced it. If you fail in any way to comply with these obligations, we may (but we are not obliged to) obtain insurance on your behalf and charge the amount of any premium to you as an additional amount secured under the mortgage. If loss or damage occurs, you will provide us with all necessary proofs of claim and do everything else necessary to enable us to obtain payment of insurance proceeds. Insurance proceeds may, in whole or in part, at our option, be used to rebuild or repair damaged buildings or be used to reduce all or part of the obligations secured.

(c) **Keeping the property in good condition**

You will keep the property in good condition and make any repairs that are needed. You will not do anything, or let anyone else do anything that lowers the value of the property. If you do not keep the property in good condition, or if you do anything, or anyone else does anything, that lowers the value of the property, we may make any needed repairs and charge the cost of them to you as an additional amount secured under the mortgage.

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**(d) Construction of buildings**

Expressions in this paragraph have the same meanings as in the Construction Lien Act as amended or re-enacted; **improvement** includes construction, alteration, repair and demolition. If any improvement is made to the property you must inform us in writing immediately if it has started and otherwise before it is started. You agree that any improvement to the property will occur only according to contracts, plans and specifications approved in writing by us in advance. You must complete any improvement to the property as quickly as possible. You must comply with all of your legal obligations as to payment of the price for any improvement to the property and provide us with proof of compliance when we ask for it; we may withhold any advance until we are satisfied that you have complied. If you fail to comply with any of your obligations to us under the mortgage, we may obtain an order vacating any construction lien, or obtain or provide a financial guarantee bond or other security, if we consider that necessary to facilitate enforcement of the mortgage, and we may charge our expenses of doing so to you as an additional amount secured under the mortgage. Those expenses will include our charges for providing a bond or security if we provide it. You authorize us to provide information about the mortgage to any person claiming a construction lien on the property, as required by law.

**(e) Legal requirements**

You will observe and conform to all laws and requirements of any government authorities relating to the property. If you fail in any way to comply with these laws and requirements, we may (but are not obliged to) comply with them on your behalf and charge our expenses of doing so to you as an additional amount secured under the mortgage.

**(f) Condominiums**

The following provisions apply to any condominium unit that is part of the property. In the mortgage, the Condominium Act as amended or re-enacted is called the "Act." Expressions used in provisions of the mortgage dealing with a condominium unit which are the same as those in the Act have the same meaning as those in the Act, except that the expression "condominium property" has the same meaning as the word "property" in the Act.

- (i) You will comply with the Act and the declaration, by-laws and rules of the corporation. You will provide us with proof of your compliance from time to time as we may request. You will forward to us copies of any notices, assessments, by-laws, rules and financial statements of the corporation. You will provide us, on request, with any other documents and information that you receive from the corporation or are entitled to receive. You will maintain all improvements made to your unit and repair them after damage.
- (ii) You will insure all improvements which you or previous owners have made to your unit and insure your common or other interest in buildings which are part of the condominium property or assets of the corporation if the corporation fails to insure the buildings as required by the Act and the declaration, by-laws and rules of the corporation. These obligations are in addition to your obligations as to insurance under the heading **Insurance** as far as they apply to a condominium unit.
- (iii) You authorize us to exercise your rights under the Act to vote and to consent. If we do not exercise your rights, you may do so, but you will do so according to any instructions we may give you. We may at any time revoke any arrangement we make for you to vote or to consent. You also authorize us to inspect the corporation's records. Nothing done under this paragraph puts us in possession of your property.
- (iv) If you do not comply with the Act and the declaration, by-laws and rules of the corporation, we may comply with them and charge our costs of doing so to you as an additional amount secured under the mortgage. If we exercise our right to pay common expenses, we can accept statements that appear to be issued by the corporation as conclusive evidence of the amount of those expenses and the dates they are due. You will pay us on demand as additional amounts secured under the mortgage our expenses in relation to any by-law, resolution, rule or other matter (other than one for which only a vote of the majority present at the meeting is required), the enforcement of our right to have the corporation or any owner comply with the Act and the declaration, by-laws and rules of the corporation and our exercising any voting rights we may have.

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**(g) Tenant's Obligations**

The following additional provisions apply where your interest in the property is as a tenant under a lease. You will pay all rent and other amounts due under the lease when they are due. You will immediately give us a receipt showing that they have been paid if we ask for it. You will comply with your other obligations under the lease. If you do not pay rent or other amounts due under the lease or comply with your other obligations under the lease, we may comply with them and charge the cost of doing so to you as an additional amount secured under the mortgage. You will not surrender the lease or make any changes to the lease without first obtaining our written consent. You will notify us immediately if your landlord advises you of early termination or takes any steps to effect termination of the lease.

**6. ASSIGNMENTS OF LEASES AND RENTS**

You assign to us the full benefit of the lessor's interest, and you irrevocably appoint us as your attorney to exercise the lessor's rights, under every present or future lease of the whole or any part of the property.

You assign to us the full benefit of, and you irrevocably appoint us as your attorney to collect, all rents and other monies payable from time to time under every present or future lease of the whole or any part of the property, together with the benefit of all covenants, agreements and terms contained in the lease, and the lessor's rights in respect of the lease, including a guarantee or indemnity, a security and a right to insurance.

You will perform and comply with all lessor's obligations contained in every lease referred to in this section. You will on our request deliver to us a further assignment in registrable form. You will deliver to us on our request an executed copy of every such lease. You will also execute and deliver to us all such notices and other documents as may be required in order to render every assignment effective in law.

You agree that none of our rights or remedies under the mortgage will be delayed or in any way hindered or prejudiced by the assignment or by any act of ours relating to it. We are not obliged to collect any rent or other income from your property nor to comply with or enforce any covenant, agreement and term of any lease or agreement. Nothing we do under this section shall make us a mortgagee in possession of the property. We need only account for rents we actually receive, less reasonable collection charges. We may apply such rents to the repayment of the obligations secured.

**7. ENFORCING OUR RIGHTS**

If you fail to comply with any of your obligations under the mortgage, or if any part of the obligations secured is not paid when due, or if an event of default occurs under any agreement that relates to the obligations secured, we may enforce our rights in any of the ways set out below. These provisions do not limit any other rights given to us by law or the mortgage. We may enforce this and any other security we may have for any of the obligations secured, and enforce our rights under the mortgage, at the same time or at different times and in any order we choose.

**(a) You will make immediate payment**

You will immediately pay to us all of the obligations secured if any part of the obligations secured is not paid when it is due or if you fail to comply with any of your obligations under the mortgage or any other agreement to which you and we are parties.

**(b) We may sue you**

We may take such legal action as is necessary to collect the obligations secured.

**(c) We may take possession of the property and collect rents**

We may take and keep possession of the property, collect rents from it, and manage it or lease it or any part of it. You certify that we will have the right to take possession of the property or collect the rents from it.

**(d) We may sell or lease the property**

If you do not repay the obligations secured within 15 days after we have demanded payment of them, we may take possession of the property and lease the property without notice or we may upon 35 days' notice to you sell the property or we may apply to the appropriate court for permission to sell the property, or your interest in it, without notice.

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After we are in a position to sell the property, or your interest in it, or lease the property, we may sell or lease at any time, in any way, and on any terms which we think are reasonable. If we sell on credit, we need not account for the proceeds until we receive them. We may sell anything on the land separately from the land itself. We may buy in, rescind or vary contracts of sale and resell at any time, in any way, and on any terms which we think are reasonable. When we sell we can transfer to the buyer every interest in the property which you had power to dispose of.

We will use the proceeds of sale or lease to reduce or repay the obligations secured and will pay you any balance remaining after all claims have been satisfied. If the amount we receive from the sale or lease is less than what you owe, you will immediately pay the difference to us.

You agree that a buyer or lessee may pay all of the money due under a sale or lease to us without seeing to the application of the money. You agree that a buyer or lessee under a sale or lease by us will receive a good title to the property or a valid lease of the property. You will not make any claims concerning the sale or lease against the buyer or lessee or their successors in title. If you do have any claims concerning a sale or lease by us, you will make them only against us and only for money damages.

(e) **We may foreclose or sell through the courts**

We may commence court proceedings to foreclose the property, or your interest in it. If we obtain a final order of foreclosure, the property, or your interest in it, will by law become our property. We may also ask a court to order a sale of the property, or your interest in it. We may also ask a court to appoint a receiver (or receiver and manager) of the property.

(f) **We may appoint a receiver**

We may appoint in writing a receiver (or receiver and manager), on any terms (including remuneration) that we think are reasonable, to collect any income from the property. We may make the appointment even if we have taken possession of the property. We may also, in writing, remove a receiver appointed by us and appoint a new receiver. The receiver is considered to be your agent and not ours; his defaults are considered your defaults and not ours. Nothing done by the receiver puts us in possession of the property or makes us accountable for any money except money we actually receive.

The receiver has the right to use any legal remedy (taken in your name or our name) to collect the income from the property; take possession of the property or part of it; manage the property and any business conducted on the property and maintain the property in good condition; lease the property or any part of it; enforce any of our other rights under the mortgage which we delegate to him; and borrow money on the security of the property in priority to the mortgage for these purposes.

(g) **We may recover our expenses**

You will pay us on demand, as additional amounts secured under the mortgage:

- (i) every amount or expense that we may charge to you as an additional amount secured under any other term of the mortgage,
- (ii) our expenses incurred in negotiating the mortgage, investigating title to the property and preparing and registering the mortgage,
- (iii) our expenses incurred in collecting payment after default of the obligations secured, and
- (iv) our expenses incurred in enforcing our rights under the mortgage,

including our reasonable legal fees on a solicitor and own client basis and interest on the total amount of those amounts and expenses from the date we incur them to the date you pay them to us at a rate of interest equal to Prime plus 2 % per annum, calculated on a daily basis and payable monthly, both before and after maturity, default and judgment, and interest on overdue interest at the same rate and calculated and payable in the same way. We may deduct the amounts, expenses and interest from any money we owe you.

(h) **Other**

We may take any other remedies available to us under law.

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**8. WE MAY USE PROCEEDS TO REDUCE ANY OBLIGATION**

We may apply the proceeds we receive from enforcing our rights under the mortgage to reduce or repay any of the obligations secured in such manner as we may decide.

**9. WE MAY OPEN A SEPARATE ACCOUNT**

If we learn that you have disposed of or encumbered the property or any part of it, we may close your account at the amount then due to us. We may open a new account for advances and payments subsequently made and received by us. No amount paid in or credited to the new account will be applied to or have the effect of reducing or repaying any of the obligations secured due to us on the closed account when we learned of the subsequent disposition or encumbrance.

**10. DELAY, RELEASES AND PARTIAL DISCHARGES**

We may delay enforcing any of our rights under the mortgage or the obligations secured or any agreement evidencing or securing the obligations secured without losing or impairing those rights. We can waive any breach of your obligations under the mortgage or the obligations secured or any agreement evidencing or securing the obligations secured without losing our rights in respect of any breach of your obligations.

We may release others on any terms from any liability to repay the obligations secured without releasing you. We may on any terms discharge any part of the property from the mortgage and, if we do so, the remainder of the property not discharged will secure the total amount of the obligations secured.

**11. DISCHARGE OF THE MORTGAGE**

If you pay us the obligations secured on our demand, we will sign a discharge of the mortgage in registrable form. You will give us a reasonable time after payment in which to prepare and sign the discharge. You must pay our expenses of having it prepared and of signing it. You are responsible for registering it.

**12. EFFECT OF JUDGMENTS**

If we obtain a court judgment against you for your failure to pay any of the obligations secured or to perform any of your obligations to us under the mortgage, the judgment will not result in a merger of your obligations under the mortgage with the judgment or take away any of our other rights to enforce the mortgage. We will continue to be entitled to receive interest on the obligations secured at the agreed rate, calculated and payable in the agreed way, and the judgment may so provide.

**13. OUR RESPONSIBILITY**

We are not responsible for any loss arising in the course of our enforcing our rights under the mortgage unless it results from our wilful neglect or default.

**14. HOW WE MAY MAKE DEMANDS OR GIVE NOTICES**

Where the mortgage allows or requires us to make a demand on or give a notice to any person (including you), we may make the demand or give the notice by delivering it personally to the person (where the person is a corporation, by delivering it personally to a director, officer or employee of the corporation) or by mailing it by prepaid registered mail addressed to the person at the person's last known address.

A notice or demand so delivered will be regarded as given or made when it is so delivered to the person or to the director, officer or employee of the corporation. A notice or demand so mailed will be regarded as given or made on the day it is mailed, whether the person receives it or not.

**15. WHO IS BOUND BY THE MORTGAGE**

The mortgage will be binding on your legal or personal representatives and anyone else to whom your interest in the property is transferred. It will be binding on our legal representatives and anyone to whom it is transferred from us. All our rights under it may be enforced by anyone to whom it is transferred from us.

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If more than one person signs the mortgage, each person is jointly and severally bound to comply with all obligations of the Chargor under the mortgage.

16. **STATUTORY COVENANTS EXCLUDED**

The covenants set out in Section 7 (1) of the Land Registration Reform Act are excluded from the mortgage.

Date February 21, 2000.

The Bank of Nova Scotia  
By: 

Name: S.D.N. Belcher  
Title: Executive Vice-President

I have authority to bind the corporation

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# EXHIBIT "I"



# Business Banking Services Agreement

November 2017



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## *Welcome to Scotiabank*

We would like to take this opportunity to welcome you to Scotiabank. It is our commitment to become your business banker. We look forward to working with you to add value to your business.

### *So, What's in this Booklet?*

This booklet is a companion document to your Statement – About the Business and Statement – About You or Business Account – Service Request, or Application – Banking Services *for business*, or Indirect Agriculture Financing – Credit Application and (where applicable) the Credit Agreement *for business* and contains important terms and conditions which form part of your agreement with the Bank. These terms and conditions, unless specifically identified as pertaining to a particular product or financial service, apply to all Scotiabank business banking products and services, which we may provide to you from time to time.

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## Some Definitions you need to know

**We, our, us, Scotiabank and the Bank** mean The Bank of Nova Scotia and, as appropriate, any of our Canadian subsidiaries.

**“You”** and **“your”** mean the business customer, except in the “About You” section on page 6 where *“you”* and *“your”* mean the owner, officer, partner, co-borrower, or guarantor providing personal information and except in the Scotiabank Privacy Agreement where *“you”* and *“your”* mean an individual who has made application to us for, enrolled in or signed an application in respect of any personal or business banking, insurance, brokerage or financial product or service offered by us (“Service”), including any co-applicants, guarantors or personal representatives.

**Inactive Accounts** are personal deposit accounts that have no customer initiated transactions for 24 consecutive months or business accounts that have no customer initiated transactions for 12 consecutive months.

## Business and Personal Information

This section outlines the terms and conditions relating to information, both personal and business, provided to us.

In this section, you and your mean the owner, partner or guarantor providing personal information to Scotiabank and the business customer.

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## About the Business Customer

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The business customer:

- Authorizes us to collect further information about the business customer from time to time in connection with any banking relationship the business customer is applying for, will apply for, or already has with us.
- Authorizes Scotiabank to use the business information to adjudicate and administer the products and services requested and agrees that we may do this during our banking relationship with the business customer.
- Authorizes us to collect and disclose information about the business customer from and to other credit reporting agencies, credit bureaus, other credit grantors, any person the business customer has or proposes to have financial relations with, and as otherwise permitted or required by law, and agrees that we may do this both during our banking relationship with the business customer and after it has ended.
- Authorizes Scotiabank to tell the business customer about Scotiabank products and services, and to disclose this information about the business customer to other members of the Scotiabank Group (where the law allows this) so that they may directly offer the business customer their products and services both during our banking relationship with the business customer and after it has ended.
- Authorizes us to check the information the business customer has given us from time to time.
- Authorizes and directs any person we may contact in this regard to provide us with such information.
- Confirms receipt of Scotiabank's Business Accounts – Your Guide to Fees and Interest Schedules (applicable if this application includes a request for a business account).

## Business Banking Services Agreement

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### About You

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As the owner, officer, partner, co-borrower, or guarantor providing personal information, you:

- Agree these terms and conditions apply in connection with any banking relationship you, or a business you are involved in, are applying for, or already have with us (the “Banking Relationship”).
- Agree that, if you are applying for, or are providing a guarantee in respect of any Scotiabank personal or business banking products or services, and while you are a Scotiabank customer you will be bound by and abide by the Scotiabank Privacy Agreement, a copy of which has been included in this booklet, or which can be obtained at any Scotiabank branch.
- Certify that, if you (with anyone else, if applicable) signed the Statement — About the Business, or the Application – Banking Services *for business* or the Business Account – Service Request or Indirect Agriculture Financing – Credit Application on behalf of the business customer, you (with any other signatories) are authorized to do so by the business customer.
- Certify that the business customer (if an incorporated company) is authorized to borrow money and grant security (not applicable to third party guarantors).
- Certify that any information and documents (including evidence of incorporation) submitted by you to us are true, correct and complete.

### PERSONAL GUARANTEE (GUARANTEE BY PERSONS OTHER THAN CO-BORROWERS)

Subject to the exclusions below, you (in your capacity as an owner, officer, or partner of the business customer) agree that, if the business customer is incorporated, you guarantee and are personally responsible for, repayment of the business customer's obligations to Scotiabank arising under this application (if approved). The guarantor also agrees to be bound by the terms and conditions in this book, the Business Banking Services Agreement, in particular the section of the Credit Agreement which outlines the guarantor's obligations. This provision applies to obligations incurred by the business customer in connection with account products or services, but does not apply:

- Where you are a co-borrower with the business customer; or
- To obligations incurred in as a result of credit products addressed in the Credit Agreement Section of the Business Banking Services Agreement and any applicable credit or security granting documents.

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# Scotiabank Financial Services Agreement

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## 1. Your Agreement with Us

- 1.1 You acknowledge that this Agreement is entered into between you and us for valuable consideration and sets out the terms under which we will operate your accounts, carry out your instructions, and provide certain financial products and services to you.
- 1.2 “**You**”, “**your**” and “**Customer**” mean the business customer who signs or otherwise agrees to be bound by this Agreement. “**We**”, “**our**”, “**us**”, the “**Bank**” and “**Scotiabank**” means The Bank of Nova Scotia. Please refer to Appendix A for other definitions used in this Agreement.
- 1.3 When you sign the Scotiabank Financial Services Agreement Signature Form, you are bound by the terms and conditions of this Agreement in relation to all of your accounts with us and each instruction (including Payment Instructions) given on the account(s). When you sign any Service Agreement, you are bound by the terms and conditions of this Agreement in relation to the account(s) and service(s) described in the Service Agreement, including each instruction given on the account(s) or service(s). Each such account and service subject to the terms and conditions of this Agreement is a “**Service**”. This Agreement supersedes and replaces any previous Scotiabank Financial Services Agreement between you and us relating to the Services.
- 1.4 In the event of conflict or inconsistency between any provision of this Agreement and the corresponding provision in any Service Agreement or Service Materials, the applicable provision in this Agreement will always govern and prevail, unless the relevant Service Agreement or Service Material expressly states otherwise.
- 1.5 If you are a partnership, joint venture or other type of organization that is not incorporated, each individual or entity which is a member (but not the limited partners of a limited partnership) is responsible for all of your obligations, indebtedness and liability to us under this Agreement and each Service Agreement, even if the partnership, joint venture or other organization is dissolved or terminated or the membership or partners or constituting documents change. If you consist of more than one Person, each Person will be jointly and severally responsible for your obligations, indebtedness and liability to us.

## 2. The Services and Service Materials

- 2.1 Our agreement to provide any particular Service will be given by notice to you or signified by our starting to provide the requested Service.
- 2.2 You must: (i) promptly give us any information we reasonably request from you from time to time in connection with any Service or Service Agreement and (ii) immediately notify us of any changes to the information and documentation you give to us.
- 2.3 You agree not to use any of our Services or give any instructions for any unlawful or improper purpose, or otherwise in violation of applicable laws and rules, including Sanctions. You agree to perform your obligations under this Agreement and each Service Agreement in accordance with applicable laws and rules.

## Business Banking Services Agreement

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- 2.4 Except as contemplated in Section 2.5 below, you agree to make your own arrangements to provide the equipment and software you need to meet your desired levels of service, security and reliability. All equipment and software must meet our requirements and specifications for the Service we are providing. All purchase, installation and maintenance costs will be at your expense.
- 2.5 You agree to follow or use, as applicable, the most current procedures, forms, user guides, software, equipment and other information and materials, whether in written or electronic form (collectively, the “**Service Materials**”) that we provide or make available to you for any Service. The following additional terms apply to the Service Materials:
- (a) You will have a non-exclusive license to use the Service Materials solely for the Service(s) for which they are provided. You are not entitled to assign this license and the license for each Service Material will end immediately upon the termination of our provision of the relevant Service(s). You do not acquire any ownership or copyright interests or rights in the Service Materials.
  - (b) You will not disassemble or reverse engineer any software comprising any part of the Service Materials. You will not copy, remove, modify, transfer, adapt or translate the Service Materials without our consent.
  - (c) You will treat as confidential any software and written material forming part of the Service Materials and will not disclose them to any third party. This obligation will not apply to information that is in the public domain or that you can obtain from a third party without a breach of any obligation by that third party to us.
- 2.6 Except as expressly stated in this Agreement, each Service Agreement, and any related Service Materials, no representations, warranties and conditions of any kind, whether express, implied or statutory, are made by the Bank with respect to the Services. We expressly disclaim implied warranties of merchantability and fitness for a particular purpose. We do not warrant that the Services will operate error-free or without interruption or Disabling Codes.
- 2.7 You confirm that all credits to your account(s) are and will be beneficially owned by you and that the Services will not be used to conduct business on behalf of any Person other than the Customer (except as specified in a Service Agreement or as otherwise agreed in writing by the Bank).
- 2.8 Unless agreed by the Bank in a Service Agreement or otherwise in writing, amounts standing to the credit of any of your accounts will not bear interest payable to you.

### **3. Your Instructions and Authorizations**

- 3.1 You authorize us to act on any instruction (including Payment Instructions) received from you or in your name, or on your behalf, or using your Authentication ID with respect to any Service or this Agreement, even if it differs in any way from any previous instruction sent to us, and to rely on such instruction as being valid, correct, authorized by, and binding on you.
- 3.2 We may at any time without prior notice refuse to act upon any instructions (including Payment Instructions) if: (i) to do so would cause you to exceed any daily processing



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limits or other restrictions to the applicable Service, (ii) there are not sufficient Cleared Funds in your account(s), (iii) the instructions are incomplete or inconsistent, illegible or do not comply with the rules of any applicable Clearing and Payment System or any other reasonable requirements for completion we specify to you, (iv) to do so may contravene a court order, garnishment, trust provision, or cause us to fail to comply with any laws and rules, or (v) otherwise for any proper or lawful reason.

- 3.3 You authorize us to record any telephone or other verbal communication, and that such recording may be used as conclusive evidence of the content of that communication in any legal proceeding.
- 3.4 We may, but are not obligated to, act on any oral instructions or any instruction (including Payment Instructions) that contains insufficient, inconsistent or incorrect information, does not comply with all requirements of the applicable Clearing and Payment System, or is otherwise not properly given.
- 3.5 You acknowledge and agree that, subject to Section 3.4 above, if the words and numbers of a Payment Instruction differ, the words shall prevail and be deemed to be correct. If there is a discrepancy between any Payment Instruction and the written confirmation of it or any such instruction is otherwise ambiguous, such instruction as we understood it will be taken as correct.
- 3.6 You must: (i) ensure that all your instructions to us meet our requirements with regard to form (and formatting requirements), signatures, verification and authorization, and (ii) give us specific authorization or additional information if reasonably required by us.
- 3.7 We are authorized to rely on any signature appearing on an instruction that is, or purports to be, a signature of the Customer or any Representative of the Customer, including any signature affixed by mechanical, electronic, or other non-manual means, as being valid, authorized by, and binding on, the Customer.
- 3.8 You shall be solely responsible for all instructions from, and actions of, your Representatives in relation to each Service.

#### **4. Your Payment Obligations**

- 4.1 You are responsible for settling payment of your Payment Instructions. Unless you have made specific arrangements with us, you will ensure that your accounts have sufficient Cleared Funds to settle any Payment Instructions at the time that you give us the instruction. The reported balances for your account may include amounts which are not Cleared Funds.
- 4.2 We may process your Payment Instructions and any charges to your accounts in any order we determine for efficient processing and that complies with applicable laws and rules. Where more than one Payment Instruction is presented for payment on your account, the order of processing may affect whether any such Payment Instruction is honoured if there are insufficient Cleared Funds in the account.
- 4.3 You acknowledge that we must clear Payment Instructions using one or more Clearing and Payment Systems and are bound by the rules of any Clearing and Payment Systems we use. These rules affect our ability to honour your request to Cancel

## Business Banking Services Agreement

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Payment Instructions or stop payment on any such instructions and the procedures we must follow to settle your Payment Instructions and clear funds for you. You acknowledge and agree that these rules shall in no way whatsoever operate or be construed to impair or limit any rights and remedies we have against you.

- 4.4 We reserve the right to clear and transfer Payment Instructions through any financial institution, Clearing and Payment System, or other Person, and in any manner, we deem appropriate, whether they are drawn on your account or negotiated by you. You agree to grant us sufficient time to settle all instructions and acknowledge that we may, in our discretion, delay crediting your account or place a hold on any credit to your account until we receive the Cleared Funds for the Payment Instruction.
- 4.5 If we cannot charge a payment, chargeback, fee or expense to your account(s) with us because of insufficient funds or for any other reason, or if we ask you to, you must immediately pay us any amounts you are required to pay under this Agreement or any Service Agreement, plus interest at the overdraft rate published in the Schedule of Rates or such other rate as may be agreed from time to time between you and us. Interest will be calculated on a daily basis and will be payable monthly or as we may otherwise require.
- 4.6 We may, but are not required to, confirm or obtain endorsements for Instruments. If a Service we provide involves accepting and processing unendorsed third party cheques, we may do so. You will reimburse us for any amount we cannot collect as a result of a problem in clearing an unendorsed third party cheque.
- 4.7 You waive presentment, notice of dishonour, protest, and notice of protest of any Instrument. You will be liable to us on any Instrument as if it had been duly presented, protested and notice of dishonour and protest had been given as provided by applicable laws and rules.

### **5. Cancellation of Payment Instructions**

- 5.1 We may treat all Payment Instructions as final when given to us.
- 5.2 You may not reverse, change, recall, stop or cancel (collectively called “**Cancel**”) any Payment Instruction without our consent. We will use commercially reasonable efforts to comply with your cancellation instructions, but you acknowledge that: (i) we must follow the rules of all applicable Clearing and Payment Systems and (ii) we will have no obligation to hold the affected funds or return the funds to you unless we are able to have the Payment Instruction cancelled and Cleared Funds are returned to us.
- 5.3 Each cancellation instruction must follow the procedures and forms set out in the Service Materials, or such other procedures or forms we may provide to you from time to time for this purpose, and must be received by us before final settlement.
- 5.4 You are responsible for any cost of a cancellation at the rates set out in the Schedule of Rates or such other rates as we may agree with you from time to time.

### **6. Debits (including Chargeback and Set-Off)**

- 6.1 You irrevocably authorize us to charge and debit the following to, and against, any of your accounts with us:

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- (a) the amount you ask us to pay in any Payment Instruction;
  - (b) the amount of any Payment Instruction we have paid to you or credited to any of your accounts that is dishonored, rejected, returned or reversed (or otherwise not paid) in whole or in part for any reason (including fraud, loss or endorsement error) together with all related costs;
  - (c) the amount of any counterfeit or otherwise invalid currency deposited or transferred to any of your accounts;
  - (d) payment of any amount you owe us, including fees, charges, costs, expenses, and taxes; and
  - (e) the amount of any deposit credited to any of your accounts in error or otherwise improperly.
- 6.2 We may at any time and from time to time, without notice to you, set-off and apply any credit balance you may have in any of your accounts with us or any other obligation of any kind that we or any of our affiliates may have to you (whether or not presently due), against any indebtedness, liability or obligation of any kind that you may have to us or to any of our affiliates (whether or not presently due) and you hereby irrevocably authorize us to do so. This right is in addition to any other rights that we may have with respect to set-off or combining accounts.

## **7. Foreign Currency**

- 7.1 We may, in our discretion, accept payments or permit Payment Instructions to be given on your account in a currency other than the currency of the applicable account, but upon doing so, we may convert the incoming currency to the currency of the applicable account and in that regard, we may sell to you or purchase from you the amount of the other currency required to settle your instruction. The sale or purchase will be at our customer rate of exchange in effect at the time. Any costs for this exchange will be added to the sale amount payable by you or deducted from the purchase amount otherwise payable to you. We will charge the resulting total sale amount or credit the resulting net purchase amount to your account. We are not responsible for any loss you may incur due to changes in foreign currency exchange rates or funds not being available due to foreign currency restrictions.
- 7.2 You acknowledge that foreign currency accounts are not insured by Canada Deposit Insurance Corporation.

## **8. Overdrafts**

- 8.1 On occasion we may allow, in our discretion, one or more of your accounts with us to be overdrawn even though you do not have an overdraft facility. Interest is calculated daily on the closing overdrawn balance at the overdraft rate published in the Schedule of Rates. In addition, an overdraft handling fee applies for each Payment Instruction or other item which places your account in an overdrawn position and for each additional item that is paid while the account is overdrawn (normal transaction fees still apply). The overdraft handling fee is also published in the Schedule of Rates. Each such overdraft, together with accrued interest and related fees, will be immediately due and payable in full.

## Business Banking Services Agreement

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### 9. Verifying Your Accounts

- 9.1 We will provide you with periodic statements of your accounts in printed or electronic form.
- 9.2 You must review each statement carefully to check and verify all entries have been properly recorded. If you believe there are any errors, omissions or other discrepancies of any kind whatsoever, whether or not arising from unlawful or improper actions, you must tell us in writing within 30 days of the statement date. Except for errors, omissions and discrepancies that you identify to us in writing within that 30 day period (but in that case, subject to Section 16 of this Agreement), and except for amounts mistakenly or improperly credited to your account (which we may correct at any time), after that 30 day period it will be conclusively settled that:
- (a) all entries and the balance shown in your statement is correct;
  - (b) all instructions affecting your account are authentic, duly authorized, properly issued and otherwise valid;
  - (c) all amounts charged to your accounts are properly charged to you, including all interest and service charges, whether or not the statement discloses how interest and charges are calculated;
  - (d) you are not entitled to be credited with any amount not shown on your statement; and
  - (e) the use of any Service shown is correct.
- 9.3 After that 30 day period: (i) you cannot claim, for any purpose, that any entry on your statement is incorrect and will have no claim against us for reimbursement relating to an entry, even if the instruction charged to your account was forged, unauthorized or fraudulent or was improperly charged for any other reason whatsoever, and (ii) we will be released from any claim whatsoever relating to your statement, including whether for negligence, breach of contract, or otherwise.
- 9.4 We will tell you in the Service Materials or by way of written or electronic notice if the nature of any Service requires more frequent statements, exchange of information, reports or verification than described generally for the account. The account verification conditions described above will apply regardless of the reporting frequency.
- 9.5 We will mail your statements of account to your latest address on our records or make them available for pick-up at the branch or electronically, as may be agreed in writing from time to time. You will notify us promptly, in writing, of any change of your address. If you do not receive a statement, or pick it up where this has been agreed, within 10 days after the end of the statement period, you must let us know within 15 days after the end of the statement period. If you do not let us know, you will be deemed to have received the statement 5 days after the end of the statement period, for all purposes, including the 30 day period to review the statement and advise us of any error.

### 10. Security Procedures

- 10.1 You agree to comply with all security procedures we communicate to you from time to time in relation to the Services, including those in this Agreement, each Service Agreement, and the Service Materials.

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- 10.2 You agree to keep any tokens, keys, access codes, security devices, digital certificates, passwords, PIN, and verification procedures created or issued in relation to the Services (collectively, your “**Authentication ID**”) safe and confidential, and change them at least as often as specified in the security procedure.
- 10.3 We may, at our option, with no obligation to do so, establish and use procedures as we deem appropriate to verify the source and authenticity of instructions given to us, including contacting any of your authorized signatories, before acting on it.
- 10.4 You must immediately inform the Bank of any actual or suspected unauthorized use of any Service and if any of your Authentication ID becomes known to any third person who is not authorized to possess and use such Authentication ID, and you must promptly report to the Bank any other errors or irregularities in any Service. You agree to provide us with all information necessary for us to investigate any actual or suspected unauthorized use, error or irregularity in relation to any Service, including any documentation or testimony we may reasonably request.
- 10.5 You agree to maintain security systems, procedures and controls to effectively prevent and detect:
- theft of funds and Instruments;
  - forged, fraudulent and unauthorized instructions (including Payment Instructions); and
  - losses due to fraud, forgery, unauthorized access to any Service or other improper or unlawful actions (including unauthorized access to your Authentication IDs and equipment used in giving instructions).

Without limiting your agreement immediately above, you will:

- ensure that all Instruments are numbered sequentially;
- ensure that all Instruments are secured in the same way as large amounts of cash;
- ensure that cheque imprinters, facsimile signature devices, other equipment, and Authentication ID that might be used in giving instructions are effectively secured when not in authorized use;
- ensure that access to Authentication ID and related procedures required for giving instructions is limited to those who need access for their authorized duties on your behalf with us;
- conduct periodic audits of your systems, procedures and controls, and notify us promptly of all deficiencies and/or failures detected or identified as a result;
- ensure that those Persons responsible for reviewing the statements we provide you are not the same Persons responsible for preparation or security of Instruments, instructions and related matters; and
- diligently supervise and monitor the conduct and activities of all employees and other persons having any role in the preparation of instructions (including Payment Instructions), security relating to banking functions or other matters relating to your accounts.



- 10.6 The Customer is responsible for advising all applicable Persons of the delivery methods which may be used in connection with the Services. The Customer agrees with and assumes full responsibility for the risks associated with the communication methods used in connection with the Services, including the risks that the use of mail, courier, or unencrypted electronic communications (including fax and email): (i) may not be secure, private and confidential, (ii) may not be reliable and may not be received by the intended recipient promptly or at all, and (iii) may be subject to interception, loss and alteration.

### **11. Electronic Communications and Electronic Signatures**

- 11.1 You authorize us to accept electronic communications and electronic signatures from you or on your behalf, and consent to receiving electronic communications from us, in relation to this Agreement, any Service Agreement, and the Services.
- 11.2 You agree that all electronic communications shall have the same legal effect as if in paper format with handwritten signatures and will constitute a “writing” for the purposes of all applicable laws and rules.
- 11.3 You acknowledge that (i) the form, format and delivery of each electronic communication will permit you to retain, store and subsequently access and retrieve such electronic communication without the requirement of any specialized or proprietary equipment or software from us and (ii) it is your responsibility to acquire and maintain the necessary computer equipment and software to deliver, receive, store, retain and subsequently access each electronic communication. You acknowledge that we may, but are not obligated to, store and maintain, and may delete, at our discretion, any electronic communication.
- 11.4 Our methods of storing, maintaining and retrieving any electronic communication, including any electronic signatures associated with such electronic communication, and our data systems, maintain the integrity of the electronic communication. You agree that electronic communications maintained by us will be admissible in any legal or other proceedings as conclusive evidence as to the contents of those electronic communications in the same manner as an original paper document. To the fullest extent permitted by applicable laws and rules, you waive any defence, or waiver of liability, based on the absence of a written document in paper format, with handwritten signatures.
- 11.5 At our discretion, we may require: (i) electronic communications be delivered using technology acceptable to the Bank including the use of a secure electronic signature, and (ii) any electronic communication from you or on your behalf to be delivered to us in paper format or with handwritten signatures. If we require that you acknowledge your agreement by clicking the appropriate button, you will follow any instructions that we provide to indicate your agreement (which may include typing your name and/or clicking “I Agree” or similar button).
- 11.6 When your handwritten or electronic signature is delivered by facsimile, email or other electronic or digital transmission, such transmission shall constitute delivery of an executed copy of the document. If you use an electronic signature to indicate your agreement, you shall ensure that your electronic signature is attached to or associated with the relevant electronic communication.

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- 11.8 In accordance with our internal documents retention policies as amended and replaced from time to time, we may retain a copy (in any form, including photocopy, electronic image, and CD-ROM) of any and all documents in respect of your Services, instead of any original paper copies. You agree that our records containing such copies will be considered to be conclusive evidence of the original documents and their contents for all purposes.

## **12. Our Service Obligations**

- 12.1 Subject to Section 14, we are under no obligation to provide you with any Service. Each Service will be provided in our sole discretion.
- 12.2 You authorize us to retain the services of any financial institution, Clearing and Payment Services provider, delivery service, communications provider, or other third party service provider as we consider necessary or desirable in connection with the Services.
- 12.3 You acknowledge that our provision of each Service will be subject to applicable laws and rules and agree that we may comply with: (i) any lawful demand from a governmental or regulatory authority, Clearing and Payment System, or to the extent applicable to the provision of any Service to you, any other Person and (ii) any garnishment, attachment, levy, administrative order, subpoena, summons, or other legal or administrative process.

## **13. Fees and Charges**

- 13.1 You agree to pay the fees, charges and interest promptly when due, as set out in the Schedule of Rates or any other agreed fee arrangement, any Service Agreement, and each statement relating to your accounts. You also agree to pay all taxes we must collect on the Services we provide to you. If any Service to you is cancelled in the first 15 days of a month, you will be charged, and you agree to pay, a prorated fee for that month equal to 50% of the average monthly billed amount for such Service over the prior 3 month period. If any Service to you is cancelled after the 15th day of a month, you will be charged and you agree to pay a monthly fee for that month equal to 100% of the average monthly billed amount for such Service over the prior 3 month period.
- 13.2 We may change any of our fees, charges or interest rates. If we do, we will give you notice at least 30 days before they go into effect.
- 13.3 We will advise you of fees, charges, interest and other amounts we deduct from your accounts.
- 13.4 You agree to pay us for any out of-pocket or other expenses we incur at your request or in the course of providing a Service to you. These expenses include communication charges, transmission charges, and transportation or delivery charges incurred by us.
- 13.5 If the fees and charges you pay are based on your agreement to maintain a specified level of transaction volumes or deposits, you agree that:
- (a) we reserve the right to revise the fees and charges if actual transaction volumes during any 12 month period differ by more than 15% from the specified levels;
  - (b) we reserve the right to revise the fees and charges if actual average deposit balances during any 12 month period (beginning 3 months after the contract starting date) differ by more than 15% from the specified levels; or

## Business Banking Services Agreement

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- (c) if you cancel the applicable Service under this arrangement before the first anniversary of the Service Agreement, we reserve the right to collect the full amount of fees and charges that you would have been expected to pay over the full 12 month period.
- 13.6 If we pay you interest on your deposit balances based on your agreement to maintain a specified level of transaction volumes or deposits, you agree that we reserve the right to revise the interest arrangement if:
  - (a) actual transaction volumes during any 12 month period differ by more than 15% from the specified levels, or
  - (b) actual average deposit balances during any 12 month period (beginning 3 months after the contract starting date) differ by more than 15% from the specified levels.

### **14. Holds, Changes, Suspensions and Termination**

- 14.1 We have the right to make additions, deletions or other changes to any Service and to amend or replace any Service Materials. We will give you notice at least 30 days before making any such changes that materially alters the nature of a Service. Your continued use of the relevant Service after the effective date of the change is an acknowledgement by you that you agree to and accept such change.
- 14.2 We will give you at least 30 days' prior notice of any amendment we make to the terms of any Service Agreement or this Agreement. Your continued use any Service after the effective date of such amendment, you will be deemed to have accepted the amendment.
- 14.3 This Agreement and any Service Agreement may be terminated by you or us for any reason, upon at least 30 days' prior written notice to the other, subject to our overriding right of termination in Section 14.4. Any notice of termination of this Agreement will be deemed to also constitute written notice of termination of any outstanding Services and Service Agreements.
- 14.4 We may immediately cancel or suspend any or all Services and terminate any Service Agreement and this Agreement (including freezing or placing a hold on any funds in any account) at any time without notice if: (i) required by any laws and rules, (ii) you default on any obligations to us under this or any other agreement to which you and we are parties, and applicable grace periods (if any) in such agreement shall have lapsed, (iii) any representation or warranty made by you to us in this Agreement or any other agreement is or becomes untrue, (iv) you become insolvent or bankrupt, (v) a receiver is appointed over a significant amount of your assets, (vi) we have reason to suspect that you are engaged in any improper or unlawful activity in connection with the Services, or are the victim of fraud or identity theft, (vii) we have notice of a possible claim or interest under any court order, statutory demand, or other governmental legislation, or (viii) we believe that it is necessary to terminate our relationship with you in order to protect our customers or employees from physical harm, harassment or other abuse, or any other circumstance or event which we believe has created or could create reputational risk or harm to the Bank.
- 14.5 If any Service is cancelled, you will be liable for all instructions (including Payment Instructions and pre authorized payments) issued before it was cancelled and for all



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payments required to be made by this Agreement and the relevant Service Agreement (if any).

- 14.6 If any Service is cancelled, you will promptly: (i) delete from your computer hardware any Service Materials for the Service consisting of software and (ii) return to us in good condition any keys, equipment and Service Materials which we have provided to you regarding the Service.

## **15. Inactive Accounts**

- 15.1 We may elect not to send a statement to you regarding any account if there is no activity other than charges assessed or interest accrued, as applicable, in the account since either the date it was opened or the date of the last statement we have sent you.
- 15.2 If you have not had any contact with us concerning an account for at least one year, we may elect to designate the account as inactive. Inactive accounts cannot be accessed through any automated banking machine or similar Service. You will need to contact the Scotiabank branch where the account is located to reactivate access to an inactive account. We may charge reasonable service fees to maintain an inactive account. We may close an account if you have not had any contact with us concerning the account and there has been no activity in the account for at least one year, and the balance of the account is nil. We will comply with applicable laws and rules concerning abandoned accounts, which may require us to transfer balances to the federal government.

## **16. Limits of our Liability**

- 16.1 You acknowledge that our fees for Services may be small in relation to the value of your instructions from time to time and our willingness to provide the Services is based on the liability limitations contained in this Agreement and the Service Agreements. Without limiting the effect of any greater limitations on our liability provided elsewhere in this Agreement or in any Service Agreement, you agree that Scotiabank's liability for any Loss you suffer or incur in connection with the provision of any Service, or refusal to provide any Service, shall be limited exclusively to actual proven damages arising directly from Scotiabank's gross negligence or wilful misconduct. Under no circumstances will Scotiabank be liable for any indirect, consequential, incidental, special, punitive, aggravated, or exemplary Losses (including loss of data, lost profit, and opportunity costs), anticipated or actual, and whether or not the likelihood of such Loss was or ought to have been known to us at any time during the provision of the relevant Service. Any Loss for which we may be liable to you will be calculated from the time we should have made the funds available to you until the time we did make them available, or until you should have reasonably have discovered their loss, whichever is earlier.
- 16.2 Notwithstanding the foregoing, Scotiabank will not be liable for, and is hereby released from, any Loss resulting (in whole or in part) from:
- (a) the actions of, or failure to act by, you and your Representatives, including your failure to fulfil any of your obligations under this Agreement or any Service Agreement, or to comply with any instruction we may provide to you from time to time in connection with any Service;

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- (b) the actions of, or failure to act by, correspondent banks, Clearing and Payment Systems, delivery service, utility or communications provider, or any other Person;
- (c) mistakes, errors, omissions, inaccuracies in or inadequacies of any information furnished to or obtained by Scotiabank in connection with the Services;
- (d) any Instrument or instruction that is forged (in whole or in part), has a material alteration or is otherwise fraudulent or unauthorized;
- (e) any cause beyond our control, including Force Majeure or electrical, computer, mechanical or telecommunications malfunction or failure;
- (f) a breach of any applicable laws and rules by you, or any Compliance Action taken by us, in relation to your use of any Services, including resulting from any instruction by you to us; and
- (g) the transmission of any Disabling Code and any related damage to your or any other Person's computer system.

### 17. Indemnity

- 17.1 Except to the extent caused directly from our gross negligence or wilful misconduct, you agree to indemnify and hold Scotiabank harmless from any and all Losses suffered or incurred by Scotiabank arising out of or relating to the Services, including:
- (a) any Compliance Action;
  - (b) any Payment Instruction honoured, processed, negotiated, settled, changed, cancelled, reversed or refused;
  - (c) your failure to properly provide information or comply with this Agreement or any Service Agreement or any breach of a representation or warranty made by you to us; or
  - (d) our compliance with any garnishment, attachment, levy, administrative order, subpoena, summons, or other legal or administrative process.
- 17.2 Scotiabank will notify you if any claim arises for which you have agreed to indemnify us. We will each cooperate in dealing with the claim, including making available all necessary information, documentation, and witnesses. You agree that any costs (including any legal fees, disbursements, third party costs, or monies paid as a result of judgment or settlement) will be at your expense. You may defend a claim on our behalf subject to the following conditions: (i) you obtain our prior written consent before commencing the defence, (ii) your interests must not conflict with ours, (iii) you will not cause us to be exposed to further possible Loss, and (iv) you will not agree to any settlement of the claim without our prior written consent.

### 18. Notices

- 18.1 Except as otherwise provided in this Agreement or any Service Agreement, we may give you any notices by any means of written or electronic communication, or by posting notice in our branches or on our website, and any of those will be adequate delivery of such notice. We will use your last contact information on our records and, except as otherwise provided by laws and rules, you will be deemed to receive such notice five days after mailing, or at the time of delivery of a personal delivery, the sending of an electronic communication, or the posting of the notice in our branches or on our website.

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- 18.2 You designate electronic mail and the internet banking services to which you have subscribed or will subscribe (each a “**Designated Information System**”) as information systems through which we can deliver notices, documents and other information that we are required by applicable laws and rules to provide to you in relation to the Services, including product and service features, rates, fees, and our policies, procedures and practices (“**Regulatory Notices**”). With immediate effect, you consent to receiving Regulatory Disclosures through the Designated Information System. You may revoke your consent at any time. You are responsible for informing us of any changes to your Designated Information System, including any changes made to your contact information related to the Designated Information System. It may take up to 10 Banking Days for your revocation or notice of change to take effect. Regulatory Disclosures through a Designated Information System will be retained by us and made available to you for 7 years. You are responsible for printing or downloading a copy of each Regulatory Disclosure.
- 18.3 Unless otherwise specified in an applicable Service Agreement, you must deliver any notices or communications concerning this Agreement or any Service to the branch where your applicable account is located.

**19. No Assignment**

- 19.1 You may not assign this Agreement or any Service Agreement without our prior written consent.
- 19.2 The terms and conditions in this Agreement and each Service Agreement are binding on you and your heirs, executors, administrators and other legal representatives, successors and permitted assigns, as applicable.

**20. Collection, Use, Disclosure and Retention of Information**

- 20.1 You authorize us to collect, use, disclose and retain information about you from time to time for any purpose relating to our relationship with you, including:
- to open and operate your account(s) and provide other Services to you;
  - to comply with regulatory requirements (including “know your customer” requirements);
  - to verify the information you have given from time to time;
  - to comply with valid requests for information about you from regulators, government agencies, public bodies, auditors, and other Persons who have a right to issue such requests;
  - identifying products and services of our affiliates or subsidiaries that may be of interest to you;
  - to prevent or protect against any fraud or illegality, or as otherwise required or permitted by applicable laws and rules;
  - to comply with legal process or subpoena;
  - in response to credit enquiries from financial institutions or any other Persons with whom you have or propose to have financial or other business dealings;

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- to maintain the accuracy and integrity of information held by credit reporting agencies;
- if it is otherwise reasonably necessary to protect our interest under this Agreement or any Service; and
- as otherwise set out in the Scotiabank Privacy Agreement.

You also authorize any Person we may contact in connection with the above purposes to provide us with such information.

- 20.2 If you have dealings with any of our affiliates or subsidiaries, you authorize us and such affiliates and subsidiaries to (where not prohibited by applicable laws and rules) share information about you in our respective records with each other so that we may each consolidate information about you for use by each of us for any of the purposes described in Sections 20.1.
- 20.3 You request and authorize us and our affiliates and subsidiaries to each communicate with you directly, including via electronic communications, with information and offers on products or services we or they offer from time to time that may be of interest to you. You may choose not to receive such communications from us, or our affiliates and subsidiaries, by notifying the branch at which your account with us is maintained or as otherwise instructed in the communication. You will not be refused any Services or other benefits if you withdraw your consent.
- 20.4 You represent and warrant to us that, to the extent any information we obtain about you from time to time consists of personal information of your employees, officers, directors, authorized signatories or other Representatives, you have obtained the consent of such individuals for the collection, use and disclosure by us and our affiliates and subsidiaries of their personal information for the purposes you have authorized in this Section 20, including their consent to receive communications set out in Section 20.3.
- 20.5 You may obtain more information about our privacy practices, including how we collect, use and disclose personal information, by contacting the branch at which you maintain an account with us or by reading the Scotiabank Privacy Agreement available at [www.Scotiabank.com](http://www.Scotiabank.com).

### **21. Your Representations and Warranties**

- 21.1 You represent and warrant to us on a continuing basis for the term of this Agreement:
- (a) you are duly organized, validly existing and in good standing under the laws of the jurisdiction of your incorporation or organization, are duly qualified to do your business and in good standing in each jurisdiction where qualification is necessary for your business, and you have not commenced any dissolution or reorganization proceedings;
  - (b) you have all necessary power and authority and obtained all consents, authorizations, registrations, and approvals required to enter into and perform your obligations this Agreement and each Service Agreement, and this Agreement and each Service Agreement have been duly authorized, executed and delivered by you;

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- (c) the execution, delivery and performance by you of this Agreement and each Service Agreement: (i) does not contravene any provision of your constating or other charter documents, by-laws, resolutions of directors or shareholders, or any shareholder agreement (as may be applicable), (ii) does not contravene or violate any laws and rules of your jurisdiction of incorporation of formation (as applicable) or any other legal requirement applicable to you, and (iii) will not constitute, or result in any breach of, or default under, or be in conflict with, any deed, indenture, franchise, licence, judgment, agreement or instrument to which you are a party or by which you are bound;
  - (d) all written information and data you have provided to us in connection with this Agreement or in any Service Agreement (as updated from time to time) are true and correct in all material respects and do not omit to state a material fact necessary in order to make the statements contained in such information and data, taken as a whole, not misleading;
  - (e) the Customer and each Person using a Service on the Customer's behalf possess the necessary signing authority and other power and authority to bind the Customer; and
  - (f) to the best of your knowledge, neither you nor any of your subsidiaries, directors, officers, employees, agents, or affiliates is a Sanctioned Person nor do you, nor any such other entity or individual, operate, possess, own, charter, or use a vessel that is listed, designated or sanctioned under any Sanctions.

## **22. Compliance Action – Sanctions**

### **22.1 You acknowledge and agree that:**

- (a) we and our affiliates and subsidiaries and third party service providers are required to act in accordance with, and it is our policy to comply with, the laws and rules of various jurisdictions, including those which relate to Sanctions and the prevention of money laundering, terrorist financing, bribery, corruption and tax evasion; and
- (b) we may take any action (a “**Compliance Action**”) that we, in our sole discretion, consider appropriate, to act in accordance with Sanctions or other laws and rules. Such Compliance Action may include but is not limited to the interception and investigation of any payment, communication or instruction, or other information; the making of further enquiries as to whether a Person is subject to any Sanctions; and the refusal to process any transaction or instruction that does not conform with Sanctions.

## **23. Tax Status**

- 23.1 Customer represents and certifies that it is a Canadian resident for tax purposes, unless it has advised Scotiabank otherwise in writing. If Customer becomes a non-resident of Canada for Canadian tax purposes, Customer will notify Scotiabank promptly (but no less than within 30 days) and advise of its new country of residence.
- 23.2 If the Customer is a non-resident of Canada, Customer acknowledges that transactions outside Canada may have tax consequences in Canada. Prior written

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advice should be obtained for such transactions from qualified tax advisors in Customer's domicile. A copy of such advice may be requested by Scotiabank prior to opening of accounts, permitting a transaction, or anytime thereafter. Scotiabank will withhold taxes only where required to do so by law, otherwise Customer is responsible for any taxation that may be incurred on accounts or transactions.

- 23.3 Unless the Customer informs Scotiabank otherwise in writing, Customer represents and warrants that it is not a US Person for the purposes of the US Federal income tax and Customer is not acting for, or on behalf of, a US Person. Customer acknowledges that a false statement or misrepresentation of tax status by a US Person could lead to penalties under US law. If Customer is or becomes a US Person, Customer agrees to notify Scotiabank promptly but not less than within 30 days and file such additional forms and take all other steps as Scotiabank shall request, including providing Scotiabank with a completed IRS Form W-9.

### **24. Intellectual Property**

- 24.1 Unless otherwise indicated, all trademarks, logos and other intellectual property rights in or relating to the Services are the property Scotiabank. Except as provided in this Agreement or any Service Agreement and related Service Materials, you shall not reproduce, transmit, sell, display, distribute, establish any hyperlink to, provide access to, modify, or commercially exploit in whole or in part any part of a Service or Service Material, without our prior written consent.
- 24.2 Neither party will use the other's name, trademarks or other intellectual property in any advertisement, marketing or other public message without the other party's prior written consent.

### **25. Other General Terms**

- 25.1 This Agreement and each Service Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
- 25.2 In this Agreement and each Service Agreement: (i) the words "include", "includes", and "including" will be interpreted to mean "including, without limitation", (ii) headings of particular sections are inserted only for convenience and will not be applicable to the interpretation of the section, (iii) where the context requires, words and phrases written in the singular will be construed to include the plural and vice versa, and (iv) when the laws of the Province of Quebec are applicable, the words "joint and several" shall mean "solidarily".
- 25.3 If any provisions of this Agreement or any Service Agreement is unlawful or unenforceable for any reason, each such will be without force or effect without invalidating or affecting the validity and enforceability of the remaining provisions of this Agreement or the Service Agreement, as applicable. To the extent permitted by applicable law, each of you and we hereby waive any provision of law that renders any provision in this Agreement or any Service Agreement unenforceable.
- 25.4 You acknowledge and agree that nothing in this Agreement or any Service Agreement creates any agency, fiduciary, joint venture or partnership relationship between us and you or any other Person. This Agreement and each Service Agreement is only for



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the benefit of Scotiabank and the Customer, and is not intended to confer any legal rights, benefits, or remedies on any other Person except to the extent otherwise provided in this Agreement or any Service Agreement.

- 25.5 To the extent that you have or hereafter acquire any immunity (including sovereign, crown or similar immunity) from jurisdiction of any court, suit or legal process (whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise), you irrevocably waive and agree not to claim such immunity.
- 25.6 You agree to do, execute, acknowledge and deliver such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms of this Agreement and each Service Agreement as we may request from time to time.
- 25.7 We retain all our rights under any law respecting loans, set-off, deposits and banking matters, even if they are not described in this Agreement or any Service Agreement.
- 25.8 Our rights under this Agreement, each Service Agreement, and applicable law are cumulative, and we can exercise any right without losing any other right. We can delay enforcing any right without losing that right. We can also waive any right on one occasion, or on multiple occasions, without losing our ability to exercise that right in the future.
- 25.9 Notwithstanding any termination of this Agreement, Sections 13, 14.5, 14.6, 16, 17, 18, 19.2, 20, and 25 (together with the related definitions in Appendix A) shall survive and remain in full force and effect.
- 25.10 This Agreement and each Service Agreement (including any signature forms, schedules, or other related documents) may be executed in one or more counterparts, each of which when taken together shall comprise one and the same agreement. This Agreement and each Service Agreement, once signed by you and accepted by us, shall be a binding agreement between us.
- 25.11 It is the express wish of the parties that this Agreement, and every Service Agreement, and any supplemental documents be drawn up and executed in English. C'est la volonté expresse des parties que cet accord et chaque contrat de Service et tout document complémentaire être élaboré et exécuté en anglais.

#### **Appendix A - Definitions**

As used in this Agreement, the following words and phrases have the following meanings:

**“Agreement”** means this Financial Services Agreement (including this Appendix A), as amended, extended, restated or otherwise modified from time to time.

**“Authentication ID”** has the meaning ascribed to it in Section 10.2.

**“Banking Day”** means any day that is not a Saturday, Sunday, statutory or civic holiday (federal or provincial), or any other day on which banks are required or permitted to be closed in the Province(s) or Territory(ies) where the applicable account(s) is located and/or Service is provided.

**“Cancel”** has the meaning ascribed to it in Section 5.2 and “cancellation” has the comparable meaning.

**“Cleared Funds”** means cash or any funds from any deposit which have been finally settled through the Clearing and Payments System that we use for settling payments in connection with Payment Instructions.

## Business Banking Services Agreement

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**“Clearing and Payment Systems”** means the payment and clearing settlement systems applicable to any of the Services, including the Payments Canada, NACHA, S.W.I.F.T., and CDS Clearing and Depository Services Inc.

**“Compliance Action”** has the meaning ascribed to it in Section 22.1(b).

**“Designated Information System”** has the meaning ascribed to it in Section 18.2.

**“Disabling Code”** means any contaminating or other destructive code, design, routine or other mechanism (including clock, timer, counter, virus, worm, software lock, drop dead device, Trojan horse routine, trap door, or time bomb) that may be used to access, modify, replicate, distort, delete, damage or disable any electronic or other digital channel, including any related hardware or software.

**“electronic communication”** means any agreement, transaction, instruction, document, information, disclosure, notice, confirmation, inquiry, request, response, or other communication that is sent or stored by means of any electronic or other digital transmission.

**“electronic signature”** means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic communication and includes a secure electronic signature as may be prescribed by applicable law or otherwise required by us.

**“Force Majeure”** means any event, act or omission beyond the reasonable control of such party (exercising reasonable foresight and diligence), including labour dispute, act of God, flood, fire, lightening, severe weather, earthquake, act of terrorism, war, revolution, civil commotion, act of public enemies, blockade, embargo, pandemic disease, or the application of any laws or rules.

**“instructions”** means a request, direction, or other instruction with respect to any Service or this Agreement, and includes where the context applies, any Payment Instruction.

**“Instrument”** means any document evidencing or that can be used to evidence a Payment Instruction, including cheques, money orders, promissory notes and other bills of exchange and other orders (written or electronic) for the payment of money, clearing item or other value item (including any image or reproduction).

**“laws and rules”** means as to any Person or Service: (a) the laws, statutes, codes, acts, ordinances, orders, regulations, directives, guidelines, and other requirements of all domestic and foreign governmental and regulatory authorities having jurisdiction over the Person or Service (including the Office of the Superintendent of Financial Institutions (Canada) and any Province, Territory or other government of Canada) and (b) the rules, standards, conditions, and other requirements of any Clearing and Payment Systems applicable to the Person or Service (including Rule H-1 and Rule F-1 of the Payments Canada applicable to cash management pre-authorized debits); each as may be amended or replaced from time to time. You can access the rules of Payments Canada available to the public on the internet at [www.Payments.ca](http://www.Payments.ca).

**“Losses”** means all liabilities, losses, damages, claims and demands (including third party claims and demands), fines, damages, penalties, expenses incurred (including legal expenses based on the solicitor’s fees charged) and other costs claimed against or sustained or incurred by any Person.

**“OFAC”** means the Office of Foreign Assets Control (of the US Department of the Treasury).



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**“Payment Instruction”** means a request to transfer funds to or from, or receive funds in, any of your accounts with us, whether in Canadian dollars or other currency agreed to by us, whether pursuant to Instruments, endorsements, pre-authorized payments, deposits, electronic transfers, electronic data transmissions, or any other orders for the payment or receipt of money, including transfers between accounts and which may have the signature electronically or mechanically produced or imprinted as an alternative to handwritten signature but in all cases must be given by a method that is acceptable to us, in our discretion, at the time they are given.

**“Person”** means, as the context requires, any individual, firm, partnership, company, corporation or other body corporate, government, governmental body, agency, trust, instrumentality, unincorporated body of persons or association.

**“Regulatory Notices”** has the meaning ascribed to it in Section 18.2.

**“Representatives”** in relation to the Customer, includes the Customer's employees, officers, directors, co-ordinators, users, cardholders, contacts, delegates, and agents.

**“Sanctioned Country”** means at any time a country, region or territory which itself is the subject or target of any Sanctions.

**“Sanctioned Person”** means a Person that is, or is directly or indirectly owned or controlled by a Person or Persons that is, listed, designated or sanctioned under any Sanctions or any Person operating, organized or resident in a Sanctioned Country.

**“Sanctions”** means any trade, economic or financial sanctions laws, regulations, executive orders, embargoes or restrictive measures imposed, administered or enforced by a Sanctions Authority.

**“Sanctions Authority”** means any one or a combination of: (a) the United Nations; (b) the United States of America; (c) Canada; (d) the United Kingdom and each respective member of the European Union; and (e) the governments and official institutions or agencies of any of (a) to (d) above, including the Security Council of the United Nations, OFAC, the United States Department of State, Global Affairs Canada and Her Majesty's Treasury of the United Kingdom.

**“Schedule of Rates”** means the Schedule of Rates we deliver to you or otherwise make available to you in our branches or on Scotiabank's website (as updated from time to time) and which shall be deemed to comprise part of this Agreement.

**“Service”** has the meaning ascribed to it in Section 1.3.

**“Service Materials”** has the meaning ascribed to it in Section 2.5.

**“Service Agreement”** means each offer letter or agreement (including each Cash Management and Payment Services Agreement and the service schedules attached thereto, or otherwise comprising a part thereof, from time to time) from time to time signed by you, or otherwise accepted by the Bank from you, for the provision of one or more financial products or services to you and made subject to the terms and conditions of this Agreement; each as may be amended, extended, restated or otherwise modified from time to time.

**“US Person”** means a US person as defined under the US Internal Revenue Code, including as applicable: (i) a US citizen, (ii) US resident (e.g.: a person who has obtained a green card or who has been granted the right to lawful permanent residence in the US), (iii) US corporation, (iv) US partnership, and (v) US trust.

## Credit Agreement

This section contains terms and conditions that apply when you are approved for small business credit products and services.

We may cancel the approval if we find there has been any material change to your financial status, as disclosed in the Credit Application, or if there has been any misrepresentation of facts in the Credit Application or other documentation.

### 1. Your contract with us

The agreement constitutes a binding contract between you and us.

If the business customer consists of more than one individual or entity, you agree that:

- every such person is responsible jointly and severally (in Quebec, solidarity) for the payment and performance of each obligation described in the agreement or derived therefrom
- the Bank can choose among you to decide who will pay back the obligations.

If we approve a ScotiaLine® *for business* Visa\* card, Scotia Momentum® *for business* Visa\* card or ScotiaGold Passport® *for business* Visa\* card, you agree to be bound by the terms of the Revolving Credit Agreement which you will receive with your Scotiabank credit card carrier to which your approved ScotiaLine *for business* Visa card, Scotia Momentum *for business* Visa card, ScotiaGold Passport *for business* Visa card, or Scotiabank® GM®\* Visa\* Business Card will be attached when the card is issued and delivered to you by us.

You understand and agree that you are liable for all charges incurred on your account with any supplementary card issued in connection with the account. When you request Scotiabank to issue a supplementary card, we will also issue renewal and replacement cards for such supplementary card, unless the card is cancelled by you or Scotiabank. You understand and agree that a supplementary cardholder's signature on or use or retention of the supplementary card issued in his or her name shall evidence your receipt of the agreements relating to the account and your acceptance of their terms.

If we approve a Scotiabank Visa Business Card, you agree to be bound by the terms of the Scotiabank Visa Business Card Agreement which is provided to you before your card is issued, and to the Scotiabank Visa Business Card Cardholder Agreement that is provided to you when the Scotiabank Visa Business Card is issued and delivered to you by us.

### 2. Your promise to pay

You promise to pay the Bank the full amount of the obligations described in the agreement, the interest on it when due and payable and any applicable fees and charges levied by us from time to time. You also promise to pay us any expenses that we incur to realize on security or collect payments from you and costs of preparing and registering any security or notice with respect to any security.

### 3. Advances

If we approve a credit line or overdraft facility, you may borrow up to the limit specified by us, and for ongoing credit risk management purposes, you agree to maintain with the Bank

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all your business operating accounts as long as you have a credit line or overdraft facility with us. We can, however, cancel your credit line or overdraft facility at any time and not permit you to borrow after that. Cancellation does not relieve you of any obligations under this agreement until the credit line balance or overdraft facility balance has been paid to us in full. Regardless of such cancellation, you are responsible for paying us for all debits or other charges made following cancellation.

The amount of an overdraft is paid down and readvanced as you deposit or withdraw money from your account. The amount of a credit line may be readvanced if it is paid down. We are not required to advance to you more than the limits that are agreed by us.

If we approve a term loan, the Bank advances the money in one or more amounts as outlined by us.

#### **4. Payments**

You agree to pay back your indebtedness to us, including without limitation principal, interest, fees and charges according to the terms of the agreement.

If your credit facility is repayable on demand, you agree to immediately pay back the entire amount of the credit facilities at any time if we ask you to do so.

For non-farm overdraft facilities excluding those fully secured by readily realizable security (e.g. cash) or real estate, prior to the following month-end, you must make deposits to your business account of at least 3% of the authorized outstanding overdraft amount indicated on each month-end statement as at the month-end statement date (minimum \$50). For nonfarm overdraft facilities fully secured by readily realizable security (e.g. cash) or real estate, prior to the following month-end, you must make deposits to your business account of at least the interest amount calculated and charged to your business account as of the month-end (minimum \$50). For any non-farm overdraft facilities, the total minimum deposit amount will be communicated on your month-end statement if applicable. We may require a different monthly payment and will notify you of this beforehand. Any overdue payment or overlimit amount must be paid in full as soon as you receive your statement and the total minimum deposit amount includes your current minimum deposit amount, plus any overdue or overlimit amounts.

Any farm overdraft facilities must be repaid at the end of the production cycle as determined by the Bank from time to time.

If you borrow via a term loan, the entire amount of the indebtedness remaining unpaid is due and payable at the end of the term specified in the agreement or earlier if you default on any of the terms in the agreement, or in any other agreement with us. If you do, we can demand that you immediately pay back the entire indebtedness to us under this agreement.

If we demand repayment of the entire amount, we will give you notice according to legal requirements.

We can deduct payments from your account(s) with the Bank.

#### **5. Fees and charges**

You are specifically responsible for paying any late payment fees and interest charges on all payments you do not make when they are due. You agree to pay us these late payment fees and interest charges which are published by us from time to time.

## Business Banking Services Agreement

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If there are any amounts due and payable by you to us, we can deduct them from any of your accounts with the Bank. This includes any fees and charges described in this agreement (but may also include any other fees and charges the Bank may charge).

We may change the fees and charges published by the Bank or described in this agreement. If we do, we will post a notice of the new fees and charges in each branch, at least 30 days before they go into effect.

### **6. Record of your indebtedness**

We will keep a record of the amount of principal, interest costs and fees you owe us. This record will show the amount of each advance we make to you and the amount of each payment of principal and interest costs you make to us. For a credit line or overdraft facilities we will give you this information monthly. For all other indebtedness, we will give you this information, when you ask for it.

Unless we have made a clear mistake, this record is conclusive evidence of the amount you owe the Bank. You are still responsible for paying the amount you owe, even if there is a mistake in our record or in the statements we provide.

### **7. Interest**

You must pay interest on your advances at the rate specified by us from time to time. If the interest rate is based on “prime”, that means the prime lending rate of the Bank. Our prime lending rate is the variable per annum reference rate of interest as announced and adjusted by us from time to time for loans made by us in Canada in Canadian dollars.

We calculate your interest daily on the daily balance you still owe us. Interest is due and payable as follows:

- for credit lines, interest is payable monthly on the 22nd day of each month unless you request a different payment date
- for an overdraft facility or overdraft protection, interest is payable monthly on the date your business account statement is prepared and printed
- for term loans with non-monthly blended payments or loans under the Canadian Small Business Financing Act (CSBFA) and the Canadian Agriculture Loans Act (CALA) with non-monthly principal plus interest payments, interest is payable at the time of the principal payment
- for all other term loans, interest is payable monthly on the date of the principal payment.

Interest is paid in arrears and, for each obligation, is due both before and after your obligation matures and before and after any default or judgement.

If you don't pay the interest when it is due, we may charge you interest on the interest. If we charge this additional interest, it is payable at the same rate as specified in the agreement and at the same time as specified in the agreement. This additional interest may increase your effective rate of interest.

### **8. Prepaying your term loans**

If you have a floating rate loan prepayment is permitted without penalty at any time in whole or in part. Prepayments on floating rate loans are noncumulative and are to be applied against installments of principal in the inverse order of their maturities.

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If your fixed rate loan stipulates a closed/lock-in period, no prepayment is permitted during the closed/lock-in period. Prepayment is permitted if your fixed rate loan is open (has no closed/lock-in period) or after a completed specified closed/lock-in period and the cost to pay-off some or the entire principal amount of your term loan early is the higher of three-months' interest cost at the originally approved term loan rate on the amount you want to pre-pay, or the "Interest Differential". Prepayments are noncumulative from year to year and are to be applied against installments of principal in the inverse order of their maturities

"Interest Differential" means the amount, if any, by which interest at the rate applicable to the term loan exceeds interest at the prevailing rate at the time of prepayment calculated on the amount of the principal prepayment for the remaining term of the loan. (The "prevailing rate at the time of prepayment" is defined as that rate at which the Bank would then lend to you, based on the same security, for the remaining term of the loan.)

If you have a term loan with a fixed interest rate that is guaranteed by the Government of Canada under the CSBFA, you can make a 10 percent principal prepayment without penalty or notice once a year on the anniversary date of the loan. The 10 percent amount is based on the original principal balance of the loan.

#### **9. Overdraft Protection for business™**

Overdraft Protection for business (ODP) is a temporary credit arrangement involving a specified business account.

If we have approved you for ODP, we will honour debit entries originated by you (eg. cheques, electronic funds transfers, etc.) ("debits") drawn on your specified deposit account, within your approved ODP limit. You agree to pay interest on the amount of the overdraft at the rate specified by us, plus any applicable fees.

You agree to reduce your overdraft to zero within 30 days after it is created.

We do not have to honour any debit if the action would result in your specified overdraft limit being exceeded, if your specified deposit account has been overdrawn for more than 30 days, or if we have made a demand for payment. In addition, we can cancel ODP for your specified account at any time without notice and refuse to honour any further debits that create an overdraft. Cancellation does not relieve you of any obligation under this agreement until the overdraft amount has been paid in full. Regardless of such cancellation, you are responsible for paying us for all debits or other charges made following cancellation.

On occasion, we may allow your account to be overdrawn even though you will exceed your authorized ODP limit (unprotected overdraft). An Overdraft Handling Fee applies for each item which places your account in an unprotected overdraft position and for each additional item that is paid while the account is in an unprotected overdraft position (normal transaction fees still apply). The amount of the Overdraft Handling Fee is published in the Guide to Fees and Interest Schedules for business accounts. Unprotected overdrafts are payable in full immediately.

If we allow you to exceed your authorized ODP limit from time to time, that permission shall not be considered to be a permanent increase in your credit limit.

If we have not agreed to provide ODP, we do not have to honour any debits that create an overdraft. We do not have to tell you that we are not going to honour a debit in these cases.



### 10. Declarations and Agreements

Everyone signing the Statement – About the Business, or the Application – Banking Services *for business* or Indirect Agriculture Financing – Credit Application, and, where applicable, the Credit Agreement *for business* is making the following declarations. These declarations are specifically needed for any loan in the agreement guaranteed by the Government of Canada under the CSBFA, CALA:

- the owner of the business is properly described in the agreement
- to the best of your knowledge, the information in the applicable loan request or credit application is complete and correct
- to the best of your knowledge your loan application complies with all the applicable provisions of the CSBFA, CALA and will continue to comply until your loan is repaid in full
- if the loan is guaranteed under CALA, you hold an interest in a farming operation as prescribed by CALA.

If the loan is approved, you agree:

- to use the proceeds of the loan for the purposes you specified in the agreement and not for anything else
- to give us any information we require to satisfy ourselves that you have used the loan for the purpose stated in the agreement
- to properly use, maintain and repair your property (secured to the Bank)
- not to put a mortgage, lien or charge on any property purchased with the loan money or pledged or given as security for the loan unless you have our prior permission in writing
- not to dispose of any property you purchase with the loan money or pledged or given as security for the loan unless you have our prior permission in writing
- to give us any additional information we reasonably require about your business, such as copies of documents and business records
- to give us, from time to time and at your expense, any security and insurance we require to secure the loan and the interest on it
- to pay the cost of any insurance we may choose to obtain or renew if you do not provide or keep up the insurance we require
- to pay the cost of the necessary registration or filing and gathering of evidence about the priority of our security.

If the loan is approved, you:

- authorize us to register or file the security, or notice thereof, if necessary, and obtain evidence that satisfies us about the priority of the Bank's security
- authorize us to sell the property which is the security given for the loan, or to realize on it in any way that is authorized by applicable law, if you default in any payment or other obligation under the agreement or under any other agreement with us from time to time (We will subtract our expenses from the money we get from the sale or realization. We will then apply the balance of the money to your debt. If there is not enough money to pay off your

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debt, you must pay the shortfall to the extent permitted by law. Under CSBFA, this is currently a maximum of 25 percent of the original balance of the loan for an individual or one or more individual guarantors who have guaranteed a CSBFA loan.)

- acknowledge that the terms of the government guarantee may require us to sell or realize the security given for the loan in a short time, and we are not allowed to grant any period of time for you to correct your default, except as required by law
- authorize us to give all the information about your loan or the agreement to any person involved in the administration of the CSBFA, CALA. We will give the information only to a person appointed by or on behalf of the Government of Canada
- acknowledge that all the loans you may have which are guaranteed by the Government of Canada are not and cannot be more than the applicable limit announced by the Government of Canada.

### **11. Your obligations**

You are required to satisfy a number of legal obligations to us when you borrow money from us. You agree to:

- pay us the money you owe us when it is due or on demand
- pay all amounts you owe to other people to protect your property from other liens or claims
- tell us right away if you can't pay the amount you owe us
- tell us right away if you commit any default under these terms and conditions or any other agreement with us
- tell us before you change the ownership or nature of your business or use of any property
- tell us if any information in the agreement changes
- tell us right away if you move the property which is security for your indebtedness under the agreement, but only tell us when you change the main base of operation for this property if the property you move normally goes from one location to another
- give us any information we request on your business or property
- give us, when we request, your current financial statements, personal financial or net worth statement and any other information we may reasonably require from time to time
- make sure your guarantor, when we request, also provides current financial statements, personal net worth statements and any other relevant information we may reasonably require from time to time
- keep the property you have put up as security in first class order and repair, and replace all worn, broken or defective parts
- let us on your premises at any time so we can inspect your property
- insure your property with an all-risks insurance policy satisfactory to us that protects your property from all hazards, including fire, theft and collision for motor vehicles
- amend your all-risks insurance policy to put our interest as "loss payee", and deliver satisfactory proof of insurance or our form of insurance certificate to us

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- keep your property free of any mortgages, liens, charges, or security interest, except the ones granted to us
- tell us right away if you are involved in a lawsuit or another creditor makes a claim against you
- keep proper accounting records
- give us all the other certificates, agreements and assignments we may request from time to time (that relate to these terms and conditions or the terms and conditions of the agreement and the granting of security for your indebtedness)
- observe and conform to all laws and requirements of any federal, provincial or any other governmental authority that relate to the environment and the operation of your business activities, and notify us of any failure to do so
- not change your name without giving us written notice
- undertake and pay the expenses of any environmental investigation, assessment or clean-up which we require
- notify us of any unfavourable change in the environmental condition of your business premises or equipment
- notify us of any unfavourable change in the environmental impact of your business activities
- authorize us to make, at any time, credit enquiries which may involve full information disclosure, and you hereby waive to the extent permitted by law any right to privacy or confidentiality of credit information.

### 12. Security Agreement

By signing the Statement – About the Business, or the Application – Banking Services *for business* or Indirect Agriculture Financing – Credit Application and where applicable, the Credit Agreement *for business*, you grant us a mortgage and charge, and hereby grant, bargain and sell to the Bank for security purposes and grant a hypothec and security interest in the property, both current and acquired in the future (other than consumer goods) that is provided for in the Statement – About the Business, or the Application – Banking Services *for business* or the Credit Agreement *for business*.

Our security interest also includes all your rights, interests and benefits in that current property and property acquired in the future and specifically secures your obligations under any agreement with us.

The security interest you grant us is in the form of a fixed and specific mortgage. We may register your grant of security against the secured property in such registries as we choose, including personal property registration systems.

If the collateral covered by the security interest includes your book debts, you assign and transfer to us all book debts, such as accounts receivable.

Where required by the Bank or law, we will physically hold the property as security for your obligations to us, which may include securities in uncertified form by notice to the clearing corporation. The grant of security, mortgage and hypothec includes any grant, bargain and sale required to complete this grant of security and mortgage. It also includes our right to



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have and to hold property for the purposes of this agreement. If we hold securities in our possession, we are not required to keep them separate from other securities held.

If the Bank holds property, we are not responsible if the property decreases in value for any reason. Your security on money or cash equivalents entitles us to seize the money or cash equivalents and immediately set-off against your indebtedness.

The business customer grants Scotiabank a security interest, and a hypothec if property is located in the Province of Quebec, on all present property and property acquired in the future, (other than consumer goods) including inventory, furniture, fixtures, office, equipment, industrial equipment, machinery, plant, tools, vehicles, intangible personal property, securities, documents of title, instruments, chattel paper, money and accounts receivable. If any of your property is located in the Province of Quebec, the security interest includes a hypothec on the property described in the agreement for an amount equal to 150% of the aggregate of the initial limits for all Lines of Credit, ScotiaLine® *for business* Visa\* card, Scotia Momentum® *for business* Visa\* card, ScotiaGold Passport® *for business* Visa\* card, Scotiabank® GM® Visa\* Business Card and the Scotiabank Visa Business Card as described in the first page of the Application – Banking Services *for business* – About the Business or the Statement – About the Business. This provision does not apply when the Credit Agreement for business is used. Except as otherwise agreed, this security interest and hypothec:

- Is granted when the limits for all credit lines ScotiaLine® *for business* Visa\* card, Scotia Momentum® *for business* Visa\* card, ScotiaGold Passport® *for business* Visa\* card, Scotiabank® GM® Visa\* Business Card and overdraft facilities (“Credits”) approved under this application plus the limits for any existing Credits total more than \$50,000; and,
- Secures all Credits approved under this application and any existing Credits.

The mortgages and security interest you grant to us are to secure payment and performance of all your obligations to us that are described in this agreement, and any other agreement you enter into with us. These obligations include but are not limited to:

- the repayment of the principal amount of all your indebtedness to us
- the payment of interest to us, including without limitation, interest on overdue interest
- the payment of all our costs, charges, expenses and fees, including without limitation, legal fees on a solicitor and client basis, that relate to the agreement or the enforcement or realization of security.

All attachments, accessories, parts, repair parts and other equipment, to the extent applicable, become part of the property secured and described in the agreement as being covered by the security interest you grant us.

The grant of security over any property described in the agreement includes all proceeds, money and property from the secured property including insurance proceeds whether it is cash or other proceeds of any nature and kind. It also includes all your records relating to your business and the property that is secured.

If you are a corporation, the Limitation of Civil Rights Act and the Land Contracts Act of the Province of Saskatchewan do not apply to this agreement.

## Business Banking Services Agreement

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The time for attachment of any security interest created has not been delayed. The security interest attaches, which means it takes effect, when you sign the agreement.

You acknowledge that you have received and read a copy of these terms and conditions.

You waive the right to receive a copy of any financing statement, financing change statement or verification statement we may register or receive.

### **13. Guarantee and obligations of the guarantor**

Each guarantor agrees to be bound by the following terms of guarantee:

- the guarantee is a continuing guarantee, is not released by any change in capacity or death of the guarantor and is security for the indebtedness that is guaranteed to us
- this agreement of guarantee is given for valuable consideration
- the guarantor agrees that he or she is responsible to us to the maximum extent permitted by applicable law for all indebtedness and obligations outlined in the agreement, including all interest, fees, legal and other costs and all charges and expenses
- we are entitled to demand payment from a guarantor even if we have not tried to get payment from the business customer, any other person, any other security or any other guarantee or guarantor
- we do not need to demand or get payment from all guarantors; we can demand and get the whole amount from any guarantor or guarantors we choose (this is often called joint and several liability and in Quebec, solidarity).

If the business customer defaults on any payment owed to us, we are entitled to treat all guaranteed liabilities as due and payable. We may then immediately demand and collect the total guaranteed amount from the guarantor.

The guarantor must pay us immediately after we demand payment and the guarantor's liability to make payment arises forthwith after such demand. We will demand payment in writing and will mail or deliver our letter to the guarantor's address.

Until we are paid in full, the guarantor agrees its interests including all amounts owing by you (the business customer) to the guarantor are fully postponed to us, waives all rights to take legal action against the business customer and to exercise rights of subrogation, which are the rights to take our position and security. We are not required to marshal property, which is the act of realizing security in a certain order.

The guarantor's liability includes the liability to pay any interest the customer has not paid, and interest from the date of demand. This interest is charged at the applicable rate in the agreement. The guarantor must also pay all of the costs and expenses we incur to get the money the customer owes us, including any costs and expenses of collecting from the guarantor including without limitation legal fees on a solicitor and his/her own client basis.

The guarantor is not released from the guarantee if, from time to time, we change the terms of your indebtedness, or if we deal with the customer on different terms than the agreement. These changes include the terms of the credit arrangements and the granting of time, extensions, renewals, indulgences, releases and discharges. We do not have to notify the guarantor if we make any of these changes.

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This guarantee is not discharged or affected by any change in the capacity or status of the customer, including bankruptcy or other insolvency, even if we advance more money after the bankruptcy or insolvency.

This guarantee is in addition to any security and any other guarantee we hold. The liability under the guarantee may be limited, however, only if the limitation is set out in the agreement.

## **Default events and remedies**

### **14. Default events**

We have the right to require immediate payment at any time if the agreement specifies that a credit facility must be paid on demand.

If a credit facility is not a demand loan, we still have the right to demand immediate payment of the entire amount if any of the following events happen. These events are called default events:

- you fail to pay, when it is due, any payment required by the agreement
- a guarantor fails to pay any amount owing to us on any obligation to us
- you fail to observe or perform any provision of these terms and conditions or any other agreement with us
- you fail to comply with the terms of the security granted to us
- you, or a guarantor, become insolvent or commit an act of bankruptcy
- you, or a guarantor, make an assignment or bulk sale of all or a substantial part of your or, its property
- you sell the property which is secured under the agreement, except in the ordinary course of business
- a creditor moves to have you or a guarantor declared bankrupt
- you take a step or a guarantor take(s) a step to make an arrangement with creditors, wind up business or appoint a receiver
- anyone legally takes possession of a significant portion of your or a guarantor's property, particularly the property which is security for your indebtedness, or obtains a judgement permitting him or her to do so
- any security required to be provided in the agreement is not valid and in force
- in our opinion, there is any material unfavourable change in your financial condition, the financial condition of any guarantor or the operation of your business
- any declaration, representation or warranty you make to us or to the Government of Canada under the CSBFA, CALA is false in any material way
- you or a guarantor fails to comply with all applicable provisions of the CSBFA, CALA with respect to your loan
- any property secured is in danger of being lost, damaged or confiscated
- any guarantee of the credit facilities is withdrawn, determined to be invalid or made ineffective for any reason

## Business Banking Services Agreement

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- you are in breach of any term of any other agreement you have entered into with us from time to time, even if it does not relate to the agreement
- you complete any reorganization, amalgamation or merger without our prior permission in writing
- there is a change of control in the ownership of your business
- in our opinion, there is any unfavourable change in the environmental condition of your business premises or equipment
- in our opinion, there is any unfavourable change in the environmental impact of your business activities.

### 15. Default remedies

If a default event occurs, we are entitled to demand that you immediately pay back the full amount you owe us. We are also entitled to exercise the rights in the agreement, or in law.

As well, we are entitled to realize on any security you granted to us under these terms and conditions and any other agreement you enter into with us from time to time. We are not required to take any action, however, and any delay or failure to do so does not release your obligations.

“Realize” includes the right to take possession, sell or lease, foreclose, seize and keep the property which is secured. We may choose how we want to realize. You are responsible for all our costs, including legal fees on a solicitor and his/her own client basis, and for interest on such expenses we have paid. We will charge this interest at the same rate as the interest rate in the agreement. We can deduct expenses from your account(s) with us.

#### **If a default event occurs, we also have the following remedies:**

We do not have to make any more advances to you or provide any banking services.

We can declare you to be in default under any other agreement with us.

We have, in addition to the rights and remedies in this agreement, all the rights and remedies provided by law and under any statute that applies, including all rights of legal and equitable set-off. This includes without limitation, the applicable personal property security legislation in every province and territory of Canada where you have property.

We are entitled to take possession of the property which is secured, and we can enter any of your premises to do so. If we incur any costs to take possession of the secured property, we can charge those costs to your account, and they will be added to the amount you owe us.

The security you grant to us covers these costs.

We may hold, insure, maintain, repair, process, protect, preserve, prepare for disposition and dispose of the property. If we do, we will charge the costs to your account, and they will be added to the amount you owe us. The security you grant to us covers these costs.

We may appoint a receiver or a receiver-manager if we choose to do so. The receiver or receiver-manager will have all our rights, benefits and powers provided by these terms and conditions or any law, including the right to sell or lease property.

Once the receiver or receiver-manager has been appointed, he or she has the power, but not the obligation, to operate your business, and may borrow money for that purpose. The receiver or receiver-manager will be your agent, however, and we will not be responsible for any misconduct

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or negligence on his or her part. If we appoint a receiver or receiver-manager, we will charge the costs to your account, and they will be added to the amount you owe us. The security you grant us will cover these costs and any money borrowed by the receiver or receiver-manager.

#### **16. Sale of secured property**

We are entitled to seize or foreclose and take the property which is the security for your indebtedness. If we do, we will consider the indebtedness to be repaid to the extent required by law.

We can choose how to deal with the property once we can realize. We are entitled to realize at any time after you default on any of the requirements of the agreement or we have demanded payment and you have failed to pay in full. We are only required to give you the notice required by law.

We can sell the property in any way we choose, including private sales and auctions. We may purchase the property for ourselves in any sale process and we can accept deferred payment terms in any sale.

If we sell the property, we may apply the proceeds of the sale to the costs and expenses including without limitation receivership costs and legal fees on a solicitor and his/her own client basis, and then to repay your obligation to us as we determine. After that, we will pay you any remaining amount as required by law.

You must pay any remaining amount if the proceeds from the sale or the value of property seized or foreclosed is not enough to repay your entire obligation to us. We are only required to be reasonable in the sale, seizure or foreclosure process. We are not required to get the best price or wait to sell if the market isn't good.

#### **Other**

##### **17. Amendments**

You and we may amend the agreement at any time but each amendment must be in writing and signed by each of you and us. Any amendment made to the agreement may change the business arrangements between you and us, including the legal relationship.

##### **18. Governing law**

This agreement is governed by the laws of the province or territory where your main business office is located as indicated in the Business Account – Service Request, Statement – About the Business or the Application – Banking Services *for business* or Indirect Agriculture Financing – Credit Application or the Credit Agreement *for business* and the laws of Canada applicable therein. The limitation period for this agreement is extended to six years where permitted by provincial or territorial laws.

##### **19. Assignment**

The agreement is binding on you and any person who succeeds you or takes on your obligations by assignment.

You must not assign the agreement without getting our prior written permission. For example, you must not change your business from a proprietorship or partnership to a corporation as this is an assignment.

## Business Banking Services Agreement

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The Bank may assign your obligations and our rights under the agreement.

### 20. Financial review

We may conduct reviews of your business and financial affairs from time to time, and inspections of your property at any time. We will give you reasonable notice of the time of any review or inspection.

### 21. Additional agreements

If we need further agreements for this credit arrangement, you will provide them on our request, and we can register those agreements.

### 22. Scotia Leasing Agreements / Conditional Sales Agreements

If we approve a Scotia Leasing lease agreement and/or conditional sales agreement financing transaction, you agree to be bound by the terms of the Scotia Leasing lease agreement and/or conditional sales agreement documentation which will be executed between you and Scotiabank at the time of drawdown.

In the event of a conflict, the terms and conditions of the executed lease agreement and/or conditional sales agreement supersede the terms and conditions of the Credit Agreement *for business* with regards to such lease agreements and/or conditional sales agreements.

## Revolving Credit Agreement

(ScotiaLine® *for business* Visa\* card, Scotia Momentum® *for business* Visa\* card, Scotiabank® GM\*\* Visa\* Business Card and ScotiaGold Passport® *for business* Visa\* card)

You agree to be bound by the terms of the Revolving Credit Agreement which you will receive with your Scotiabank credit card carrier to which your approved ScotiaLine® *for business* Visa\* card, Scotia Momentum® *for business* Visa\* card, Scotiabank® GM\*\* Visa\* Business Card, or ScotiaGold Passport® *for business* Visa\* card will be attached when the card is issued and delivered to you by us.

## Scotiabank Visa Business Card Agreement

In this Agreement, you and your refer to the Company, refer to the business customer and its Designated Cardholders We, our, us, and the Bank refer to The Bank of Nova Scotia. If you agree to this Agreement, or sign the reverse of the card when we issue you a Visa\* card or cards ("Card" or "Cards"), or provide Company with a renewal or replacement Card or Cards, and you keep or use the Cards, you agree to the terms and conditions of this Agreement, and where applicable, the Scotiabank Group Privacy Agreement (available at [www.scotiabank.com](http://www.scotiabank.com)). Your credit application is incorporated into and forms part of this Agreement.

### COMPANY'S RIGHTS AND OBLIGATIONS

#### Using the Card

You can use the Cards we supply to you, wherever they are accepted to buy goods or services ("Purchases"), and for other purposes we may authorize from time to time. At your request, we will supply you with additional Cards for Purchases or cash advances. A percentage value of cash advance must be input by the Designated Card Coordinator when ordering a Card.



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The value selected can be between 0-100%. Only the Designated Card Coordinator(s) are able to set this value for the cash advance feature.

Using the online Scotiabank Visa Business Card Management application, the Company will designate for us certain employees (“Designated Cardholders”) to whom we will issue a Card embossed with the name of the Company and the Designated Cardholder name. If you ask the Bank to not emboss a Designated Cardholder’s name on a Card, that may impact the insurance coverage that applies to transactions including coverage for Purchases made on that Card. The Bank recommends the embossing of the Designated Cardholder on each Card. You may impose use restrictions for any Cards issued to you, so long as your Card use restrictions comply with this Agreement, Visa regulations, and applicable law. The Company is solely responsible for all activities of its Designated Cardholders, and is responsible for obtaining from its Designated Cardholders any Agreements or commitments you consider necessary to govern their use of the Cards.

Only Designated Cardholders may obtain cash advances from financial institutions that accept the Card. By using the Card with a personal identification number (“PIN”), Designated Cardholders can also obtain cash advances at any automated bank machine (“ABM”) that we designate and displays the Visa\* logo. If a Card is used by a Designated Cardholder to obtain a cash advance, you are assumed to have authorized the transaction.

You agree that all transactions, including all Purchases made using the Cards and all cash advances made using the Cards, will be for your business purposes. Your violation of this provision does not relieve you of your obligations to repay us for all such amounts along with any interest, fees or other amounts you may owe us pursuant to this Agreement.

#### **Identification**

Company warrants that, prior to requesting cards for any potential Designated Cardholder, Company shall have obtained, verified, and recorded information that verifies the identity of each potential Designated Cardholder. Further, Company warrants that any card request sent to the Bank by the Company shall only be for a potential Designated Cardholder that has been screened, whose identity has been verified and who is allowed to be issued a Card by, but not limited to, applicable Federal laws related to the prevention of money laundering and funding of terrorism as required of financial institutions.

#### **Scotiabank Visa Business Card Coordinator**

The Company will designate up to two (2) of your employees as “Scotiabank Visa Business Card Coordinator(s)” (the “Card Coordinator(s)”) by completing and sending us a signed “Scotiabank Visa Business Card Coordinator Designation” form(s). All dealings and communications between you and the Bank in connection with the Cards will be conducted through the Card Coordinator(s). We may rely exclusively on any directions, authorizations and other communications we receive from a Card Coordinator whether communicated verbally, electronically or in writing. The Card Coordinator(s) will be responsible for notifying us of all Designated Cardholder misuse or termination, Designated Cardholder name changes, Card use restrictions, any change in address of the Company or a Designated Cardholder and any other information which we require to keep our records up to date.

## Business Banking Services Agreement

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### **Data and Privacy**

Company understands that the Bank may outsource the processing and housing of Program information and data to a jurisdiction outside Canada. Company further understands that law enforcement authorities in the jurisdiction, under applicable legislation or statutes in the jurisdiction, may access the information and data.

From time to time, the Designated Cardholder acknowledges and consents that the Company may request and receive reports showing data and information regarding the Company's Program that may contain data and personal information pertaining to the purchases, travel arrangements and other activities of the Company's Designated Cardholders. The Designated Cardholder acknowledges that they have been given notice of this use of information. The Designated Cardholder explicitly consents to the collection, use and disclosure of such data and personal information to the Bank, the Company and other third parties. By signing this Agreement, the Company warrants to the Bank that the Company will abide by any and all applicable legislation including all laws governing privacy and personal information. The Company warrants that it will inform Designated Cardholders prior to requesting this information from the Bank, however failure to do so will not reduce the ambit of the consents given in this Agreement.

### **Repaying the Amounts You Owe**

When you use the Cards or allow others to use them, you incur a debt owed to us ("debt"). Interest, service charges and annual fees that we may charge you under this Agreement will be added to Company's debt and are not refundable, even if this Agreement is cancelled or terminated. If we use the services of a third party to retrieve any Card from you, we may add the cost of the Card retrieval to your debt. You agree to repay us in full any debt you owe to the Bank. All amounts payable under this Agreement are the responsibility of the Company.

### **Making Your Monthly Payments**

The Bank will provide you with access to an electronic monthly statement (the "Corporate Statement") containing information about each transaction during the statement period. The Bank is also authorized by you to issue to each Designated Cardholder access to an electronic monthly memo statement (the "Cardholder Monthly Statement"). All indebtedness incurred through the use of our Cards is billed and payable in the Card currency.

You agree to pay us, in full, the sum of all debt shown in your electronic Corporate Statement, in the currency stated in the statement. Interest is payable on cash advances from the transaction date indicated on the Corporate Statement to the date payment is received in full. Payment in full is due by the due date shown on your Corporate Statement or electronic notification, and any outstanding amounts will be debited from your business account on the due date shown on your Corporate Statement or electronic notification.

### **Requesting Cardholder Services**

You have requested the features, benefits and services provided automatically with the Card. You understand that optional services may be available at an additional cost to you. You understand that firms independent of us may supply some Card features, benefits or services and that we are neither responsible nor liable for them. We are not liable if the Card(s) are not accepted or honoured at any time.



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### **Adhering to our Scotiabank Visa Business Card Guidelines**

You will adhere to our Scotiabank Visa Business Card Guidelines (the “Guidelines”) as may be provided to you. These Guidelines provide you with information on the operation of a successful Scotiabank Visa Business Card Program. In the event of any inconsistency between the terms of this Agreement and our Scotiabank Visa Business Card Guidelines this Agreement shall prevail.

### **Cash Back Reward program (For Canadian Dollar Cards ONLY)**

There is an annual Cash Back program, as described below; associated with each Card that is part of a Canadian Card Currency Program (the “Cash Back Program”). The Cash Back Program is based on the monthly billing cycles in each 12-month period from September 16 to September 15 (the “Cash Back Rebate Period”). At the end of the Cash Back Rebate Period, the Bank will credit the Customer with the amount of the Cash Back earned (the “Cash Back”) by October 31st, on an annual basis, as described below.

Cash Back will only be paid once a year and will be based on transactions recorded for each Designated Cardholder under your Cash Back Program less Cash Advances, annual fees and other fees or service charges, refunds, returns or other similar credits, unauthorized transactions and fraudulent transaction and if applicable interest.

Annual Spending levels per card	Cash Back rate	Maximum Cash Back (per Program)
\$0 - \$7,499.99	No Cash Back	N/A
\$7,500+	1.00%	\$25,000

Cash Back is paid to each Card in the Program that has reached the annual spend of \$7,500. For example, if a Card in the Program reaches \$8,500 in annual spend you will receive a rebate of \$85. However, if a Card has only received an annual spend of \$6,500 during the Cash Back Rebate Period, that Card will earn no Cash Back as it has not met the minimum spend requirement of \$7,500 per Card. Note: The maximum cash back is \$25,000 per year at the program level (which includes all Cards issued for your program).

### **Maximum Rebate**

The maximum Cash Back that can be earned is \$25,000 (calculated based on the Cash Back that is awarded to all Cards issued for your Program). We reserve the right to modify the Cash Back Program from time to time in our sole discretion without notice to you. Each Card must be in good standing at the time the Cash Back is awarded (payout) otherwise the Cash Back will not be awarded by the Bank.

### **Calculation of your annual Cash Back**

Cash Back will be calculated at the rate of 1% of the amount of all Designated Cardholder qualified transactions (on an aggregate Customer basis) less cash advances, annual fees and other fees or service charges, refunds, returns or other similar credits, unauthorized transactions and fraudulent transactions and if applicable interest (the “Net Cash Back”).

If your Net Cash Back (on an aggregate basis) is in a negative position at the end of the annual Cash Back Rebate Period, we will not pay any Cash Back for the Cash Back Rebate Period.

### **Reporting on the Cash Back Program**

- Your Card Coordinator will receive a monthly notification from us showing those eligible transactions that qualify for

### **Cash Back for each Designated Cardholder.**

- The Bank reserves the right to determine, in its sole discretion, whether a transaction qualifies for Cash Back.

### **Payment of the Cash Back**

- Payment of the Net Cash Back will be done annually after the Cash Back Rebate Period each October 31st.
- Payment of the Net Cash Back will be made electronically to the Account and not to the individual Designated Cardholder.
- To receive your Net Cash Back, your Account must be in good standing at the time of payment under the Cash Back program.

### **Cash Back Program.**

- If you cancel your Cards and exit the Cash Back Program at any time, you will not be entitled to any Cash Back unless you continue to have a Scotiabank business account that is open and in good standing with us as of the applicable award (payout) date of October 31st and in that case, the Bank will credit that other Scotiabank business account with the Cash Back.

### **Telling us about Loss, Theft or Unauthorized Use**

You will inform the Scotiabank Visa Business Card Service Centre (as indicated in your Card Coordinator Guide) by telephone or in writing immediately upon discovering the loss, theft or unauthorized use of any Visa Card or PIN issued to the Company or Designated Cardholder. If you even suspect unauthorized use of any card or PIN, you will notify us immediately. Should you choose to advise us in writing, the date of receipt by the Bank of the notification shall be the actual notification date. If any Card is lost or stolen, you will be liable for debts, including accrued interest, resulting from their use prior to your notification to the Bank that they have been lost or stolen.

### **Changing Addresses**

You will advise us of any change in the address of Company or a Designated Cardholder and you will give us other information that we may need from time to time to keep our records up to date.

### **Keeping the Personal Identification Number (PIN) Confidential**

You and the Company's Designated Cardholders agree to keep each PIN assigned to a Card in safe keeping and confidential and to keep them separate at all times. If you or the Company's Designated Cardholders do not keep each PIN confidential, or you store the Cards and the PINs in a way that would enable someone other than a Designated Cardholder to use them together, you will be liable for all debt, including accrued interest, which may arise from their use in such circumstances. In order to ensure confidentiality of the PINs each Designated Cardholder must choose passwords that are not easily identified.

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### **Telling us about Errors**

If you think your Corporate or Cardholder Monthly Statement contains any errors, or if you need more information about a transaction on a statement you must contact us by phone at the Scotiabank Visa Business Card Centre, 1-888-823-9657 or fax us at 1-416-701-7022 within 10 days of the date of the Company or Cardholder Monthly Statement. After that time, the statement will be considered to be correct unless you can provide us with written proof that it is not. We will require the following information:

- The cardholder name, account number and significant date (password).
- The dollar amount of the suspected error and an explanation of why you believe there is an error.

### **Settling disputes**

If a dispute arises about a transaction for which any of the Company's Visa cards were used, you must first attempt to settle it directly with the merchant or business concerned. You are also responsible for returning defective merchandise and ensuring proper credit is received. If this dispute is not resolved to the Company's satisfaction we may investigate any such dispute by your contacting the Scotiabank Visa Business Card Service Centre within 70 days of transaction date to initiate. If we investigate a dispute we will remove the disputed item(s) from the Company's statement and you do not have to pay the portion of its debt owed in connection with a disputed transaction amount up to sixty (60) days while our Scotiabank Visa Business Card Centre investigates such dispute. However Company will remain obligated to pay the balance of its Corporate Statement debt, which is not in dispute. Interest continues to be charged during this period. If you are held to be liable, any amount in question becomes payable at the earlier of the time investigation is completed to the Bank's reasonable satisfaction, or 60 days from the payment due date for the Corporate Statement on which the amount in question first appeared, whichever is earlier. We make no representation or promise in regards to settling a dispute.

### **Cancelling Cards**

You will promptly advise the Scotiabank Visa Business Card Service Centre if a Designated Cardholder ceases to be authorized to use the Card. We can cancel this Agreement and require you to give your Cards back to us or to someone acting on our behalf, upon our demand. Cancellation of cards by either party does not relieve you of your responsibility to pay any debt you may owe the Bank. When a Designated Cardholder has used the Card to authorize preauthorized payments on a continuing basis you are responsible for all such charges to the Card until you terminate such preauthorized payment arrangements with each payee. The Card Coordinator will require each Designated Cardholder to provide a current list of all such preauthorized payment arrangements that are to be paid by the Designated Cardholder by use of the Card. On the cancellation of the Card by the Card Coordinator(s) following the cancellation of a Designated Cardholder's use of the Card (either during employment or following termination of the employment of a Designated Cardholder) or on termination of this Agreement, the Card Coordinator(s) will notify the payees of all such preauthorized payment arrangements that all future preauthorized

## Business Banking Services Agreement

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payments on the Card are immediately cancelled and will be returned by the Company if processed on behalf of the payee.

### **Observing your Cards Expiry Date**

You agree not to use any Card after the expiry date embossed on a Card. If a Card is used after its expiry date, you agree to pay any debts that are related to or arise from such use.

### **Not Exceeding your Credit Limit**

In connection with the use of all the Cards supplied to you, the Bank has assigned you an Aggregate Credit Limit set out in the Credit Agreement for business with you. Each Card is subject to an individual Card credit limit ("Individual Credit Limit") set out in the online Scotiabank Visa Business Card Management Application. You are responsible for ensuring the Aggregate Credit Limit and the Individual Credit Limits are not exceeded. The Bank may change the Aggregate Credit Limit as determined by the Bank in consultation with the Card Coordinator and in conjunction with a credit review.

### **Insurances**

Insurance certificates will be delivered to each Card Coordinator, as applicable, at the time of card issuance.

## **OUR RIGHTS AND OBLIGATIONS**

### **Charging Interest on Purchases, Cash Advances and Service Charges**

You agree to pay us interest as set out below.

You must make payment in full of the amount due shown on the Corporate Statement notification and Cardholder Monthly Statements (representing Purchases, cash advances interest service charges transaction or other fees) by the due date shown on the monthly statement notification. We will debit your designated Bank account for the full amount due on the due date shown on the monthly statement.

Interest is payable on cash advances from the transaction date indicated on the Statement to the date payment is received in full. The interest rate applicable to cash advances is 19.99%. You will also be charged a transaction fee of \$5.00 CAD/USD (in your program currency) per cash advance made on the Card at ABMs where Visa credit cards are accepted. If Company makes payment in full on or before the due date, we will not charge you interest on any Purchase, service charge, transaction fee or other fee that appears on the statement. If payment is not made in full, Purchases, service charges, transaction fees or other fees are subject to interest from the transaction date indicated on the Statement to the date it is repaid in full.

Our rate of interest, applicable to all transactions except cash advances is our "Scotiabank Visa Business Card interest rate". This interest rate is the Bank's prime lending rate, from time to time, as of the first business day of each calendar month plus 10.00% per annum, and is applied for the remainder of the current Statement period up to and including the current Statement period's Statement date, if payment in full is not received on or before the due date.

The Bank's prime lending rate is posted and available for your review in the Bank's branches and online at [www.scotiabank.com](http://www.scotiabank.com).

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### **Adding Interest to Company's Debt**

We calculate interest on Company's average daily balance for each Statement period and we add it to Company's debt and report it on Company's statement as set out above. We calculate the amount of interest for each statement period by multiplying the average daily balance of the debt on which interest is payable by either the Scotiabank Visa Business Card interest rate or the Bank's prime lending rate, as applicable (which is determined based on whether the debt is cash advance or other), divide this by 365 days to get the amount of interest charged per day. This is then multiplied by the number of days in the monthly statement cycle to get a monthly interest charge. We get the Average Daily Balance by taking the beginning balance of the debt on which interest is payable each day during the statement cycle period, add any new transactions as of the date of the transaction, and subtract any payments and credits we apply to your debt as of the date each is applied. Then we add up all of the daily balances for the statement period and divide the total by the number of days in the statement period to get the Average Daily Balance. Interest calculated on Cash Advances is prime, calculated from the date the cash advance transaction takes place until payment is made. This is reported on your statement as a Cash Finance Charge and interest calculated on Purchases service charges transaction fees or other fees due to late payment is reported as a Purchase Finance Charge.

### **Rush Card Fee**

You may request that we rush deliver a Card to a Designated Cardholder. If we do so, you will pay a fee of \$35 per rush Card delivery. The rush card fee will be charged to the Designated Cardholder's Monthly Statement and will also appear on the Company's Monthly Statement on the date the request is processed. Rush cards will be delivered within 3-5 business days when Card(s) is ordered before 3 p.m. EST on the date requested.

### **Telling you about Interest Rates, Service Charges and our Fees**

You will pay the Bank fee(s) for the Cards as specified below:

<b>Gold Card Annual Fees (per Card)</b>	<b>Silver Card Annual Fees (per Card)</b>
Canadian Dollar Program (CAD):	
\$105 (CAD)	\$75 (CAD)
U.S. Dollar Program (USD)	
\$105 (USD)	\$75 (USD)

### **Fees to be charged at setup and annually thereafter.**

Reporting option is determined at the Company level, not the Card level. The first annual fee for the Cards issued will appear on your first monthly statement and is not refundable. We may change any service charges or transaction fees from time to time and will give you 60 days prior notice of any such changes.

Please note that VRU (Voice Response Unit) Card Activation is a mandatory feature within the Scotiabank VISA Business Card Program. All cardholders will receive nonactivated cards. They will be required to call The Bank's Support Number and activate their cards via an automated process in order to use their cards.



## Business Banking Services Agreement

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### **Applying Payments**

We apply payments first to interest charges that we have billed, then to any billed fees and service charges, then to any billed cash advances. Next we apply payments to any billed Purchases on which interest is payable then to billed Purchases on which interest is not yet payable. We then apply payments to unbilled current cash advances and finally to any unbilled current Purchases.

### **Applying Credit Vouchers**

If a business gives you a credit, we will reduce Company's debt by that amount when the credit is received by us. We apply Company's credits first to any billed cash advances then to billed Purchases on which interest is payable. We then apply your credits to any unbilled current cash advances and finally to any unbilled current Purchases.

### **Foreign Currency Transactions**

All your debt incurred through the use of a Canadian dollar Card will be billed and payable in Canadian currency. All Canadian dollar Card transactions completed in a currency other than Canadian dollars will be converted and posted to the Corporate Statement in Canadian currency. This includes debit and credit vouchers.

Visa International determines the foreign currency exchange rate for Cards on the date a transaction item is received and debited or credited to Company's Designated Cardholder's Card(s). The exchange rate at the date of conversion may be different from the rate in effect on the date the transaction was made. (For information purposes, the exchange rate includes an additional amount equal to 2.50% of the converted amount, which is applied to both debit and credit transactions).

Any gains made and any losses incurred by Company on foreign currency transactions following a debit and a credit on a Card due to currency rate fluctuations between the date the debit is posted to the Company's Card and the date any subsequent credit is posted to Company's Card are for the account of Company and shall be payable to or by Company (as the case may be). We will not assume any risk of foreign currency exchange gains or losses from cross currency conversions resulting from Company's use of the Cards.

### **Automatic Banking Machines (ABMs)**

The amount a Designated Cardholder may withdraw each day as a cash advance from an ABM is limited to the amount of the individual Card Credit Limit and is also subject to the ABM withdrawal limit set by the Bank or by other financial institution. The amount a Designated Cardholder may withdraw each day as a cash advance on the Card in an over the counter transaction at a financial institution is limited to the amount of the individual Card Credit Limit and is also subject to the daily allowable cash advance credit limit which we assign for your Cards. Over the counter transactions using a Card are subject to Card verification and authorization by the financial institution processing the transaction. The Bank is not liable for any losses the Company may suffer as a result of unauthorized cash advances obtained by Designated Cardholders using the Cards at any time. The Company is responsible for the repayment to the Bank of all cash advances obtained by a Designated Cardholder, including interest thereon, prior to your notification to the Bank that a Card has been lost or stolen.

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Visa Canada regulations state that an ABM acquirer should not add a surcharge or fee to the cash advance transaction amount through the use of the Card, unless local law expressly provides that an ABM acquirer be permitted to impose a surcharge

#### **Preparing and Sending Monthly Statements**

Monthly Corporate and Cardholder statements are only prepared on business days, so the time between statements may vary from 27 to 34 days depending upon the number of business days in the month in which a statement is issued. If the end of the cycle date falls on a weekend or holiday, the statements will be prepared on the business day prior.

#### **Security**

If this credit account is secured by a mortgage, hypothec or security Agreement, you will not further encumber the property without our permission. If you sell the property which is subject to the mortgage, hypothec or security Agreement, you agree that you will immediately repay to us all amounts owing under this Agreement.

#### **TERMINATION**

We may cancel this Agreement and/or require you to pay your debt immediately if: You do not carry out your obligations under this Agreement or any service Agreement which forms part of this Agreement; you become bankrupt, insolvent or any actions are taken to place you in bankruptcy, receivership, etc.; upon legal attachment, seizure, lien or execution against you or your property; or if any Card or PIN is used contrary to this Agreement. Termination of this Agreement does not relieve your liability for making all payments required under the Agreement.

#### **Termination for Convenience**

The Company or the Bank may on thirty (30) days prior written notice to the other party hereto terminate the Agreement for convenience. In the event of such termination, the Bank shall be repaid the full balance of all Cardholder accounts, and any other amounts payable under the Agreement will be immediately due and payable in full.

#### **Termination for Credit Risk**

The Bank may on written notice to the Company terminate this Agreement due to a decline in the credit worthiness of the Company which in the reasonable opinion of the Bank increases the credit risk of the Bank in regard to the credit to which the Bank is exposed under this Agreement. The termination of this Agreement shall be effective at the date and time set out in the notice of termination. The Company agrees that any material deterioration in the credit worthiness of the Company is a cause for immediate termination of this Agreement by the Bank.

#### **Overhead Costs or Profits**

Whether the Bank terminates the Agreement with or without cause, in no event shall the Bank be responsible for termination expenses, for overhead costs associated with the Agreement, for any profits the Company or the Affiliates would have earned if it or they had completed the term of the Agreement, or for any special, consequential, punitive, incidental or indirect damages.

### Offset

We may debit any other account you have with us with the amount of any payment you are required to make to us under this Agreement and credit the amount to the outstanding debt under this Agreement.

### WARRANTIES AND REPRESENTATIONS

We make no warranties, representations or conditions whatsoever, except as stated in this Agreement. We will not be liable for any damages of any kind related to your use of the Cards, or any of the features, benefits or services contemplated in this Agreement, even if you have notified us in advance of such possible damages.

We will not be liable for the inability to perform the whole or any part of the features, benefits or services contemplated under this Agreement, which is reasonably beyond our control. In no event, will we be responsible for the activities of any third party. No claim arising from this Agreement may be brought by you more than one (1) year after your disputed matter occurred or a longer period if required by local laws.

### Notice of Agreement Changes and Guideline

We may change this Agreement or the features, benefits or services that are available with the Cards at any time, but we will give you written notice (in writing or electronically) of such changes and in case of a material change we will give you at least 30 days written notice (in writing or electronically) of such change, except before we make any such changes except in the case of features, benefits or services supplied by firms independent of us, which may be changed any time without notice. You agree that we will have satisfied our written notice obligation to you about anything contemplated under this Agreement, or any other matter relating to the Cards, when we send such notice to you at the address first written above by electronic transmission or mail, or hand deliver it, to the most recent Company address on our records. You also agree that our giving written notice to you constitutes written notice being provided to all users of the Cards. We may from time to time issue you guidelines related to the proper use of the Cards, or other services contemplated under this Agreement and you must comply with those guidelines.

### Applicable Law

This Agreement and the transactions contemplated hereby, and any claim, dispute or controversy (whether in contract, tort or otherwise) at any time arising from or relating to this Agreement or the transactions contemplated hereby, are governed by and construed in accordance with applicable Canadian federal law and the applicable laws of the Province in which the Company resides. The legality, *enforceability and interpretation of this Agreement and the amounts contracted for, charged and reserved* under this Agreement will be governed by such laws.

### English Language

Applicable in the province of Quebec only. It is the express wish of the Company and the Bank that this Agreement and any related documents be drawn up in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais. The parties signing on behalf of the Company certify that they are legally able to sign on behalf of the Company.



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## ScotiaCard® Cardholder Agreement

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This *ScotiaCard* Cardholder Agreement sets out the terms that apply to your *ScotiaCard* banking card. It replaces all previous versions of the *ScotiaCard* Cardholder Agreement and it applies if we send or provide you with a replacement or reissue you a *ScotiaCard* banking card. When you receive the *ScotiaCard*, select a PIN for the *ScotiaCard*, sign the reverse of the *ScotiaCard*, activate or use the *ScotiaCard*, that means you have received and read this Agreement and that you agree with, and are bound by, its terms.

### Definitions You Need to Know

**ABM(s)** means designated automated banking machine(s).

**Account** means a deposit account, credit card account, investment or brokerage or loan account you have with us that can be accessed using your *ScotiaCard*.

**Agreement** means this *ScotiaCard* Cardholder Agreement as amended, modified or replaced from time to time.

**Automated Banking Services** means the services you use and receive through the following channels where you can access your designated Accounts by using your *ScotiaCard*:

- ABMs;
- Direct Payment Terminals;
- Mobile Banking;
- Online Banking;
- Telephone Banking;
- Card Not Present Transaction channels;
- Any other automated banking channel we may offer from time to time.

**Bill Payment Company** refers to a business, company, utility company or other party that has an arrangement with Scotiabank to be a payee of bill payments through the service for which you have been registered by Scotiabank for branch or Automated Banking Services bill payment access.

**Business Day** refers to regular weekdays only and excludes Saturdays, Sundays or statutory federal holidays.

**Cardholder** means the person to whom a *ScotiaCard* has been issued by the Bank.

**Card Not Present Transaction** means an online order, mail order or telephone order transaction (including payments and other funds transfers such as refunds) using the *ScotiaCard* and whereby you provide the *ScotiaCard*, *ScotiaCard* expiry date and/or CVV2 to the authorized merchant.

**CVV2** means the three-digit security code on the back of the Card, where applicable.

**Direct Payment** refers to payments (or other funds transfers, such as refunds) made with your *ScotiaCard* using Interac<sup>†</sup> Debit, Visa<sup>\*</sup> Debit, Interac<sup>†</sup> Flash or any other system we may designate from time to time to pay for goods or services by using your *ScotiaCard* at a Direct Payment Terminal.

**Direct Payment Terminal** means a point of sale terminal at which Direct Payments can be completed using your *ScotiaCard*.

## Business Banking Services Agreement

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**Electronic Signature** refers to each secret and confidential combination of numbers and/or letters selected by you, for your use, as a means of confirming your identity and authorizing transactions performed, and services accessed, by using your *ScotiaCard*. Your Electronic Signature includes, but is not limited to, your PIN and/or any other security codes such as access codes, passwords or passcodes which allow for your access to the Automated Banking Services. Reference to “Electronic Signature” throughout this Agreement refers to all Electronic Signatures that you have.

**Inactive Accounts** means those deposit Accounts having no customer-initiated transactions for 24 consecutive months.

**Interac Flash Transaction** means payments or other funds transfers (including refunds) made at a Direct Payment Terminal using an *Interac* Flash-enabled *ScotiaCard* without using an Electronic Signature.

**Mobile Banking**<sup>\*\*\*</sup> means the Scotiabank mobile banking application downloaded to your Mobile Device or [www.scotiabank.com](http://www.scotiabank.com) through the Internet browser on your Mobile Device.

**Mobile Device** means an internet-enabled smart phone or any other wireless handheld computing device that we allow you to use to access Automated Banking Services.

**Online Banking** means the Scotiabank services that can be accessed by your personal computer (and modem) through the Internet at *Scotia OnLine* ([www.scotiabank.com](http://www.scotiabank.com)).

**PIN** means the secret and confidential personal identification number you have selected for your *ScotiaCard*.

**ScotiaCard** means the *ScotiaCard* banking card, and any replacement *ScotiaCard* banking card, that we have issued to you and that has a unique card number that is:

- (i) associated with an Account(s);
- (ii) used with or without, as applicable, your Electronic Signature or Written Signature to access Automated Banking Services.

*ScotiaCard* also means the unique card number itself.

**Telephone Banking** means *TeleScotia*® automated telephone banking, the automated brokerage telephone service or any other telephone banking services that may be offered by Scotiabank from time to time.

**Written Signature** means the written signature that you provide to authenticate yourself, and confirm receipt of, a transaction record for certain types of Direct Payments made using the Visa\* Debit functionality on your *ScotiaCard*, where applicable.

**We, our, us, Scotiabank and the Bank** means The Bank of Nova Scotia and, as applicable, any of our Canadian subsidiaries, including but not limited to Scotia Securities Inc. and Scotia Capital Inc.

**You and your** mean the person to whom we have issued a *ScotiaCard*.

**Visa Debit** refers to the payment feature on selected *ScotiaCards* that allows you to shop online and internationally and pay directly from your bank account.

### Security of Your *ScotiaCard* and Electronic Signature

Protecting the security of your *ScotiaCard* and your Electronic Signature is important. You are responsible for maintaining their confidentiality and safekeeping. This includes:

- keeping the *ScotiaCard* in your possession;

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- keeping the *ScotiaCard* in a safe place and not letting anyone else use it;
  - keeping the *ScotiaCard* in your sight, and taking the *ScotiaCard* and transaction record (when applicable), once a transaction at a Direct Payment Terminal or ABM is complete;
  - keeping your Electronic Signature confidential and memorizing it or, if you must write it down, keep it separate from your *ScotiaCard* at all times such that they cannot be used together;
  - selecting an Electronic Signature that cannot be easily guessed;
  - not using an Electronic Signature that is a combination selected from your name, date of birth, telephone number(s), bank account number(s), address or social insurance number;
  - taking all reasonable precautions to ensure that no one else sees or learns of your Electronic Signature when using the Automated Banking Services;
  - always signing out or logging out of an Online Banking or Mobile Banking session using the applicable sign out or log out function;
  - not leaving your computer or Mobile Device unattended while signed in to Online Banking or Mobile Banking;
  - not voluntarily disclosing your Electronic Signature to anyone else at any time, including any family member, friend, law enforcement agency, or financial institution employee;
  - not consenting to or allowing someone else to forge your Written Signature;
  - not storing your Electronic Signatures on your computer or Mobile Device; and
  - not using third party password generators.

You may use your *ScotiaCard*, PIN or Online Banking credentials to identify yourself to a third party, such as a government office, where this method is authorized by us and where this ability is available.

You must ensure that you regularly update your passbook and check your Account statements and balances to verify all transactions have been properly recorded. If entries do not accurately reflect your transaction activities, such as missing or additional transactions you must contact us immediately by visiting the nearest Scotiabank branch or through Telephone Banking.

#### **A Lost, Stolen or Compromised *ScotiaCard* or Electronic Signature**

You will notify us immediately if:

- your *ScotiaCard* is, or you suspect that it is, lost or stolen;
- someone else has, or you suspect that someone else has, used your *ScotiaCard*, Electronic Signature or forged your Written Signature;
- your *ScotiaCard* or Electronic Signature has, or you suspect that it has, become known to someone else or has otherwise been compromised.

You may notify us by visiting the nearest Scotiabank branch or by contacting us at the telephone numbers shown at the end of this Agreement.

In addition to notifying us, you should change your Electronic Signature. For example your PIN may be changed at the nearest Scotiabank branch or at our Scotiabank ABMs that allow you to make a PIN change. Online Banking and Mobile Banking passwords or passcodes can be changed by using the applicable reset password or reset passcode function.

#### **Expiry Date**

Your *ScotiaCard* has an expiry date. A new *ScotiaCard* will be re-issued to you before the expiration date on the *ScotiaCard*. You agree not to use your *ScotiaCard* after its expiry date.

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## Business Banking Services Agreement

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### Automated Banking Services

Once your *ScotiaCard* is activated, you can access the Automated Banking Services by using your *ScotiaCard* and your Electronic Signature, or Written Signature where applicable. You may also use your *ScotiaCard* without the Electronic Signature or Written Signature for *Interac* Flash Transactions and Card Not Present Transactions at participating merchants. You will have the same rights and responsibilities for transactions that do not require an Electronic Signature or Written Signature as you would have had using your *ScotiaCard* and Electronic Signature or Written Signature.

In addition to the various other Automated Banking Services you will have access to by using your *ScotiaCard*, you will be able to obtain cash advances at designated ABMs from your Scotiabank Visa\* card, your *ScotiaLine*® for business Visa\* card, your Scotiabank American Express card, your *ScotiaLine*® personal line of credit and your *ScotiaLine*® personal line of credit for students accounts if:

- Automated Banking Services access via your *ScotiaCard* to these designated Accounts has been pre-arranged;
- your Accounts are in good standing, and
- your Account credit limit will not be exceeded by doing so.

You can also use your *ScotiaCard* to access your designated investment Accounts (including your GICs and your Accounts with Scotia Securities Inc.) and brokerage Accounts with ScotiaMcLeod®, HollisWealth™ and Scotia iTRADE®\* through the Automated Banking Services.

You authorize Scotiabank to accept your instructions given through the Automated Banking Services as if you had given the instructions to us signed and in writing.

For certain purposes, when dealing with your investment Accounts, we may restrict access to some of your other Account options.

### Branch Access to Accounts

You can access your designated Accounts by presenting your *ScotiaCard* together with your Electronic Signature, your passbook, your personalized Scotiabank cheque, or such other identification as we reasonably require, at any Scotiabank branch within Canada. If you do not have a *ScotiaCard*, you will need sufficient identification to enable the branch to verify your identity and your home branch may need to be contacted to facilitate the transaction.

### Inactive Accounts

Inactive Accounts cannot be accessed through any Automated Banking Service(s). You will need to visit a branch to reactivate your access to Inactive Accounts.

### Transaction Charges & Fees

You agree to pay and we may deduct, without notice, from any of your Accounts (even if this creates or increases an overdraft) the following:

- a transaction charge at the prevailing rate (as determined by us from time to time) for each transaction for which your *ScotiaCard* has been used through the Automated Banking Services. A notice of the charges and fees is provided in the Day to Day Banking Companion Booklet and, for business Accounts, in the document called “Your Guide to Fees and Interest Schedules” provided with the Business Banking Services Agreement;

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- the transaction charges or service fees imposed by other financial institutions (inside or outside Canada) for each transaction conducted through their ABMs or Direct Payment Terminals in which your *ScotiaCard* has been used. You should contact other financial institutions for information on their transaction fees or service fees they charge for using their ABMs.

### Transaction Limits

We may establish and change limits, dollar or otherwise, from time to time, that apply to your use of the *ScotiaCard* and on the various transactions which may be available through the services, without prior notice to you. Cumulative limits currently in effect are:

- Limits for ABM cash withdrawals or cash disbursements from your bank Accounts and advances from your credit card Accounts, by using your *ScotiaCard* are as indicated on your *ScotiaCard* Banking Access Enrollment/Maintenance Form;
- Direct Payment limits and the Cashback limit are as indicated on your *ScotiaCard* Banking Access Enrollment/Maintenance Form.
- ABM Deposit Limits
  - \$99,999 per transaction
- ABM transfer and ABM bill payment limits
  - \$100,000 and \$49,999 per day respectively
- Online Banking, Mobile Banking, *TeleScotia* Telephone Banking transfers
  - \$100,000 limit for transactions between Accounts in the same currency.
  - \$10,000 CAD daily limit for cross-currency transfers (currently unavailable on mobile banking).
- Online Banking, Mobile Banking, *TeleScotia* Telephone Banking bill payments
  - \$49,999 per transaction
- *Interac* Flash
  - up to \$100 per transaction at authorized merchants.
- Electronic Transfer Limit
  - as indicated on your *ScotiaCard* Banking Access Enrollment/Maintenance Form.
- Online Purchase Limit (includes Card Not Present Transactions, Visa Debit online transactions and *Interac* Online transactions)
  - as indicated on your *ScotiaCard* Banking Access Enrollment/Maintenance Form.

All fees and limits for Western Union money transfers or foreign currency transfers can change from time to time and can be viewed at Online Banking.

### Transaction Records/Confirmation Numbers

At the completion of each Automated Banking Services and branch transaction, you will be given a transaction record, unless otherwise requested, or you will be provided with a reference number. If your *ScotiaCard* is used for a Direct Payment or Card Not Present Transaction, we may arrange for a third party, such as a merchant, to give you the transaction record. For some Direct Payment transactions you will need to provide your Written Signature on the transaction record.

## Business Banking Services Agreement

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You agree that cheques or any other form of debit voucher transaction performed through any Automated Banking Services, at any Scotiabank branch other than at the branch where you maintain your Account(s), will not be returned to you, but rather a description of the transaction only (e.g. cheque, debit voucher or debit memo) will be reflected in your monthly statement or passbook.

### **Interac Flash - Description**

**Interac Flash** is a feature available on your *ScotiaCard* that enables Cardholders to use the *ScotiaCard* to pay for small purchases, up to \$100 at select merchants, by holding your *ScotiaCard* over a Direct Payment Terminal that supports *Interac Flash*. You do not have to insert your *ScotiaCard* or enter a PIN.

**Note:** If your *ScotiaCard* was issued before March 2013, your maximum purchase limit is \$50 at most merchants and \$100 at gas stations. Should you exceed the maximum amount at any merchant, you will be prompted for your PIN in order to complete the transaction. *Interac Flash* Transactions are only for the payment of goods and services – “cashback” transactions are not permitted.

### **Interac Flash - Enabling and Opting Out**

**When you are first issued a *ScotiaCard* with *Interac Flash* enabled, this feature will be activated the first time you conduct a successful PIN transaction at a Direct Payment Terminal, at an ABM or a branch.**

You must have a pre-selected chequing Account linked to your *ScotiaCard* for *Interac Flash* to be enabled. If you requested to have the *Interac Flash* enabled on your current *ScotiaCard* any replacement *ScotiaCards* will also have the *Interac Flash* feature enabled.

**You can have *Interac Flash* disabled on your *ScotiaCard* by contacting the Scotiabank Call Centre at 1-800-4SCOTIA or by visiting your nearest branch.** If you request to have the feature disabled, any replacement *ScotiaCards* issued after the request will also have the *Interac Flash* feature disabled.

You may request to have the *Interac Flash* feature enabled at any time through the same contact methods. There is no charge to have the *Interac Flash* feature added to, disabled or enabled on your *ScotiaCard*.

### **Visa Debit**

For *ScotiaCard* debit cards that have Visa Debit functionality, Visa Debit transactions will be processed through the pre-selected chequing Account linked to your *ScotiaCard*.

### **Liability**

#### **1. Your Liability**

Reference to the *ScotiaCard* below also includes use of the *ScotiaCard* with Electronic Signature or Written Signature, as applicable.

- a) You are responsible for all debts, withdrawals, deposits, transactions, advances, other Account activity and losses resulting from:
- all authorized transactions which means transactions in which the *ScotiaCard* was used by you or by persons to whom you have made your *ScotiaCard* available or who received possession of your *ScotiaCard* with your consent;



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- any error or fraudulent use of the *ScotiaCard* by you, or authorized by you, including any errors or fraudulent or worthless deposit or other transaction using the Automated Banking Services;
  - failing to comply with your obligations to protect your *ScotiaCard* and Electronic Signature as described in the section above entitled “Security of Your *ScotiaCard* and Electronic Signature” or if you did not otherwise take reasonable steps that could have prevented the loss;
  - failing to notify us immediately if you become aware that your *ScotiaCard* or Electronic Signature has been lost, stolen or compromised (as described in section entitled “Lost, Stolen or Compromised *ScotiaCard* or Electronic Signature” above);
  - any other unauthorized use of the *ScotiaCard* to which you have contributed and is not otherwise exempted under a provision of this Agreement; and
  - any other failure by you to comply with the terms of this Agreement.

b) You are not liable for losses resulting from:

- technical problems and other system malfunctions;
- errors, fraud or negligence caused by us;
- unauthorized transactions after the *ScotiaCard* has been reported to us as lost, stolen or compromised;
- unauthorized transactions after the *ScotiaCard* is cancelled or expired;
- unauthorized transactions, where you have unintentionally contributed to such use, provided that you notify us immediately upon becoming aware of the transaction and fully co-operate in any subsequent investigation (the word “unintentionally” in this clause excludes any non-compliance with your obligations under the “Security of Your *ScotiaCard* and Electronic Signature” section of this Agreement); and
- transactions using your *ScotiaCard* where it can be shown that you have been the victim of fraud, theft, trickery, force or intimidation provided that you notify us promptly of the incident, fully cooperate in any subsequent investigation and provided that you have not contributed to the loss.

c) Your liability will not exceed the established transaction limits (including daily and weekly limits) for the applicable Automated Banking Services, however your liability may exceed the actual or available funds in an Account. This may occur, for example, if an Account has a line of credit or overdraft protection or is linked with another Account or multiple other Accounts (for example another banking Account or a credit Account).

d) Where you are liable for the transactions on your Account(s) pursuant to the terms and conditions described in this “Your Liability” section, you understand that this liability is in addition to any liability for those transactions that you have under any credit agreements (including the Revolving Credit Agreement) and other banking agreements that apply to your Accounts.

## **2. Our Liability**

WE ARE NOT LIABLE TO YOU FOR ANY DELAY, LOSS, DAMAGE OR EXPENSE THAT YOU INCUR OR ANY INCONVENIENCE WHICH RESULTS FROM OUR PROVIDING OR FAILING TO

## Business Banking Services Agreement

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PROVIDE ANY SERVICE, EXCEPT WHERE SUCH LOSSES RESULT FROM:

- WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY THE BANK;
- ERRORS, TECHNICAL PROBLEMS OR SYSTEM MALFUNCTIONS FOR WHICH THE BANK IS SOLELY RESPONSIBLE.

ALSO, WE ARE NOT RESPONSIBLE FOR YOUR ACTS OR OMISSIONS OR THOSE OF ANY THIRD PARTY. FURTHERMORE, THE BANK SHALL IN NO WAY BE LIABLE FOR ANY ACCIDENT, ACT OF AGGRESSION, THEFT, LOSS OR DAMAGE YOU MAY SUFFER WHILE USING AUTOMATED BANKING SERVICES OR OTHER SERVICES, WHETHER YOU ARE ON BANK OR OTHER PREMISES.

TO THE EXTENT THAT WE MAY BE LIABLE TO YOU, WE WILL ONLY BE LIABLE FOR DIRECT DAMAGES. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOST OR DAMAGED OR CORRUPTED DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO YOUR USE OF ANY SERVICE, HOWEVER CAUSED AND REGARDLESS OF THE BASIS OF THE CAUSE OF ACTION INCLUDING, BUT NOT LIMITED TO, CONTRACT OR TORT (INCLUDING NEGLIGENCE, STATUTE OR ANY OTHER CAUSE OF ACTION) AND EVEN IF YOU HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

OUR LIABILITY IS SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION AND IN ANY OTHER SECTION OF THIS AGREEMENT.

We are not liable to you if an ABM or if a store, retailer or merchant does not accept your *ScotiaCard* at any time or if you cannot use your *ScotiaCard* or your Electronic Signature at any time or for any reason, including if we cancel or temporarily deactivate your *ScotiaCard* or decline to authorize a transaction because we have detected activity in your Account or the use of the *ScotiaCard* that we consider to be unusual.

### No Warranties

Neither the Bank, nor any access service provider nor any other information technology service provider, makes any express or implied warranties concerning the Automated Banking Services including, but not limited to, any warranties of merchantability, fitness for a particular purpose or non-infringement of any third party proprietary rights unless disclaiming such warranties is prohibited by law.

### Accepting Our Records

Our records as to whether an Automated Banking Services or branch transaction has been performed, and our determination of the details of that transaction, will be considered correct and binding on you, unless you provide us with evidence to the contrary within 30 days of the date of a disputed transaction.

### Posting of Transactions, Cancelling Transactions and Updating Bill Payment Information

Any Automated Banking Services transaction (excluding automated bill payments) conducted in Canada before 12:00 a.m. (midnight) local time Monday through Saturday will normally be posted to your applicable Account as of the date of the transaction, unless that day is a holiday. Transactions conducted on Sundays or holidays will normally be posted to the applicable Account as of the next Business Day.



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Any transaction conducted on a Saturday involving a Scotiabank chequing account or a current or business account will normally be posted to the designated Account as of the next Business Day.

Transactions conducted outside Canada may be posted to your designated Account at a later date.

For transactions conducted using Visa Debit, transactions are posted to and funds debited from your Account on the date the transaction is authorized by us. If there is a difference between the original authorized amount and the final settled amount of the transaction, your Account may be credited with the original authorized amount and subsequently debited for the final settled amount of the transaction.

Any automated bill payment request made on or before 8:30 p.m. Eastern Standard Time, Monday through Friday will be posted to your designated Account on the day of the transaction. An automated bill payment made after 8:30 p.m. Eastern Standard Time, Monday through Friday or anytime on Saturday, Sunday or a holiday, will be posted to your designated Account on the next Business Day.

Any automated bill payment request will be deemed to have been received by us on the date the transaction is posted to the designated Account.

We are not responsible for the processing of or any of the posting procedures or practices of your designated Bill Payment Companies and we are not responsible if they charge you late fees or interest penalties. When you make a bill payment at one of our ABMs, branches, through the Automated Banking Services, you are responsible for ensuring that the Bill Payment Company (including account numbers and payee names) required by us to complete your payment instructions to that Bill Payment Company is accurate at all times. We may, without notice to you, update your bill payment profile information if we are advised of a change by the Bill Payment Company.

The debit to your Account for post-dated bill payments and fund transfers are processed at 6:00 p.m. Eastern Standard Time on the date to which your payment is post-dated.

Transactions involving Accounts with insufficient cleared funds at the time of processing may be rejected.

You acknowledge that once you have confirmed the details of a payment or transfer, you may not revoke or stop the payment or the transfer unless it is a post-dated payment or transfer you have set up in Online Banking, Mobile Banking or *TeleScotia* Telephone Banking. Such postdated payments and transfers can be cancelled directly through Online Banking until 6 p.m. Eastern Standard Time on the day they are scheduled to take place. You can also request cancellation of a postdated payment or transfer by speaking directly with one of our Customer Service representatives at the latest one (1) Business Day before the scheduled payment or transfer date. You are responsible for notifying us of any changes to billing Account information.

Where a store, retailer or merchant becomes liable to make any refund to you, we will credit the designated Account with the refunded amount only upon our receipt of a properly issued credit voucher or other appropriate verification or authorization of the refund from the store, retailer or merchant.

We may at our discretion and without prior notice, refuse a request for authorization of any *ScotiaCard* transaction, and may notify third parties of such refusal as we think necessary.

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## Business Banking Services Agreement

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In exercising such discretion, we may take into account in calculating the funds available, any funds which we may decide have been credited or debited to an Account.

We may place a hold on branch or ABM deposits pending verification.

### Processing Foreign Currency Direct Payments, Card Not Present Transactions, Withdrawals and Advances

You can use your *ScotiaCard* to access your bank Accounts for the following foreign currency transactions from these Accounts:

- Direct Payments at designated Direct Payment Terminals that are outside of Canada;
- Card Not Present Transactions (*ScotiaCards* with Visa Debit functionality) through authorized merchants that are located outside of Canada; and
- Cash withdrawals from designated ABMs that are outside of Canada.

You can use your *ScotiaCard* to access your Scotiabank Visa card Accounts, *ScotiaLine* access card and Scotiabank American Express card Accounts for the following foreign currency transactions on those Accounts:

- Cash advances, other than from *Scotiabank*® U.S. Dollar Visa card Accounts, from designated ABMs that are outside of Canada; and
- Cash advances from designated ABMs within Canada in Canadian dollars from your *Scotiabank* U.S. Dollar Visa card Account.

For foreign currency transactions, other than cash advances from designated ABMs within Canada in Canadian dollars from your *Scotiabank* U.S. Dollar Visa card Account, a converted Canadian dollar amount will be deducted from your applicable Account based on an exchange rate set by the applicable payment network and determined on the transaction settlement date. For cash advances from designated ABMs within Canada in Canadian dollars from your *Scotiabank* U.S. Dollar Visa card Account, a converted U.S. dollar amount will be deducted from your applicable Account based on an exchange rate set by the applicable payment network and determined on the transaction settlement date. The exchange rate at the time of settlement may be different from the exchange rate in effect on the transaction date. Payment networks include Visa International, Visa Inc., ACXSYS Corporation, or other payment networks as appropriate. Foreign currency transactions are subject to the following foreign currency transaction fees:

- Foreign currency transactions on your bank Accounts using Visa Debit on your *ScotiaCard* will be subject to a fee that is calculated based on a 2.5% increase to the exchange rate and is included in the converted Canadian dollar amount of the transaction;
- Foreign currency transactions on your bank Accounts using your *ScotiaCard*, other than Visa Debit transactions, are subject to a fee that is calculated by adding 0.025 to the exchange rate;
- Foreign currency transactions on your Scotiabank Visa card Accounts, or Scotiabank American Express card Accounts, by using your *ScotiaCard* will be subject to the foreign currency transaction provisions of the Revolving Credit Agreement.

If you use your *ScotiaCard* for a transaction in a foreign currency and the store, retailer or merchant gives you a credit voucher (for example in the case of a refund), the two transactions (the purchase and the refund) may not balance exactly because of exchange rate and currency fluctuations between the date of the purchase and the date of the credit (or refund).

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We will not assume any risks associated with foreign currency exchange gains or losses from cross-currency conversions resulting from the use of your *ScotiaCard*. Any gains made or losses incurred by you in connection with foreign currency transactions because of currency rate fluctuations between the date the transaction is posted and the date any subsequent credit is posted to the designated Account are your responsibility and shall be payable to you or by you (as the case may be).

#### Changing Designated Accounts

We may designate one or more of your Accounts for the FastCash™ or other services available through our Automated Banking Services. You can cancel or change a designation at any time by letting us know through *TeleScotia* Telephone Banking or by visiting the nearest Scotiabank Branch.

#### Changing or Cancelling Banking Services

We may at any time, without notice, withdraw any ABMs or Direct Payment Terminals from use, cancel or vary the whole or any part of the services we offer you through the use of the *ScotiaCard*.

No Automated Banking Services transactions will be processed after cancellation of the Automated Banking Service.

#### Adding or Changing the Terms of this Agreement

You acknowledge that we can add, change or replace the terms and conditions of this Agreement from time to time. Notice of additional, amended or replaced terms and conditions may be given to you in any of the following ways:

- a notice addressed to you at your last address in our records;
- a notice prominently displayed at all Scotiabank ABMs;
- a notice on the Scotiabank website;
- a notice in a readily accessible place in our branches;
- a notice in your monthly statement;
- an electronic notice or message sent to the Communications Centre of Online Banking or Mobile Banking; or
- such other methods as we may permit.

Your continued use of the Account, the Automated Banking Services or any other service with us, acknowledges that you agree to and accept the new terms and conditions of the *ScotiaCard* Cardholder Agreement and all agreements related to the Account or service as amended, modified or replaced. Scotiabank has the right to send you a new *ScotiaCard* with new features without prior notice.

#### Resolving Disputes

We are not responsible for any failure to supply, or lack of suitability of quality of, any goods or services purchased from Bill Payment Companies, merchants or others through the Automated Banking Services. All disputes between you and a Bill Payment Company, merchant or others, including your rights to compensation or any offset rights (set-off), shall be settled directly by you with the Bill Payment Company. We do not verify, nor are we required to verify, that any purpose for which the payment is made has been fulfilled by the Bill Payment Company as a condition of honouring your payment request on your Account.

## Business Banking Services Agreement

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**For all unauthorized claims, we will** investigate the transaction and a determination regarding whether any reimbursement will be made based upon the investigation. We will respond to the Cardholder's report of an unauthorized *ScotiaCard* transaction within 10 Business Days. We may require a signed statement during the course of the investigation. Or, where appropriate, we may require a signed affidavit from the Cardholder, which may result in a temporary suspension of the 10 day limit, until the requested information is received.

No funds, or only partial funds will be reimbursed if our investigation determines that on the balance of probabilities, the Cardholder contributed to the unauthorized use of their *ScotiaCard*. If we cannot settle the complaint in your favour, you will be informed of the reasons for Scotiabank's position in the matter.

If a problem with a *ScotiaCard* transaction is not resolved to your satisfaction or you have not received a response to a claim of an unauthorized *ScotiaCard* transaction within the time period, please refer to the Complaint Resolution section of the Day-to-Day Banking Companion Booklet.

### Other Agreements, Fees and Charges

You acknowledge that, in addition to all fees, charges, terms and conditions set forth in this Agreement, your Accounts are also subject to all fees, charges, terms and conditions set forth in any other agreements and documentation applicable to your Accounts and/or your use of services provided by us. Examples of such agreements and documentation include the Revolving Credit Agreement (for credit Accounts), the Personal Credit Agreement Companion Booklet (for credit, loan and mortgage Accounts), the Day-to-Day Banking Companion Booklet (for personal banking Accounts), the Business Banking Services Agreement (for business banking Accounts), the Investment Companion Booklet (for investment Accounts), the Digital Access Agreement, the Scotiabank Privacy Agreement and any other agreements, documentation or terms and conditions that apply to your Accounts and/or your use of the services provided by us.

If there is a conflict between this Agreement and such other agreements, documentation or terms and conditions, this Agreement will prevail as it relates to the use of your *ScotiaCard* and the services contemplated in this Agreement.

### In Quebec

The party(ies) to this Agreement has/have requested that this document be drawn up in English. Les parties ont demandé que ce contrat soit rédigé uniquement en anglais.

### Customer Service

For any question or concern (including regarding a lost, stolen or compromised *ScotiaCard*; inquiring about fees, rates or services) please visit the Scotiabank branch nearest to you or call the numbers below:

Service in English	1-800-4SCOTIA (1-800-472-6842)
Toronto	416-701-7200
Service en français	1-800-575-2424
Région de Toronto	416-701-7222
TTY/TDD Service Only	1-800-645-0288

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For more information about Automated Banking Services, fees or rates you can also visit us online at [www.scotiabank.com](http://www.scotiabank.com).

Your *ScotiaCard* provides access to Automated Banking Services, wherever you see these symbols:



Scotiabank voluntarily adheres to the Canadian Code of Practice for Consumer Debit Card Services. For information about the Code visit [www.cba.ca](http://www.cba.ca)

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™ Trademarks of The Bank of Nova Scotia.

† Interac, the Interac logo and Interac Flash are all trademarks of Interac Inc. Used under license.

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\* Visa Int. / Licensed User.

Ⓜ American Express is a registered trademark of American Express. This credit card program is issued and administered by The Bank of Nova Scotia under license from American Express.

Ⓜ Interlink is a registered trademark of Visa International Service Association used under license.

††† Mobile banking capability requires an Internet-enabled mobile device. Your wireless carrier's standard text messaging and data charges apply, as defined by your service plan with your carrier.

◆ Scotia McLeod, Hollisweath and Scotia iTrade® (Order-Execution Only Accounts) are divisions of Scotia Capital Inc. ("SCI"). SCI is a member of the Investment Industry Regulatory Organization of Canada and the Canadian Investor Protection Fund.

Ⓜ Registered trademarks of General Motors LLC. The Bank of Nova Scotia is an authorized user of General Motors LLC marks for the GM Card Program.

## Our Commitment to Business Banking Customers

Our ScotiaOne Service *for business* philosophy is our commitment to provide you with products and services that are practical, straightforward and give you more control over your business financial needs. As part of this commitment, we want to ensure that your business relationship with us is open.

### Open Communication

We pledge to be straightforward and honest in all our communication and documents, providing you with a clear explanation on all our products and services. If you would like information on any Scotiabank product or service, we invite you to speak to the Branch Manager or Account Manager, Small Business at your Scotiabank branch.

When you obtain one of our services, we will provide you with agreements that clearly detail the terms and conditions of the services you have. We will explain in writing why we ask for the information on our application forms, and other documentation and how and when we use it. When we have information on our services that is of interest to you, it will be made available on our website [www.scotiabank.com/small-business](http://www.scotiabank.com/small-business) in person or over the phone.

### We listen to you

We know that small businesses create more jobs than any other sector of the economy today. You're important to Canada, you're important to Scotiabank – and we're committed to ensuring that your relationship with us is built on trust, respect and open communication. We understand that everyone is in business to succeed, no matter what type of business you own. When you have a question or concern about any of our services, please ask us.

### Privacy and confidentiality

We are committed to respecting your confidentiality. We will maintain the highest standards of confidentiality, releasing information only with your express and written permission, unless otherwise required or permitted by law.

In committing to Privacy and Confidentiality of your information, we are guided by stringent government legislation, regulation and directed to ensure we have the necessary processes and policies in place. If you need more information, please ask for our brochure "The Scotiabank Group & You – A Question of Privacy".

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### Credit process

We're committed to a simpler credit process by:

- **Making it easier.** Scotiabank is continually looking for ways to make getting credit easier for you and to present our mutual agreements in plain language. We'll also give you information on how to apply, what the requirements are, and tell you approximately how long you can expect to wait for a decision.
- **Putting it in writing.** When your credit application is approved, we'll spell out the terms and conditions of your finances in writing. You'll know exactly how our relationship works and who is responsible for what.
- **Discussing alternatives.** If we can't approve your credit application, we'll tell you why. More importantly, we'll work with you to find ways to make your proposal work. Failing this, we'll direct you, where appropriate, to other sources of financing that may suit you better.
- **Evaluating change in circumstances together.** At times, a change in your circumstances may affect our credit relationship with you. Please be assured that we're always open to discussing alternatives – and you will be provided with at least 15 days' notice of any changes to the terms and conditions of your business credit arrangement.

If you have any concerns or questions that require review of your account(s), request a copy of our "Resolving Your Complaint" brochure, which is available in every Scotiabank branch.



## Complaint Resolution

### Step One:

**Talk to us at your Branch or Customer Contact Centre 1800-4SCOTIA or 1-800-472-6842.**

If the person you speak to at the branch/customer contact centre is not able to resolve your concern to your satisfaction, please speak directly to a management officer, who has the authority to resolve the majority of problems that arise.

### Step Two:

**Contact the Office of the President.**

If the management officer has been unable to resolve your complaint satisfactorily, a representative of the President & CEO will be pleased to assist you.

- e-mail                      mail.president@scotiabank.com
- Mail                        The President, Scotiabank  
44 King Street West  
Toronto, ON M5H 1H1
- Fax                         1-877-700-0045 (in Toronto 416-933-1777)
- Telephone                English 1-877-700-0043 (in Toronto 416-933-1700)  
French 1-877-700-0044 (in Toronto 416-933-1780)

### Step Three:

**Contact Scotiabank's Ombudsman.**

Scotiabank's Ombudsman has been appointed to undertake an impartial review of all unresolved customer complaints. If you have gone through the first two steps and remain dissatisfied, submit your complaint to the Ombudsman in writing.

- e-mail                      ombudsman@scotiabank.com
- Mail                        Scotiabank Ombudsman  
44 King Street West  
Toronto, ON M5H 1H1
- Fax                         1-866-787-7061



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## Still not satisfied?

### You may contact the Ombudsman for Banking Services and Investments (OBSI)

An independent Ombudsman has been appointed to serve the interests of customers of Canadian banks and investment firms. If you are not satisfied with our Ombudsman's response, you can refer your complaint to the OBSI. While we would expect to resolve your complaint within 90 days, if our best efforts have been unable to provide a resolution in that time, you may refer your complaint to the OBSI.

- e-mail                      [ombudsman@obsi.ca](mailto:ombudsman@obsi.ca)
- Mail                        Ombudsman for Banking Services and Investments  
401 Bay St. Suite 1505  
P.O. Box 5  
Toronto, ON M5H 2Y4
- Telephone                1-888-451-4519
- Website                    [www.obsi.ca](http://www.obsi.ca)

### Contacting the Financial Consumer Agency of Canada (FCAC):

The FCAC supervises federally regulated financial institutions to ensure they comply with federal consumer protection laws. For example, financial institutions must provide consumers with information about fees, interest rates and complaint-handling procedures. They must also provide proper notice of closing a branch and, subject to certain conditions, must cash a federal government cheque up to \$1,500 and open a deposit account when acceptable identification is presented. If you have a complaint about such a regulatory matter, you can contact the FCAC in writing at:

- Mail                        Financial Consumer Agency of Canada  
6th Floor, Enterprise Building  
427 Laurier Avenue West  
Ottawa, Ontario K1R 1B9
- Telephone                English 1-866-461-3222  
French 1-866-461-2232
- Website                    [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca)

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## Scotiabank Privacy Agreement

Your privacy is important to Scotiabank. This Agreement sets out the information practices for Scotiabank in Canada, including what type of information is collected, how the information is used, and with whom the information is shared.

This Agreement may be amended from time to time. (See “Further Information”, below, for an explanation of how we will advise you of any future changes.)

In this Agreement, “we”, “our”, “us” and “Scotiabank” mean The Bank of Nova Scotia and any of its affiliates, subsidiaries, programs or joint ventures they participate in, with respect to their operations enterprise-wide<sup>1</sup>. Scotiabank includes companies engaged in the following services to the public: deposits, loans and other personal financial services; credit, charge, debit and payment card services; full service and discount brokerage services; mortgage loans; trust and custodial services; insurance services; investment management and financial planning services; and mutual funds investment services; and services related to the above such as loyalty programs. “You” and “your” mean an individual who has made application to us for, enrolled in or signed an application in respect of any personal or business banking, insurance, brokerage or financial product or service offered by us (“Service”), including any co-applicants, guarantors, personal representatives, or an individual who participates in a Scotiabank contest, survey, event or has otherwise provided personal information to us.

### **Collecting, using and disclosing your information**

1. When you apply for, or provide a guarantee in respect of, or use any Service and while you are our customer, or when you participate in any contest, survey, event or otherwise provide us your personal information, you agree that we may collect your personal information from you and third party sources. Examples of information collected may include:
  - Your name, address, telephone number, nature of your principal business or occupation and date of birth, all of which may be required by law;
  - Identification, such as a valid driver's license or passport. We may also ask for documents such as a recent utility bill to verify your name and address;
  - Your education, annual income, assets and liabilities and credit history;
  - Information about your transactions, including payment history, account activity and how you intend to use the account or Service and the source of any incoming funds or assets;
  - Information we may need in order to provide you with a Service such as health information if you are applying for certain insurance products. In some instances, providing this information is optional;
  - Information about third parties such as your spouse if you are applying for certain Services, where this information is required by law; and
  - Information about beneficial owners, intermediaries and other parties, which is required by law.

## Business Banking Services Agreement

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For legal entities such as businesses, partnerships, trusts, estates, clubs or other organizations, we may collect the information referred to above from each authorized person, signatory, partner, trustee, executor and club member, as appropriate.

In addition, when you apply for, enroll in or use a Service, or participate in any contest, survey or event via a digital channel (such as online or mobile banking), we may collect information about your computer or device, operating system, internet connection or telephone account, settings, IP address and device locational data, browser information, and transaction data, as well as personal information as described above. We may collect, use, disclose and retain this information for the purposes described below, as well as to determine which settings are appropriate for your computer system, to provide or enhance digital functionality and banking options, and for security purposes, internal analysis and reporting. You may withhold consent to the collection, use and disclosure of this information, although in some cases this may prevent you from using the digital channel to apply for or use a Service or to communicate with us, or may reduce the functionality of that channel.

Scotiabank or its service providers may also use various web tools including Cookies (please see our Cookies Policy), Web Beacons and Tagging on our websites and advertisements to evaluate and improve our websites and other electronic offerings, tailor our services, enhance our customer experience and communicate with you regarding products and services that may be of interest.

- **Tagging** is a customized code on our websites that provide the ability to monitor user activity on Scotiabank websites. This software can be used to capture user activity to be used by us or a third party for analysis so that we can understand and enhance our user experience and provide further security controls.
- **Web Beacons** are small images embedded in our websites that, when combined with Cookies, help provide us with information about the use and effectiveness of our website.

We may collect your personal information, and use it, and disclose it to any person or organization, including any member of Scotiabank, for the following purposes:

- To confirm your identity;
- To understand your needs;
- To determine the suitability of our Services for you;
- To determine your eligibility for our Services;
- To set up, manage and offer Services that meet your needs;
- To provide you with ongoing Service;
- To provide you with various options for applying for and accessing Services;
- To satisfy legal and regulatory requirements that we believe are applicable to us, including the requirements of any self-regulatory organizations to which we belong;
- To help us collect a debt or enforce an obligation owed to us by you;
- To respond to a local or foreign court order, search warrant or other demand or request which we believe to be valid, or to comply with the rules of production of a local or foreign court;

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- To manage and assess our risks;
  - To investigate and adjudicate insurance claims, other claims or complaints; and
  - To prevent or detect fraud or criminal activity or to manage and settle any actual or potential loss in connection with fraud or criminal activity.

When we collect your health information for the purpose of providing an insurance Service, we will use that information strictly for that purpose. (See below for more information.) We do not provide directly all the services related to your relationship with us. We may use third party service providers to process or handle personal information on our behalf and to assist us with various services such as printing, postal and electronic mail distribution and marketing (including by telephone and electronic means), and you acknowledge that we may release information about you to them. Some of our service providers are located outside of Canada. In addition, we may use personal information in Scotiabank locations outside of Canada. As a result, your personal information may be accessible to regulatory authorities in accordance with the laws of these jurisdictions. When personal information is provided to our service providers, we will require them to protect the information in a manner that is consistent with Scotiabank privacy policies and practices.

2. We may collect, use and disclose your Social Insurance Number (SIN), as well as other information, for income tax reporting purposes and to fulfil other regulatory requirements, as required by law. In addition, we may ask you for your SIN to verify and report credit information to credit bureaus and credit reporting agencies as well as to confirm your identity. This allows us to keep your personal information separate from that of other customers, particularly those with similar names, and helps maintain the integrity and accuracy of your personal information. You may refuse to consent to its use or disclosure for purposes other than as required by law.
3. We may verify relevant information you give us with your employer or your references and you authorize any person whom we contact in this regard to provide such information to us. If you apply for or enroll in a Service and during the time you have the Service, we may consult various financial service industry databases, third parties (such as the Bank Crime Prevention and Investigation Office of the Canadian Bankers Association and the Investigative Services Division of the Insurance Bureau of Canada), or private investigative bodies maintained in relation to the type of Service you have applied for, enrolled in or have. You also authorize us to release information about you to these databases and investigative bodies.
4. You agree that we may monitor, record, and retain any telephone call or electronic communication we have with you. This is to establish a record of the information you provide, to ensure that your instructions are followed properly and to ensure customer service levels are maintained. Records of calls and electronic communications are destroyed when they are no longer required for business or other purposes, and any personal information is safeguarded in accordance with this Agreement.
5. Scotiabank may use video surveillance in and around our branches, bank machines and other locations for the purpose of safeguarding our clients and employees and protecting against theft, fraud and vandalism. Any video images recorded are destroyed when they are no longer required for business or other purposes, and any personal information is safeguarded in accordance with this Agreement.

## Business Banking Services Agreement

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6. If you have a Service with us, we may use, disclose to and collect from credit bureaus or financial service industry databases, credit and other information about you in order to offer you pre-approved credit products or margin facilities.
7. We may give information (except health information) about you to other members of Scotiabank (where the law allows this) so that these companies may communicate with you directly about their products and services. This consent will also apply to any companies that form a part of Scotiabank in the future. You also agree that we may provide you with information about or from third parties we select. Your consent to this is not a condition of doing business with us and you may withdraw it at any time (see below).
8. We may ask you for contact information such as your telephone, mobile or fax number or email address, and keep and use this information as well as disclose it to other members of Scotiabank so that we or any of these companies may contact you directly through these channels for the purpose of marketing, including telemarketing. This consent will also apply to any companies that form a part of Scotiabank in the future. Your consent to this is not a condition of doing business with us and you may withdraw it at any time (see below).
9. If we sell a company or a portion of the business or assets of a Scotiabank company, we may release the information we hold about you to the prospective purchaser. We will require any prospective purchaser to protect the information provided and to use it in a manner that is consistent with Scotiabank privacy policies and practices.
10. We may keep and use information about you in our records for as long as it is needed for the purposes described in this Agreement, even if you cease to be a customer.
11. You agree that all information that you give us will, at any time, be true and complete. If any personal information changes or becomes inaccurate or out of date, you are required to advise us so we can update our records.

### **Refusing or withdrawing consent**

Subject to legal, regulatory and contractual requirements, you can refuse to consent to our collection, use or disclosure of information about you, or you may withdraw your consent to our further collection, use or disclosure of your information at any time in the future by giving us reasonable notice. However, depending on the circumstances, withdrawal of your consent may prevent us from providing you, or continuing to provide you, with some Services, means of access to Services, or information that may be of value to you.

We will act on your instructions as quickly as possible but there may be certain uses of your information that we may not be able to stop immediately.

You cannot refuse our collection, use and disclosure of information required by third party service providers essential for the provision of the Services or required by our regulators, including self-regulatory organizations. Some of our service providers are located outside of Canada. As a result, your personal information may be accessible to regulatory authorities in accordance with the law of these jurisdictions.

You can tell us at any time to stop using information about you to promote our Services or the products and services of third parties we select, or to stop sharing your information with other members of Scotiabank. If you wish to refuse consent or to withdraw consent as

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outlined in this Agreement, you may do so at any time by contacting the branch or office with which you are dealing or by calling us toll-free.

Scotiabank	1-800-4SCOTIA
ScotiaMcLeod, Scotiatrust and Private Investment Counsel	1-866-437-4990
ScotiaLife Financial	1-800-387-9844
Scotia iTRADE®	1-888-872-3388

**In addition, if you apply for, accept, or guarantee, a line of credit, term loan, mortgage or other credit account with us**

When you apply for, accept, or guarantee a loan or credit facility or otherwise become indebted to us, and from time to time during the course of the loan or credit facility, we may use, give to, obtain, verify, share and exchange credit and other information (except health information) about you with others including credit bureaus, mortgage insurers, creditor insurers, reinsurers, registries, other companies in Scotiabank and other persons with whom you may have financial dealings, as well as any other person as may be permitted or required by law. We may do this throughout the relationship we have with you. You also authorize any person whom we contact in this regard to provide such information to us.

If you have a Service with us such as a banking card, credit card or line of credit product with an access card, you agree that we may give information (except health information) about you to electronic payment service providers, credit or charge card associations, loyalty program partners and their employees and agents for the purpose of processing, authorizing and authenticating your transactions (as the case may be), providing you with customer assistance services and for other purposes related to your services. We may also give this information in respect of your participation in contests and promotions administered by the electronic payment service providers, credit or charge card associations and loyalty program partners on our behalf.

If you have a mortgage account with us, we may give information about you, including credit information, to mortgage insurers for any purpose related to mortgage insurance. Information retained by Canada Mortgage Housing Corporation will be subject to federal access to information and privacy legislation.

During the term of the loan or credit facility, you may not withdraw your consent to our ongoing collection, use or disclosure of your personal information in connection with the loan or other credit arrangement you have with us or have guaranteed. We can continue to disclose your personal information to credit bureaus even after the loan or credit facility has been retired, and you may not withdraw your consent to our doing so. We do this to help maintain the accuracy, completeness and integrity of the credit reporting system.

**In addition, if you accept an insurance Service with us**

When you apply for, enroll in or sign an application in respect of or accept an insurance Service from us, we may use, give to, obtain, verify, share and exchange information about you with others including references you have provided, from hospitals and health practitioners, from government health insurance plans, from other insurers, from medical information and insurance service bureaus, from law enforcement representatives, from



## Business Banking Services Agreement

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private investigators, and from other groups or companies where collection is necessary to underwrite or otherwise administer the Service requested, including the assessment of claims. You also authorize any person whom we contact in this regard to provide such information to us.

If you accept an insurance Service with us, or if an insurance Service is issued on your life, you may only withdraw your consent as noted above so long as the consent does not relate to underwriting or claims where Scotiabank must collect and report information to insurance service bureaus after the application has been underwritten or the claim has been adjudicated. This is necessary to maintain the integrity of the underwriting and claims systems.

### Further information

You acknowledge that we may amend this Agreement from time to time to take into consideration changes in legislation, technology or other issues that may arise. We will post the revised Agreement on our website and make it available at our branches or we may also send it to you by mail. We may also notify you of any changes to this Agreement in any of the following ways:

- A notice prominently displayed at all Scotiabank ATMs;
- An announcement through the VoiceResponseUnit (VRU) or a digital channel such as a mobile app;
- A notice on the Scotiabank website or your Scotia OnLine portal;
- A notice in our branches; or
- A notice in your monthly statement.

Your continued use of the account or Service following such change means that you agree to and accept the new terms and conditions of the Agreement as amended. If you do not agree with any of the changes made or with the new terms of the Agreement, you must immediately stop using the account or Services and notify us that you are closing your account or terminating your Service with us.

If you have a general question about Scotiabank's privacy policies, please contact the branch or office you deal with or call us toll free at 1-800-472-6842. If your branch or office is not able to resolve your concern to your satisfaction, contact the President's Office:

Telephone: 1-877-700-0043  
Fax: 1-877-700-0045  
Email: [mail.president@scotiabank.com](mailto:mail.president@scotiabank.com)  
Letter: The President, Scotiabank  
44 King Street West  
Toronto ON M5H 1H1

Our Privacy Policy is available to the public on [www.scotiabank.com](http://www.scotiabank.com). The Privacy Policy forms part of the Scotiabank Privacy Agreement.

<sup>1</sup>For a list of Scotiabank's principal affiliates and subsidiaries in enterprise-wide, please refer to the most recent Annual Report available on the Scotiabank website at [www.scotiabank.com](http://www.scotiabank.com)

# EXHIBIT "J"





HARRISON PENSA

**Timothy C. Hogan**

Direct Line: (519)-661-6743  
thogan@harrisonpensa.com

Assistant: Cathy Coleiro

Direct Line: (519) 850-5568  
ccoleiro@harrisonpensa.com

January 30, 2019

**Via Registered & Regular Mail**

Cindergirls Inc.  
214 Ontario Street  
Brighton, ON K0K 1H0

Dear Sir:

**Re: Indebtedness to The Bank of Nova Scotia (the "Bank")  
Our File No. 177014**

We are the solicitors for the Bank with respect to loans provided to Cindergirls Inc. (the "**Debtor**").

According to the Bank's records the Debtor is indebted to the Bank in the principal amount of \$377,463.91 together with interest thereon which, as of January 30, 2019, amounts to \$8,304.35, for a total indebtedness of \$385,768.26 plus accruing interest and the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**").

The Indebtedness is comprised of the following:

Term Loan (Canadian Agricultural Loan)	Principal - \$37,125.00	Interest - \$765.64
Term Loan (Canadian Agricultural Loan)	Principal - \$338,100.00	Interest - \$7,538.71
Visa	\$2,238.91	

HARRISON PENSA LLP  
Lawyers

The Debtor is in default of certain agreements signed in favour of the Bank including, but not limited to, the following:

1. Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
2. Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
3. Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa);
4. Scotiabank Credit Agreement for business dated December 2, 2016 (Credit Line);
5. Charge/Mortgage of Land, from the Borrower, in the principal sum of \$378,000 and receipted as instrument number ND143083 on December 6, 2016 over the Property, legally described as: Part of Lot 3 CON Broken Front, Part 1, Plan 39R-13426; Municipality of Brighton (PIN 51154-0491 LT).

On behalf of the Bank we hereby demand payment of the Indebtedness owing by the Debtor together with interest thereon to the date of payment.

Failing payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Debtor's Indebtedness and to protect its interest, subject to your rights under the *Farm Debt Mediation Act* ("**FDMA**")


The Bank's legal fees up to the preparation of this demand and notice are estimated at \$750 plus applicable taxes, disbursements and any other administrative charges. You should contact this office to confirm the final sum of legal costs and administrative charges due when arranging to pay the Indebtedness.

We advise that no intermediate acts, negotiations or indulgences shall act as a waiver to the Bank's rights, or demand for payment as set out herein, unless so expressly stated in writing.

Finally, also find attached to this letter our client's Notice of Intention to Enforce Security as well as the relevant consent to immediate enforcement of the Bank's security. By signing this consent the Debtor waives the time period given by the Bank under this notice. Also, please find attached a Notice of Intention to Realize on Security pursuant to section 21 of the FDMA.

Yours truly,

HARRISON PENSA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TH' with a stylized flourish.

Timothy C. Hogan  
Direct: (519) 661-6743  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
TCH/cc  
Enclosure  
c: Dorne Wilson as guarantor

4541565\_1

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: Cindergirls Inc., an insolvent person

**TAKE NOTICE THAT:**

1. The Bank of Nova Scotia, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in the following security and the proceeds from the sale of said collateral:

1. Scotiabank Credit Agreement for business dated December 2, 2016 (Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
2. Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
3. Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa);
4. Scotiabank Credit Agreement for business dated December 2, 2016 (Credit Line);
5. Charge/Mortgage of Land, from the Borrower, in the principal sum of \$378,000 and receipted as instrument number ND143083 on December 6, 2016 over the Property, legally described as: Part of Lot 3 CON Broken Front, Part 1, Plan 39R-13426; Municipality of Brighton (PIN 51154-0491 LT).

The property to which the security relates includes, but is not limited to, all book debts, accounts, inventory, equipment, and real property wherever located and all other collateral however described of the above-noted insolvent person and the proceeds thereof.

2. The security that is to be enforced is in the form of:

1. Scotiabank Credit Agreement for business dated December 2, 2016 (Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
2. Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan);
3. Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa);
4. Scotiabank Credit Agreement for business dated December 2, 2016 (Credit Line);
5. Charge/Mortgage of Land, from the Borrower, in the principal sum of \$378,000 and receipted as instrument number ND143083 on December 6, 2016 over the Property, legally described as: Part of Lot 3 CON Broken Front, Part 1, Plan 39R-13426; Municipality of Brighton (PIN 51154-0491 LT).

3. The total amount of indebtedness secured by the security is \$385,768.26 as of January 30, 2019, plus interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.
4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 30<sup>h</sup> day of January, 2019

THE BANK OF NOVA SCOTIA  
by its solicitors, Harrison Pensa LLP

Per: 

TIMOTHY C. HOGAN  
Harrison Pensa LLP  
450 Talbot Street, P.O. Box 3237  
London, Ontario  
N6A 4K3  
(519) 661-6743

**CONSENT**  
**(s.244(2) of the *Bankruptcy and Insolvency Act*)**

THE UNDERSIGNED hereby acknowledges receipt of a copy of The Bank of Nova Scotia's demand dated January 30, 2019 and the Notice of Intention to Enforce Security dated January 30, 2019 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement of The Bank of Nova Scotia's security.

DATED at \_\_\_\_\_, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2019

CINDERGIRLS INC.

\_\_\_\_\_  
I have authority to bind the Company

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Dorne Jonathan Wilson



Agriculture and  
Agri-Food Canada  
Farm Debt  
Mediation Service

Agriculture et  
Agroalimentaire Canada  
Service de médiation en  
matière d'endettement agricole

PROTECTED B

## NOTICE OF INTENT TO REALIZE ON SECURITY

As required under Section 21 of the <i>Farm Debt Mediation Act</i> , you are hereby notified that it is the intent of:				
Name of creditor The Bank of Nova Scotia				
Family name of farmer Cindergirls Inc.			Given name of farmer	
Farmer's address				
Unit/Suite/Apt.	Street number 214	Number suffix	Street name Ontario	Street type Street
Street direction	PO Box or Route Number	Municipality (City, Town, etc.) Brighton	Province ON	Postal code K0K 1H0
The security being (type(s) of security)			on (asset(s))	
all personal property, inventory, equipment, real property,				
accounts, book debts, documents of title, crops growing and				
harvested, all property used in connection with the operation				

Dated this 30th day of January 2019 at London, Ontario

The Bank of Nova Scotia

Print creditor's name

Harrison Pensa LLP (as solicitors for The Bank of Nova Scotia)

519-679-9660

Signature of secured creditor or authorized representative

Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
  - unable to meet your obligations as they generally become due; or
  - have ceased paying your current obligations in the ordinary course of business as they generally become due; or
  - the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

Application forms and more information about the service can be obtained from:

**Farm Debt Mediation Service**  
**1-866-452-5556**

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



HARRISON PENSA

**Timothy C. Hogan**

Direct Line: (519)-661-6743  
thogan@harrisonpensa.com

Assistant: Cathy Coleiro

Direct Line: (519) 850-5568  
ccoleiro@harrisonpensa.com

January 30, 2019

**Via Registered & Regular Mail**

Dorne Wilson  
214 Ontario Street  
Brighton, ON K0K 1H0

Dear Sir:

**Re: Indebtedness of Cindergirls Inc. to The Bank of Nova Scotia (the  
"Bank")  
Our File No. 177014**

We are the solicitors for the Bank with respect to loans provided to Cindergirls Inc. (hereinafter the "**Debtor**").

According to Bank's records the Debtor is indebted to Bank in the amount of \$385,768.26 as of January 30, 2019 together with interest thereon plus the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**").

Pursuant to guarantees executed by you, you are indebted to the Bank as follows:

1. Guarantee dated December 2, 2016 and unlimited in sum, upon which the sum of \$37,890.64 is due and owing (the Term Loan);
2. Guarantee dated December 2, 2016 and unlimited in sum, upon which the sum of 345,638.71 is due and owing (the Term Loan);
3. Guarantee dated December 2, 2016 and unlimited in sum, upon which the sum of \$2,238.91 is due and owing (the Visa).

As a result, you are indebted to the Bank in the sum of \$385,768.26.

HARRISON PENSA LLP  
Lawyers



The debt is due and payable within ten (10) days of the date of this letter. Payment is to be made within ten (10) days, failing which our client will take whatever steps it deems necessary to protect its interest.

Yours truly,

HARRISON PENZA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TH' or 'T.H.', written in a stylized, cursive-like font.

Timothy C. Hogan  
Direct: (519) 661-6743  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
TCH/cc

4538895\_1

# EXHIBIT "K"

*Ontario*  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
Justice Drew Gonsolus

)  
)

Thursday THE 20<sup>th</sup> DAY  
OF June, 2019

BETWEEN:

THE BANK OF NOVA SCOTIA

Plaintiff

- and -

CINDERGIRLS INC. and DORNE WILSON

Defendants

**JUDGMENT**

On reading the Statement of Claim in this action and the proof of service of the Statement of Claim on the Defendants, filed, and said Defendant,

CINDERGIRLS INC., having been noted in default,

1. IT IS ORDERED AND ADJUDGED that the Defendant, CINDERGIRLS INC., pay to the Plaintiff the sum of \$38,466.16 and interest at 4.95% per year from the date of Judgment until payment in full.
2. IT IS ORDERED AND ADJUDGED that the Defendant, CINDERGIRLS INC., pay to the Plaintiff the sum of \$350,888.63 and interest at 4.95% per year from the date of Judgment until payment in full.
3. IT IS ORDERED AND ADJUDGED that the Defendant, CINDERGIRLS INC., pay to the Plaintiff the sum of \$2,410.59 and interest at 24.99% per year from the date of Judgment until payment in full.
4. IT IS ORDERED AND ADJUDGED that the Defendant, CINDERGIRLS INC. deliver to the plaintiff possession of the mortgaged property described as:

PART LOT 3 CON BROKEN FRONT DESIGNATED AS PART 1 PLAN 39R13426;  
MUNICIPALITY OF BRIGHTON (PIN 51154-0553 (LT)) (the "Property");

5. IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, CINDERGIRLS INC., pay to the Plaintiff the sum of \$ 837<sup>00</sup> for the costs of this action plus interest at the rate of 3.0% commencing on the date of this Judgment.

Date:

June 20 2019

  
Registrar, *Judge*  
Superior Court of Justice  
860 William St.  
Cobourg, ON  
K9A 3A9

Entered at Cobourg  
Inscrit à Cobourg

JUN 20 2019

In Book No. *91*  
au registre no. 73-54

*8134*

THE BANK OF NOVA SCOTIA

and

CINDERGIRLS INC. et al

Plaintiff

Defendants

Court File No. CV-19-000000027-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT COBOURG**

**JUDGMENT**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

Melinda Vine  
LSO #53612R  
Tel : (519) 661-6725  
Fax: (519) 667-3362  
Lawyers for the Plaintiff

# EXHIBIT "L"

THIS AGREEMENT made as of the      day of July, 2019

BETWEEN:

THE BANK OF NOVA SCOTIA  
90 Wynford Drive  
North York, ON M3C 1K5

(hereinafter called the "Bank")

OF THE FIRST PART

-and-

CINDERGIRLS INC.  
214 Ontario St.  
Brighton, ON K0K 1H0

(hereinafter called the "Borrower")

OF THE SECOND PART

-and-

DORNE WILSON ("Wilson")  
214 Ontario St.  
Brighton, ON K0K 1H0

(hereinafter called the "Guarantor")

OF THE THIRD PART

#### RECITALS

- A. The Bank has made certain Credit Facilities available to the Borrower as more particularly described in this Agreement;
- B. The Borrower is in default of the terms of the Credit Facilities (the "Default");
- C. As a result of the Default, the Bank did issue a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* to the Borrower dated January 30, 2019, and a further demand for payment to Wilson, as guarantor, dated January 30, 2019 (collectively, the "Demands");
- D. On January 30, 2019, the Bank did send to the Borrower a Notice of Intent to Realize on Security pursuant to section 21 of the *Farm Debt Mediation Act*.
- E. The Borrower is the owner of real property legally described as Part of Lot 3 CON Broken Front, Part 1, Plan 39R-13426; Municipality of Brighton (the "Property").

- F. The Bank holds a mortgage on the Property.
- G. The Borrower advises that there are realty tax arrears in relation to the Property.
- H. The Bank issued a Statement of Claim against the Borrower and Wilson on March 12, 2019 (the "**Action**").
- I. The Bank obtained a Default Judgment against the Borrower on June 20, 2019 and filed a Writ in the County of Northumberland against the Borrower on June 24, 2019.
- J. The Bank served Wilson with the Action on June 24, 2019, and the Bank is in a position to obtain Default Judgment as against Wilson on July 15, 2019.
- K. The Borrower and the Guarantor have requested that the Bank forbear from taking action on the Security (as defined in Schedule "B" to this Agreement) and the Bank, the Borrower and the Guarantor have agreed to enter into this Agreement for the purposes of allowing the Borrower time to sell the Property and pay all Indebtedness to the Bank by the Termination Date.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS

The parties agree and acknowledge that the recitals contained herein are true.

2. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

- a) "**Agreement**" or "**this Agreement**" means this Agreement;
- b) "**Credit Facilities**" means the Credit Facilities advanced to the Borrower by the Bank, as more particularly described in Schedule "A";
- c) "**Priority Claims**" means deemed trusts and other claims ranking in priority to the Bank's Security including, without limitation, charges under the *Bankruptcy and*



*Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), utilities, realty taxes, GST, HST, PST, employee remittances and Workers' Compensation;

- d) "**Security**" or "**Bank's Security**" means all security currently held by the Bank, together with such additional security, as may be granted by the Borrower, in support of the repayment of the Indebtedness as more particularly set out in Schedule "B";
- e) "**Termination Date**" is December 31, 2019;
- f) "**Without Consent**" means without the prior written consent of the Bank, which consent shall not be unreasonably withheld.

### 3. INDEBTEDNESS

- a) As of July 11, 2019, the Indebtedness owing to the Bank by the Borrower pursuant to the Credit Facilities was **\$408,578.35** plus accrued interest as more particularly described in Schedule "C".
- b) The above amount at 3 (a), plus accrued interest thereon, the Bank's reasonable legal fees on a solicitor and own client basis and other professional costs, and all other amounts properly payable pursuant to the Credit Facilities, the Security and this Agreement including all banking fees, are in total referred to as the "**Indebtedness**".

### 4. TERM OF AGREEMENT

- a) Subject to the terms of this Agreement, the Bank shall grant the Borrower the period of forbearance until the Termination Date, to remain in operation and pay all Indebtedness to the Bank, by the Termination Date.

### 5. ACKNOWLEDGEMENTS

The Borrower and the Guarantor hereby acknowledge and agree:

- a) That the Indebtedness as detailed herein is owing to the Bank by the Borrower, and is not disputed, and the Borrower makes no claim of set-off in any way against the Indebtedness;
- b) That the Bank will obtain Default Judgment as against Wilson on July 15, 2019;

- c) That the Credit Facilities and the Security, including the Letter Agreement, the Guarantees and the Mortgage (as defined in Schedules "A" and "B" to this Agreement), are valid and binding and shall continue to be enforceable in accordance with the terms thereof;
- d) That the Borrower, the Guarantor, their assigns, employees and any party able to claim through the same, each agree that they have no claim for set-off, counterclaim or damages to the present time on any basis whatsoever against the Bank, its officers, directors, employees, solicitors and agents (the "**Releasees**") in respect of this Agreement or in any dealings with the Borrower and Guarantor including, without limitation, any action taken by the Bank in dealing with the Credit Facilities, or with the administration of any accounts held with the Bank by the Borrower, the Security and if there are any existing claims known or unknown, they are hereby expressly released and discharged by this Agreement;
- e) The Default is valid and the Bank was in a position to issue the Demands, and the time provided therein was reasonable. The Bank does not, by this Agreement, waive its rights, and the Indebtedness remains owing in full;
- f) Upon an Event of Default under this Agreement, the Bank may enforce its Security and pursue all remedies with respect to the Indebtedness as it may deem appropriate, and by the entering into of this Agreement, the Bank is not estopped from taking any steps it deems necessary in its sole and absolute discretion to enforce the Security and to terminate this Agreement, on an Event of Default under this Agreement;
- g) That to the date hereof, the Bank has acted in a commercially reasonable manner and the Borrower and, where applicable, the Guarantor is estopped from disputing same;
- h) That the list price detailed in section 9 of this Agreement is reasonable;
- i) Except as provided in this Agreement, the Bank (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Security and pursue its remedies in respect of the Indebtedness without notice upon an Event of Default under this Agreement; and

- j) To the extent that the Bank accepts any payments or makes any advances of funds or credit available to the Borrower during the term of this Agreement, such payments accepted or advances of funds shall not constitute a waiver of any pre-existing default, maturity of loans, or any additional defaults of the Borrower or of the Bank's rights following the expiry of the Demands.
- k) The Guarantor acknowledges that they will be responsible for any deficiency owing following the sale of the Property, including all costs and legal fees.

#### 6. NON-MANAGERIAL RESPONSIBILITY

The Borrower acknowledges that the Bank shall not have control over any of the operations or affairs of the Borrower and shall not take part in the management of the Borrower's affairs, including the approval of any transactions except as hereinafter qualified. Without limiting the generality of the foregoing, neither the Bank nor its agents shall be entitled to approve or execute agreements, sign cheques, or otherwise sign on bank accounts or interfere with the efficient and proper day-to-day conduct of the business and affairs of the Borrower.

#### 7. NO PROTECTION WITHOUT CONSENT

The Borrower covenants and agrees that it will not, Without Consent, make any filing or seek any protection (including a stay of proceedings) or seek any stay pursuant to the BIA, the *Companies Creditors' Arrangement Act* (Canada) (the "**CCAA**"), or otherwise at law or in equity (a "**Filing**"), and that any Filing made in respect of any of the Borrower and/or the Guarantors will contain the following provisions:

- i) the terms of this Agreement will continue to bind the parties to this Agreement;
- ii) the Bank will not be affected by any stay or other order in such proceedings;
- iii) the Bank will be an unaffected creditor in any plan or proposal unless the Bank consents to be treated otherwise;
- iv) the Borrower irrevocably consents to the variation of any stay or order in such proceedings which would purport to affect the Bank; and
- v) the Borrower will not make or support any application which would have the effect of:
  - (1) creating any charge ranking in priority to the Security or in priority to any other rights of the Bank; or
  - (2) altering or varying the rights of the Bank under the terms of the Credit Facilities, the Security or this Agreement.



## 8. CONFLICT WITH THE CREDIT FACILITIES

In the event of a conflict between this Agreement and the Credit Facilities, this Agreement shall prevail, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Bank under the Credit Facilities or this Agreement other than as may be specifically contemplated herein.

## 9. COVENANTS OF THE BORROWER

The Borrower, and where applicable the Guarantor, agree and covenant that they shall:

- a) Maintain all the assets and equipment of the Borrower in a good state of repair;
- b) Keep all Priority Claims current, with the sole exception of the existing realty tax arrears on the Property (the "**Property Tax Arrears**"), and provide to the Bank evidence that all such accounts are current, as requested by the Bank;
- c) Provide to the Bank a statement evidence the Property Tax Arrears on execution of this Agreement;
- d) Not further encumber the Property;
- e) The Borrower will within five (5) business days of the execution of this Agreement list the Property for sale with a purchaser price of \$550,000 ("**Initial List Date**");
- f) List the Property for sale with an arms-length realtor approved by the Bank. The Borrower will grant the listing agent the authority to speak with the Bank regarding all matters in relation to the sale of the Property;
- g) The Borrower agrees to reduce the purchase price by \$10,000 every 35 days following the Initial List Date until the Termination Date;
- h) The Bank will be provided updates with respect all interested parties and be provided a copy of any offers;

- i) Not declare or pay any payment to any person who does not deal with the Borrower at arm's length (as such term is defined in the *Income Tax Act* (Canada)) except for salaries, contracts, and repayment of loans presently in place;
- j) Wilson will not file a Statement of Defence in the Action and consents to Judgment in the Action;
- k) The Borrower and the Guarantor will reimburse the Bank for all expenses that the Bank has incurred or will incur arising out of its dealings with the Borrower and with the preparation of this Agreement and in the protection, preservation and enforcement of the Security, including all legal fees of the Bank on a solicitor and own client basis, and all other fees in relation to the Borrower in general and this Agreement. The Borrower and the Guarantor specifically waive any and all rights they may have to assess any of the legal or agents' fees previously paid or paid in the future by the Bank, or any agent, whether such right arises pursuant the *Solicitor's Act* (Ontario) or any law or statute, In this regard, the Borrower and the Guarantor acknowledge and agree that they fully indemnify the Bank for all expenses detailed herein;
- l) The Borrower shall pay all Indebtedness in full on or before the Termination Date.

#### 10. BANK'S RIGHTS

It is understood and agreed that nothing contained in this Agreement and no negotiations, correspondence or discussions among the parties hereto, shall prejudice, affect or waive any of the Bank's rights under the terms of the Credit Facilities or the Security, except as those rights may have been modified by this Agreement.

#### 11. AFFIRMATION BY GUARANTORS

- a) The Guarantor hereby ratifies the covenants contained in the Guarantees provided, and hereby confirm to the Bank that the Guarantees (as defined in Schedule "B" to this Agreement) are and remain good, valid and binding upon and enforceable against them;
- b) It is further understood and agreed that nothing contained in this Agreement and no negotiations or discussions among the parties hereto shall prejudice the right of the

Bank to pursue its remedies against the Guarantor except as those rights may have been modified in this Agreement.

## 12. EVENTS OF DEFAULT

The Borrower shall be in default of this Agreement upon the happening of any of the following Events of Default:

- a) The Borrower is in breach of any terms of this Agreement, or any further breach of the Credit Facilities or any other agreement with the Bank, including, without limitation, the Security;
- b) The Borrower fails to provide evidence of the Property Tax Arrears;
- c) If, for any reason whatsoever, a creditor of the Borrower holding security in priority or subordinate to the Security commences to enforce its security, or if any creditor of the Borrower should obtain a judgment and/or a lien as against the Borrower or its property;
- d) There is, in the opinion of the Bank, acting reasonably, a material deterioration in the Security or the ability of the Bank to maximize the recovery of the Indebtedness;
- e) The Borrower makes a Filing under the BIA; and
- f) The Borrower is in breach of any of its material obligations to a third party, including the default of payment to such parties.

## 13. ENFORCEMENT

Upon an Event of Default under this Agreement, the Bank may proceed to enforce its Security and to pursue the Borrower and the Guarantor for payment of the Indebtedness at any time with no further notice and, accordingly, the Borrower and the Guarantor hereby consent to the Bank taking such steps as the Bank deems reasonably necessary, in its discretion, to collect the Indebtedness and enforce its Security and the terms of this Agreement, and to take all further necessary and lawful steps, and accordingly:

- a) The Borrower, and where applicable, the Guarantor, consent to the Bank taking such steps as the Bank deems reasonably necessary, in its discretion, to collect the Indebtedness and enforce its Security and the terms of this Agreement including,



without limitation, the appointment of a receiver as against or over the property of the Borrower;

- b) The Borrower hereby consents to the appointment of any such receiver, in the form set out at Schedule "D" hereto (the "**Consent to Appointment**"), consenting to the immediate private or court appointment of an interim receiver, receiver or receiver and manager of all property of the Borrower, which Consent to Appointment shall be held in escrow by the Bank's counsel, Harrison Pensa LLP, and used on an Event of Default, or following the Termination Date; and

The Consent to Appointment is valid and binding upon its provision by the Borrower and the Guarantor to the Bank, and not subject to any conditions precedent.

#### 14. EXTENSION OF AGREEMENT OR PAYMENT IN FULL

The Bank, in its sole discretion, may extend the period of forbearance on terms acceptable to it.

#### 15. PREVIOUS AGREEMENTS

This Agreement replaces all previous agreements between the Borrower and the Bank, save and except the Credit Facilities.

#### 16. NON-WAIVER

No delay on the part of the Bank in exercising any remedy or any waiver of the rights given to it hereunder or any of the Bank's Security shall operate as a waiver thereof except if such waiver is specifically given in writing by the Bank, and no forbearance on the part of the Bank with respect to any event of default shall be deemed to be of any waiver by the Bank of that event of default or any other subsequent or similar event of default.

#### 17. TIME OF THE ESSENCE

Time is of the essence in this Agreement, but a forbearance by the Bank in the strict application of this provision shall not operate as a continuing or subsequent forbearance.

## 18. CONFLICT

Except as explicitly amended by this Agreement, the terms and provisions of the Credit Facilities, and the Bank's Security shall remain in full force and effect and no statement, representation, warranty, undertaking or agreement is enforceable unless in writing signed by the party against who it is asserted or his or her authorized agent. In the event of a conflict between the terms and provisions of same and this Agreement, the terms and provisions of this Agreement shall govern.

## 19. FURTHER ASSURANCES

The Borrower shall from time to time and at all times hereafter, at every reasonable request of the Bank, make, do, execute and deliver, or cause to be made, done, executed and delivered, at the sole cost and expense of the Borrower, all such further acts, deeds and assurances and things as may be necessary or desirable in the opinion of the Bank for more effectually implementing the true intent and meaning of this Agreement.

## 20. NOTICE

Any notice, demand, approval, consent, waiver or other communication ("**Notice**") to be given by one party to another under this Agreement, shall be in writing and shall be sufficiently given if delivered personally, forwarded by registered mail or transmitted by facsimile transmission to such party as follows:

In the case of the Borrower and the Guarantor:

To the addresses as provided in this Agreement.

In the case of the Bank to:

The Bank of Nova Scotia  
90 Wynford Drive  
North York, ON, Canada, M3C 1K5  
Attention: Judy Vielle  
Via E-Mail: [judy.vielle@scotiabank.com](mailto:judy.vielle@scotiabank.com)

with a copy to:

Harrison Pensa <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street, P.O. Box 3237,  
London, Ontario N6A 4K3



Attention: Tim Hogan  
Via e-mail: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

or to such other address or fax number as may be designated by Notice given as aforesaid to the other party by the party to whom Notice is to be given. Any Notice delivered and received as aforesaid shall be deemed to have been given and received on the first business day following the date of personal delivery, the forwarding by registered mail, or facsimile transmission, as the case may be.

## 21. SUCCESSORS AND ASSIGNS

The Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators, executors or permitted assigns.

## 22. UNENFORCEABILITY

The invalidity, illegality or unenforceability, for any reason, of any term or provision of this Agreement, shall not in any manner invalidate any other term or provision hereof; the same shall be deemed to have been severed herefrom so that the validity, legality and enforceability of the remaining terms and provisions hereof shall not be affected, prejudiced or impaired thereby.

## 23. GOOD FAITH

It is acknowledged by the Borrower that this Agreement was prepared following good faith negotiations, by the Bank and the Borrower.

## 24. PIPEDA

The Borrower and Guarantor hereby consent to the Bank's release of personal information in relation to the Credit Facilities, without notice to the Borrower and/or the Guarantor and at the Bank's absolute discretion, to any entity having an interest or potential interest in the collateral for its enforcement or collection purposes. The Borrower and Guarantor further agree and acknowledge that such release of personal information by the Bank is lawful and is permitted despite other avenues that may be available to any third party to obtain such personal information and that such release is not a violation of the provisions of the *Personal Information and Electronic Documents Act*, S.C. 2000, c.5, s.7 and is made with the knowledge and consent of the Borrower and Guarantor as is required under this legislation.

## 25. COUNTERPARTS and FACSIMILE COPIES

This Agreement or any amendment thereto may be executed in counterparts, and if so executed all counterparts when taken together shall comprise one and the same instrument, and facsimile copies or portable document format (PDF) of signatures shall be treated as originals for all purposes.

## 26. LIMITATION PERIOD

The Obligations of the Borrower and the Guarantor to the Bank are hereby acknowledged and shall be continued to be acknowledged through the term of this Agreement. Any limitation period in relation to the demands to the Borrower or the Guarantor, the Indebtedness, the Credit Facilities and the Security (in accordance with the *Limitations Act, 2002* (Ontario)) is hereby expressly extended to a period of six (6) years from the date of this Agreement.

## 27. ACKNOWLEDGEMENT BY THE BORROWER

The Borrower hereby confirms and acknowledge that it has no adverse claims whatsoeverJ against the Bank, its agents or professional advisors including, without limitation, their agents, employees consultants and solicitors (including claims for set-off, counterclaim or damages) with respect to its dealings with the Borrower.

## 28. ACCEPTANCE

This Agreement is open for acceptance until 12:00 pm on July 19, 2019 . Should the Borrower not accept this offer by the time indicated, the same shall become null and void and no longer binding on the Bank.

The Borrower covenants and agrees with the Bank that this Agreement is subject to the following conditions, which are for the exclusive benefit of the Bank and may be waived only by the Bank in writing. Each of the following conditions is to be completely fulfilled or performed prior to this Agreement being a binding Agreement on the Bank, unless the Bank waives any of the conditions, and this Agreement shall then be at an end:

- The Bank's receipt of a duly authorized and executed copy of this Agreement;
- Executed Consent to Appointment.



In witness whereof the parties hereto have executed this Agreement as of the day and year first above written.

**THE BANK OF NOVA SCOTIA**

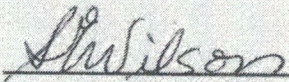
Per: \_\_\_\_\_

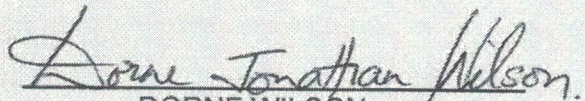
By its Counsel Harrison Pensa LLP  
I have the authority to bind the Bank

**CINDERGIRLS INC.**

Per: \_\_\_\_\_

I have the authority to bind the Corporation

  
Witness

  
DORNE WILSON

Schedule "A" - Credit Facilities  
Schedule "B" - Security  
Schedule "C" - Indebtedness  
Schedule "D" - Consent to Appointment



## SCHEDULE "A" CREDIT FACILITIES

### Letter Agreement

The following Facilities were provided to the Borrower by the Bank, as evidenced by the Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan Canadian Agricultural Loan), the Scotiabank Credit Agreement for business dated December 2, 2016 (Term Loan Canadian Agricultural Loan) and that Scotiabank Credit Agreement for business dated December 2, 2016 (Scotia Momentum for business Visa) (collectively, the "**Letter Agreement**"):

- a. Facility # 1 – Term Loan: in the sum of \$45,000 with interest due on the monies advanced at the Plaintiff's interest prime plus 1.0% per annum ("**Term Loan No. 1**");
- b. Facility # 2 – Term Loan: in the sum of \$378,000 with interest due on the monies advanced at the Plaintiff's interest prime plus 1.0% per annum ("**Term Loan No. 2**"); and
- c. Facility # 3 – Visa: in the sum of \$10,000 with interest on the amount at the rate of 24.99% per annum (the "**Visa**").

## **SCHEDULE "B"**

### **SECURITY**

As security for the Credit Facilities and for any monies advanced or to be advanced in the future by the Bank to the Borrower, and for all other present and future indebtedness, fees, expenses and other liabilities, direct or indirect, absolute or contingent due by the Borrower to the Bank, including the Bank's solicitor and own client legal fees in relation to the enforcement of the Security, and the preparation of this Agreement, the Borrower and the Guarantor, as the case may be, have granted to the Bank security over their assets consisting of the following:

#### Letter Agreement

1. Guarantee dated December 2, 2016 from Dorne Wilson and unlimited in sum, in relation to Term Loan No. 1;
2. Guarantee dated December 2, 2016 from Dorne Wilson and unlimited in sum, in relation to Term Loan No. 2;
3. Guarantee dated December 2, 2016 from Dorne Wilson and unlimited in sum, in relation to the Visa;  
(1-3 collectively referred to as the "**Guarantees**")
4. Charge/Mortgage of Land, from the Borrower, in the principal sum of \$378,000 and receipted as instrument number ND143083 on December 6, 2016 over the property legally described as: Part of Lot 3 CON Broken Front, Part 1, Plan 39R-13426; Municipality of Brighton (PIN 51154-0491 LT) (the "**Mortgage**").

**SCHEDULE "C"**  
**INDEBTEDNESS**

INDEBTEDNESS OF THE BORROWER AS AT JULY 11, 2019<sup>1</sup>

	<b>TOTAL DUE</b>
Term Loan No. 1	\$38,706.27
Term Loan No. 2	\$353,066.72
Visa	\$2,215.41
Legal Fees Billed to date	\$9,773.21
Unbilled Legal Fees	\$4,816.74
<b>TOTAL</b>	<b>\$408,578.35</b>

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<sup>1</sup> Plus accruing interest, unbilled/unpaid legal fees.

**SCHEDULE "D"**  
**CONSENT TO APPOINTMENT**

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

THE BANK OF NOVA SCOTIA

Plaintiff

-and-

CINDERGIRLS INC.

Defendant

**CONSENT**

The Defendant hereby consents to the appointment of a Receiver of the property of the Defendant under the terms of an Order substantially in the form attached at Schedule D-1 hereto or to the private appointment of same.

Dated at Trenton, Ontario this      day of August 2nd, 2019.

**CINDERGIRLS INC.**

Per: 

I have the authority to bind the Corporation

**SCHEDULE "D-1"**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE )  
JUSTICE )  
 ) DAY OF , 20

BETWEEN:

THE BANK OF NOVA SCOTIA

Plaintiff

-and-

CINDERGIRLS INC.

Defendant

**ORDER  
(appointing Receiver)**

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Defendant, Cindergirls Inc. (hereinafter the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at the Courthouse, 80 Dundas Street, London, Ontario;

ON READING the affidavit of sworn and the Exhibits thereto and on hearing the submissions of counsel for , no one appearing for although duly served as appears from the affidavit of service of sworn and on reading the consent of to act as the Receiver.



## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, \_\_\_\_\_ is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor (collectively, the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with

the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.



and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes

of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business



which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided

for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or



relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice in Bankruptcy and Insolvency.



20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$\_\_\_\_\_ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

THE BANK OF NOVA SCOTIA

Applicant

-and-

CINDERGIRLS INC.

Respondent

Court File No. CV-20-0063421400CL

	<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p><b>COMMERCIAL LIST</b></p> <p>Proceeding commenced at Toronto, Ontario</p> <hr/> <p><b>AFFIDAVIT OF JUDY VEILLE</b></p> <hr/> <p><b>HARRISON PENZA <sup>LLP</sup></b> Barristers and Solicitors 450 Talbot Street, 1<sup>st</sup> Floor P.O. Box 3237 London, Ontario N6A 4K3</p> <p><b>Melinda Vine (LSO #53612R)</b> Tel: (519) 679-9660 Fax: (519) 667-3362</p> <p>Solicitors for the Applicant</p>
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THE BANK OF NOVA SCOTIA

-and-

CINDERGIRLS INC.

Applicant

Respondent

Court File No. CV-20-0063421400CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at  
Toronto, Ontario

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**APPLICATION RECORD**

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**HARRISON PENSA <sup>LLP</sup>**  
Barristers and Solicitors  
450 Talbot Street, 1<sup>st</sup> Floor  
P.O. Box 3237  
London, Ontario N6A 4K3

**Melinda Vine (LSO #53612R)**

Tel: (519) 679-9660

Fax: (519) 667-3362

Solicitors for the Applicant