



MODEL COMMERCIAL PAPER AGREEMENT

THIS AGREEMENT is made on [DATE]

Between:

[ISSUER] (the “Corporation”)

- and -

[GUARANTOR] (the “Guarantor”) [**Note to Draft:** delete if the Notes are not guaranteed]

- and -

[DEALERS] (each, a “Dealer” and collectively the “Dealers”)

1. ISSUE

- 1.1 The Corporation may borrow money from time to time by the issue and sale of short term notes (the “Notes”), either in “book entry only” form (as provided in Section 5) or in certificated form, as set forth in the Corporation’s information memorandum dated •, 20• (the “Information Memorandum”) as from time to time amended or replaced. [The Notes will be unconditionally and irrevocably guaranteed as to payment of principal and interest, if any, by the Guarantor. **Note to Draft:** delete the preceding sentence if the Notes are not guaranteed] The Corporation may issue and sell Notes to or through the Dealer(s) at such prices and upon such terms as the Corporation and Dealer(s) may agree.
- 1.2 In offering for sale, issuing and selling Notes, the Dealer(s) and the Corporation shall follow the operating procedures that from time to time may be established and agreed to by them, the current form of such operating procedures being attached hereto as Part 2 of Schedule A.

2. DEALER(S)

- 2.1 On the terms and conditions set forth herein, the Corporation hereby appoints the Dealer and, if more than one Dealer, the Dealers severally, to act as the Corporation’s dealer(s) and agent(s) for the purpose of soliciting and receiving offers to purchase the Notes and the Dealer(s) hereby severally accept such appointment. In soliciting and receiving offers to purchase the Notes, the Dealer(s) will follow the Corporation’s reasonable instructions.

- 2.2 Subject to the operating procedures set out in Part 2 of Schedule A, if any, in receiving instructions from the Corporation regarding the aggregate amount of Notes proposed to be placed by the Dealer(s) and the proposed interest or discount rate and the maturity of such Notes, the Dealer(s) will be entitled to rely on telephone communications which it reasonably believes to originate with duly authorized representatives of the Corporation. The Corporation will furnish to the Dealer(s) a list of persons authorized to instruct the Dealer(s) regarding the placement of such Notes.
- 2.3 The Dealer(s) will use commercially reasonable best efforts to solicit offers to purchase the Notes. In accordance with the terms hereof, offers to purchase Notes solicited by the Dealer(s) will be subject to acceptance by the Corporation. In addition, the Dealer(s) may elect to purchase Notes, as principal or for resale, from the Corporation and, in any case where the Corporation offers to issue and sell any Notes and the Dealer(s) elects to purchase any Notes from the Corporation as principal, such Notes will be purchased pursuant to the terms and conditions set forth herein.
- 2.4 The Dealer(s) and the Corporation agree that nothing contained herein or in the Information Memorandum creates any obligation on the part of the Corporation to issue or sell any amount of Notes or on the part of the Dealer(s) to purchase any amount of Notes. For greater certainty, the Dealer(s) may offer to purchase Notes as principal.
- 2.5 The Corporation and the Dealer(s) acknowledge and agree that, unless otherwise agreed in writing, the Notes will be distributed in Canada in reliance upon the prospectus and registration exemption contained in section[s] 2.35 [and 3.35] of National Instrument 45-106 – *Prospectus and Registration Exemptions* (“NI 45-106”). The Corporation will promptly notify the Dealer(s) if and when the Notes become ineligible for offering and sale under NI 45-106, whereupon the Dealer will cease to offer the Notes for sale in Canada, unless any subsequent sale is otherwise exempt (under another exemption or pursuant to a discretionary ruling or order from securities regulators) from the prospectus and registration requirements. The Notes will be sold only through the Dealer(s) on the terms and conditions set forth herein and will not be sold either directly or indirectly (except through the Dealers) by the Corporation to a third party.
- 2.6 In this Agreement, the rights and obligations of the Dealers hereunder shall be several and not joint or joint and several. References to the collective term “Dealer(s)” or “Dealers” in this Agreement shall be read in each instance as referring to each of the Dealer(s) or Dealers, as the case may be, severally and not jointly or jointly and severally. [**Note:** delete this paragraph if there is only one Dealer]

3. COMPLIANCE WITH LAW

- 3.1 The Corporation and the Dealer(s) shall comply with all applicable laws and regulations of Canada and the provinces and territories thereof in connection with the offering and sale of Notes, and the Dealer(s) will not knowingly offer for sale or

effect the sale of any Notes to persons to whom or in jurisdictions where such offering or sale would be unlawful or would require the Corporation to file a prospectus.

- 3.2 The Dealer(s) acknowledges that the Notes are not registered under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) and agrees not to sell or offer the Notes to a U.S. Person (as that term is defined in Regulation S made under the U.S. Securities Act) except in certain transactions exempt from registration requirements of the U.S. Securities Act.

4. CDS CLEARING AND DEPOSITORY SERVICES INC.

- 4.1 Unless otherwise expressly agreed by the Corporation and the Dealer(s), the Notes will be issued as depository notes through CDS Clearing and Depository Services Inc. (“CDS”) pursuant to the *Depository Bills and Notes Act* (Canada).
- 4.2 In carrying out its obligations hereunder, the Dealer(s) will not assume any liability for:
- (a) any aspect of the records of CDS relating to the beneficial ownership of the Notes in book entry form only (the “Book Entry Notes”) held by CDS or the payments relating thereto;
 - (b) maintaining, supervising or reviewing any CDS records relating to the Book Entry Notes; or
 - (c) any advice or representation made by or with respect to CDS including those that may be contained in the Information Memorandum and relating to the rules governing CDS or any action to be taken by CDS or at the direction of its participants.

5. COMMISSION

- 5.1 In consideration for the services rendered by the Dealer(s) pursuant to this Agreement the Corporation shall pay the Dealer(s) a commission on each Note sold by the Dealer(s) for the Corporation or bought by it from the Corporation for which the Corporation has received full value. The commission so payable by the Corporation on any Note shall be computed on the principal amount of such Note at the rate of ● percent (●%) per annum for the period from the date of the issuance of such Note to the date of its actual maturity. The commission on any Note shall be paid forthwith upon the Dealer providing to the Corporation a monthly statement in respect thereof and in any event within the calendar month immediately following the calendar month in which such Note was actually issued.

6. INFORMATION MEMORANDUM

- 6.1 The Corporation shall provide the Dealer(s) with copies of its Information Memorandum, in such numbers as the Dealer(s) may reasonably request which the Dealer(s) may distribute to prospective purchasers of the Notes. The Corporation

consents to the Dealer(s) posting and distributing the Information Memorandum online through its website. Without the Corporation's prior written approval, the Dealer(s) will not change the text of the Information Memorandum or insert additional information therein. The Corporation may, at any time, at its own expense, change, replace or supplement the Information Memorandum, in which event the Information Memorandum as so changed, replaced or supplemented shall thereafter be deemed to be the Information Memorandum for all purposes of this Agreement and the Corporation shall promptly notify the Dealer(s) of any such change in writing.

- 6.2 The Corporation hereby represents and warrants to the Dealer(s) (which representation and warranty shall be deemed to be repeated in connection with each sale of Notes pursuant to or arising out of this Agreement) that all the statements (except any information contained therein relating solely to the Dealers and supplied by the Dealers in writing) contained in the Information Memorandum and/or in any supplementary documents prepared by the Corporation for, and disseminated to, purchasers or holders of Notes (collectively, the "Information") are true and correct in all material respects as of the dates indicated therein and at the time of each purchase of Notes pursuant to this Agreement, contain no misrepresentation (where used in this Agreement, as such term is defined in the *Securities Act* (Ontario)). In carrying out its obligations hereunder, the Dealer(s) will not assume any liability for the form or content of any of the Information (except any information contained therein relating solely to the Dealer(s) and supplied by the Dealer(s) in writing for inclusion in the Information).
- 6.3 The Corporation shall promptly notify the Dealer(s) in writing of any material change relating to the affairs of the Corporation and its subsidiaries, or in any information provided to the Dealer(s) concerning the Corporation, its subsidiaries or the Notes which would render untrue any statement in the Information, or which would constitute a misrepresentation. The Corporation shall promptly comply with all applicable requirements of regulatory authorities in respect of the occurrence of any such material change, and further agrees that as a result of any such material change, the Corporation will modify or supplement the Information to the extent necessary to ensure that all statements contained therein are true and correct in all material respects as of the dates indicated therein and that the Information does not contain a misrepresentation. Unless so advised otherwise, the Dealer(s) will be entitled to assume that there has been no material change in such Information and will be entitled to rely thereon. The Corporation will notify the Dealer(s) promptly of any notice by any judicial or regulatory authority requesting any information, meeting or hearing relating to the Corporation and its affairs or the placement of the Notes or any other event or state of affairs that may be relevant to the Dealer(s) or the Corporation's security holders. Without limiting any of the foregoing, the Corporation will immediately notify the Dealer(s) of any downgrade of which it has knowledge, or notice received by it of a potential downgrade, in the rating of the Notes, prior to any subsequent issuance of Notes.

- 6.4 In the event that the Corporation gives the Dealer(s) notice pursuant to Section 8.3, the Corporation agrees promptly to supplement, amend or replace the Information so that the Information does not contain any misrepresentation.

7. OPINION OF COUNSEL

- 7.1 The Corporation acknowledges that the Dealer(s) would not accept the responsibilities arising hereunder, but for the delivery to the Dealer(s) of the opinion of the Corporation's counsel, • dated •, 20• as to certain matters, including, without limitation the eligibility of the Notes for investment by certain classes of investors, the validity and enforceability of the Notes and related matters. The Corporation shall not take any corporate or other action which might make inaccurate any statement contained in such opinion of counsel, except after thirty (30) days written notice to the Dealer(s), and the Corporation will notify the Dealer(s) in writing forthwith upon its learning of the occurrence of any event not resulting from action taken by the Corporation which might make inaccurate any such statement. Without restriction, any amendment or alteration of the corporate by-laws or resolutions included in the Information Memorandum delivered to the Dealer(s) in connection with the assumption by the Dealer(s) of its responsibilities hereunder shall be deemed to be an action which might make inaccurate statements contained in such opinion.

8. INDEMNITY

- 8.1 The Corporation shall indemnify and save each of the Dealers and their respective directors, officers, employees, and each of their respective agents (each of whom is an "Indemnified Party," and are referred to collectively as the "Indemnified Parties") harmless from and against all losses (except loss of profits in connection with the sale of the Notes), claims, costs, damages, demands, expenses and liabilities (each a "Claim" and, collectively, the "Claims") which any of the Indemnified Parties may suffer, incur or be the subject of (whether under the provisions of any statute or otherwise), from time to time, and reimburse each Indemnified Party forthwith, upon demand, for any legal or other expenses reasonably incurred by such Indemnified Party in connection therewith, and which are in any way caused by or derived directly or indirectly by reason of, from or in consequence of:
- (a) any misrepresentation, untrue or misleading statement or omission made by the Corporation (except a statement, omission or misrepresentation relating solely to the Dealers or any of the Dealers and supplied by the Dealer(s) in writing for inclusion therein) contained herein or in the Information or in any document incorporated therein by reference or supplementary thereto or in any other material supplied to the Dealers by the Corporation and/or filed or delivered in compliance or intended compliance with any applicable statute, regulation, policy or ruling;
 - (b) any misrepresentation, or any alleged untrue statement, omission or misrepresentation (except a statement, omission or misrepresentation relating

solely to the Dealers or any of the Dealers and supplied by the Dealer(s) in writing for inclusion therein) in any material or document prepared, filed or delivered pursuant hereto and which prevents or restricts the trading in any securities of the Corporation or the distribution or eventual re-distribution of the Notes or any of them in Canada or any of the jurisdictions;

- (c) any order made or inquiry, investigation or proceeding commenced or threatened by any securities commissions or other authority having jurisdiction over the Corporation or the Notes, and relating to the Notes and this Agreement;
- (d) the French language version of any document comprising a part of the Information being, or being alleged to be, other than a complete and proper translation of the English language version of the document or being, or being alleged to be, susceptible of any materially different interpretation with respect to any material matter contained therein; or
- (e) any breach of, default under or non-compliance with, any of the Corporation's covenants, representations or warranties contained in this Agreement.

8.2 If and to the extent that a court of competent jurisdiction, in a final non-appealable judgement in a proceeding in which an Indemnified Party is named as a party, determines that a Claim was caused by or resulted from such Indemnified Party's breach of this Agreement, gross negligence or wilful misconduct, such Indemnified Party shall reimburse any funds advanced by the Corporation to the Indemnified Party pursuant to this indemnity in respect of such Claim and thereafter the indemnity contained in this Section shall cease to apply to such Indemnified Party in respect of such Claim

8.3 If any Claim shall be asserted against any of the Indemnified Parties, or if any potential Claim shall come to the knowledge of an Indemnified Party, the Indemnified Party concerned shall notify the Corporation as soon as possible of the nature of such Claim (provided that any failure to so notify shall not affect the liability of the Corporation under this subsection) and the Corporation shall, subject as hereinafter provided, be entitled (but not required) to assume the defence on behalf of the Indemnified Party of any suit brought to enforce such Claim; provided, however, that the defence shall be through legal counsel engaged by the Corporation and acceptable to the Indemnified Party, acting reasonably, and no admission of liability shall be made by the Corporation or the Indemnified Party without, in each case, the prior written consent of the Corporation and the Dealer(s), such consent not to be unreasonably withheld. An Indemnified Party shall have the right to employ separate counsel in any such suit and participate in the defence thereof but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) the employment of such counsel has been authorized by the Corporation; or (ii) the Corporation has not within a reasonable time after receiving written notice employed counsel to have charge of the defence of such action or, having assumed such defence, has failed to diligently pursue same; or (iii) the named parties to any such suit include the Indemnified Party and the Corporation and the Indemnified Party shall have been

advised by counsel that there may be one or more legal defences available to the Indemnified Party which are different from or in addition to those available to the Corporation (in which case the Corporation shall not have the right to assume the defence of such suit on behalf of the Indemnified Party but the Corporation shall be liable in accordance with the provisions of this subsection to pay the reasonable fees and expenses of counsel for the Indemnified Party).

- 8.4 Notwithstanding any other section or provision contained in this Agreement, the indemnity contained in this Section shall survive and continue in full force and effect unaffected by any termination of this Agreement or purchase or sale of any or all of the Notes.

9. AGREEMENT

- 9.1 This Agreement shall be binding on the Corporation and the Dealer(s) upon the return of the enclosed copy of this Agreement to the Corporation with the acceptance below duly executed by each Dealer
- 9.2 The Corporation may in its discretion and after notice to the Dealers appoint one or more additional Canadian investment dealers as Dealers; provided that no such appointment shall be effective unless:
- a) any such additional Dealer has entered into a counterpart hereof;
 - b) the Corporation will update the Information Memorandum to refer to any such additional Dealer and provide such update to all of the Dealers;
 - c) all relevant requirements under applicable securities laws have been complied with; and
 - d) such other matters as the Dealers' counsel or the Corporation's counsel may reasonably require in order to give effect to any such appointment shall have been completed.

Each Dealer hereby covenants to execute and deliver any and all agreements, instruments, notices, consents, acknowledgments, certificates and documents and do all such acts and things as may reasonably be required by the Corporation in order to give effect to the appointment of one or more additional Dealers as contemplated by this subsection.

- 9.3 This Agreement including Schedule A hereto constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements in this respect. This Agreement shall not apply in respect of the creation and issuance of any indebtedness of any nature or kind whatsoever (whether or not evidenced by a promissory note) by the Corporation except indebtedness incurred pursuant to the offering in Canada of the Notes. This Agreement shall not apply to loans obtained by the Corporation from its parent or affiliated companies or from its bankers or to any notes evidencing the same.

- 9.4 This Agreement may be executed in one or more counterparts, all of which shall together constitute one and the same instrument. In case any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.
- 9.5 No amendment, modification or waiver in respect of this Agreement will be effective unless in writing and executed by all of the parties.
- 9.6 The parties hereby confirm their express wish that this document and all documents and agreements directly or indirectly related thereto be drawn up in English. Les parties aux présentes reconnaissent qu'a leur demande le présent document ainsi que tous les documents et conventions qui s'y rattachent directement ou indirectement sont rédigés en langue anglaise.
- 9.7 This Agreement may not be assigned by the Corporation without the prior written consent of all the Dealer(s) hereunder. This Agreement may not be assigned by any Dealer hereunder without the prior written consent of the Corporation and with notice, which may be provided after the effective date of any such assignment, to all other Dealer(s) hereunder of the name and address information of the assignee.

10. NOTICE

- 10.1 Except as otherwise provided herein all notices, requests, approvals or other communications to any party hereunder shall be in writing (including telex, facsimile and electronic mail (confirmed by facsimile or similar writing)) and shall be given:

if to the Corporation:

-
- Telephone: (•)
- Facsimile: (•)
- Attention:

if to the Dealer(s) at:

-
- [address]
- Telephone: •
- Facsimile: •
- Attention: •

or such other address or facsimile number as such party may hereafter specify by written notice to the other party or parties. Each such notice, request or other communication shall be effective when delivered or transmitted to the address or number specified above or, (i) if given by facsimile, when such facsimile is transmitted to the specified number above and the appropriate confirmation is

received, or (ii) if given by other means, when delivered or transmitted to the address or number specified above.

10.2 The parties may electronically record all telephonic conversations between their trading and marketing personnel and any such tape recordings may be submitted in evidence in any proceedings relating to the Agreement. In the event of any dispute between the parties as to the terms of any transaction governed by this Agreement, the parties may use the electronic recordings as preferred evidence, notwithstanding the existence of any writing to the contrary.

11. TERMINATION

11.1 This Agreement (except for Section 8, which will survive and continue in any event) may be terminated by either the Corporation or the Dealer(s) upon no less than seven days' notice in writing to the other party; *provided that* this Agreement will terminate automatically upon the Corporation ceasing to be eligible to distribute Notes under NI 45-106. From and after the effective date of any such termination by the Corporation or by any one or more of the Dealers, no further commissions shall be payable by the Corporation to the terminated Dealer or Dealers (in the case of termination by the Corporation) or to the terminating Dealer or Dealers (in the case of termination by one or more Dealers), other than those commissions payable on Notes which were sold and for which the Corporation received full value prior to the effective date of the applicable termination; provided however, that, for greater certainty, the termination of this Agreement as between the Corporation and any Dealer hereunder shall not affect the Agreement between the Corporation and any other Dealer(s) hereunder and the Agreement shall continue in full force and effect unless and until specifically terminated in regard to any other such Dealer(s).

12. GOVERNING LAW

12.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

The foregoing is in accordance with our understanding and is agreed to by us.

Dated this day of , 200 • .

CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

[The Guarantor, as and from the date first written above and until the termination of this Agreement, hereby unconditionally and irrevocably guarantees the Corporation's obligations under this Agreement.

GUARANTOR

By: _____
Name:
Title:

By: _____
Name:
Title:

The foregoing is in accordance with our understanding and is agreed to by us.

Dated this day of , 200 • .

DEALER A

By: _____
Name:
Title:

The foregoing is in accordance with our understanding and is agreed to by us.

Dated this day of , 200 • .

DEALER B

By: _____
Name:
Title:

SCHEDULE A

Part 1 – Other Terms [Optional, to be included at the discretion of dealer(s)]

If and to the extent that pursuant to any applicable law the Corporation is not authorized to solicit, receive offers for, or sell Notes through the Dealer(s) acting as its agent as contemplated under this Agreement, the appointment by the Corporation of the Dealer(s) pursuant to Section 1 and for all purposes of this Agreement shall be and be deemed to be restricted to an appointment to purchase Notes as principal only, either for investment or for resale to qualified investors, and not as agent to solicit, receive offers for or sell Notes on behalf of the Corporation.

[Other terms to be completed, if applicable]

Part 2 – Operating Procedures

[To be completed, if applicable]