



## **Retailer Certification Process**

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**Town of Ponoka**

**April 20, 2006**

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*1. Definition and Contract*

Retailer Certification - means a retailer has met and maintained the certification requirements as defined in the current TOWN OF PONOKA Terms and Conditions For Distribution Access Service

The role of Retailer Liaison within the Town of Ponoka will be the point of contact for retailer organizations that wish to inquire into or apply for retail certification with the Town of Ponoka

Retailer Liaison –

Betty Quinlan  
Town of Ponoka  
(403) 783-0121  
(403) 783-0115 (Fax)  
[bettyq@ponoka.org](mailto:bettyq@ponoka.org)

## ***2. The Process***

### ***2.1 RETAILER CERTIFICATION INQUIRIES***

The Retailer must contact the Town of Ponoka Retailer Liaison – This service is intended to address Inquiries regarding the certification process only. The Liaison will provide the retailer with a copy of the Retailer Handbook and outline all the details of the certification process. Other sources for information regarding the TOWN OF PONOKA Retailer Certification process are:

- The SIMMARIX Web page (Distribution and Transmission)  
[www.simmarix/site/clientPonoka.htm](http://www.simmarix/site/clientPonoka.htm)
- The TOWN OF PONOKA Terms and Conditions For Distribution Access Service document

## **2.2 *RETAILER CERTIFICATION***

The Retailer must contact the Town of Ponoka Retailer Liaison. The retailer requirements for Certification are defined in the current TOWN OF PONOKA Terms And Conditions For Distribution Access Service.

The Certification process:

### **Step 1.**

The request for certification should be in writing and delivered to the Retailer Liaison; and must:

- Identify the Retailer
- Identify contact person within the Retailer organization
- State the date for which the certification is requested to be effective for, and
- The request must be accompanied by:
  - Power Pool certification documentation
  - Government license/certification documentation

### **Step 2.**

The Retailer Liaison will contact the retailer contact person to discuss the Prudential Requirements of the Retailer – as outlined in Schedule B of the TOWN OF PONOKA 2001 Distribution Tariff.

### **Step 3.**

Once the Retailer Liaison is satisfied that the Prudential Requirements are in place, or is reasonably satisfied that they will be in place prior to the effective date of the retailer certification he/she will schedule the Retailers Communication Test. (Communication Test details are outlined in the Communication Testing Process section of this document)

### **Step 4.**

The Retailer Liaison will coordinate the execution of the Communication Test with the retailer's organization. Ten (10) days should be allowed for this test. Upon completion of the test the Retailer Liaison will announce the results of the test.

**Step 5.**

Pending the successful outcome of the Communication Test the Retailer Liaison will verify that the Retailers Prudential requirements have been met and will subsequently draft up the Distribution Service Agreement between the Retailer and Town of Ponoka Both parties will be allowed five (5) business days for internal review of the agreement.

**Step 6.**

- I. Retailer provides the Retailer Liaison with Electronic Funds Payment information.
- II. Both parties sign the Distribution Service Agreement. (Schedule “A” – of this document)
- III. Retailer signs and submits the Statutory Declaration (Schedule “B” – of this document)
- IV. Retailer signs and submits the Guarantee Agreement. (Schedule “C” – of this document).

### **3. DISTRIBUTION SERVICE AGREEMENT**

## **DISTIRUBITON SERVICE AGREEMENT**

THIS DISTRIBUTION SERVICE AGREEMENT is entered into between Town of Ponoka (“Town of Ponoka”), an owner of an electric distribution system, having its principal place of business in Ponoka, Alberta and *[Insert name of Retailer]*, an entity validly authorized under the laws of Alberta to sell electricity to retail customers in Alberta, having its principal place of business in *[Insert principal place of business of Retailer]* (“Retailer”).

### **WITNESSETH**

WHEREAS the Town of Ponoka provides Distribution Services pursuant to its Distribution Terms approved from time to time by the regulatory authority; and

WHEREAS the Town of Ponoka desires to provide Distribution Services to Retailer and Retailer desires to obtain Distribution Services from the Town of Ponoka, upon and subject to the provisions of this Agreement

NOW THEREFORE in consideration of the premises and mutual promises and agreements of the Parties herein expressed, the Parties, intending to be legally bound, hereby agree to the following:

## **1.0 DEFINITIONS AND INTERPRETATIONS**

**“Agreement”** means this Distribution Services Agreement.

**“Parties”** means Town of Ponoka and Retailer and their successors and permitted assigns and **“Party”** means any one of the Parties.

All other capitalized words and phrases used in this Agreement have the respective meanings ascribed to them in the Terms and Conditions.

Words importing the singular number include the plural and vice versa. Words importing gender include masculine, feminine and neuter. The meanings specified are applicable to both the singular and the plural.

## **2.0 DISTRIBUTION TERMS**

Town of Ponoka's Distribution Terms, approved by the Regulator from time to time, are expressly incorporated in and made a part of this Agreement by reference. The Parties shall perform their respective obligations as set forth in the Distribution Terms as amended from time to time.

## **3.0 ENFORCEABILITY**

Each Party represents that it has taken all necessary corporate action to authorize the execution of this Agreement, that the execution and performance of this Agreement does not and will not violate or result in the breach of any law, rule, regulation or agreement to which it is subject or party and that, upon execution, this Agreement shall constitute a valid and binding obligation, enforceable against it in accordance with its terms, except to the extent enforceability thereof is limited by bankruptcy, moratorium, or similar laws affecting creditors' rights generally, or general principals of equity.

## **4.0 TERM**

This Agreement shall become effective on the day and year it is signed and dated by the Town of Ponoka. Subject to Section 5.1 and Article 6, the term of this Agreement shall continue for a period of six (6) months and shall continue thereafter from month to month unless terminated by either Party by written notice given to the other Party at least thirty (30) days prior to the intended termination date.

## **5.0 RETAILER RESPONSIBILITIES**

### **5.1 Valid Authorization**

Retailer represents that it is validly authorized under Alberta law to sell and provide Electricity Services to retail customers in Alberta. Retailer shall notify the Town of Ponoka immediately upon any change in its status to conduct sell and provide Electricity Services in Alberta. Failure of Retailer to maintain its authorization in good standing under Alberta law shall be grounds for immediate termination of this Agreement by the Town of Ponoka.

### **5.2 Compliance with Terms and Conditions**

Retailer shall fully comply with the requirements of the Town of Ponoka's Distribution Terms and Conditions.

### **5.3 Taxes**

The Town of Ponoka shall have no responsibility for reporting or remitting to the appropriate taxing authority any taxes applicable to the sale by Retailer of electricity to Customers.

5.4.1 Retailer shall notify the Town of Ponoka immediately if:

- (a) Retailer ceases to operate in Alberta;
- (b) Retailer is no longer permitted to provide electricity services under the conditions of the retailer's license under the Fair Trading Act and the regulations made under that Act; or
- (c) Retailer is no longer permitted to Exchange electric energy through the Alberta Electric System Operator in accordance with the rules of the Alberta Electric System Operator.

## **6.0 TERMINATION**

### **6.1 Termination**

Notwithstanding any contrary terms elsewhere in this Agreement, the Town of Ponoka may, by written notice to the Retailer, terminate this Agreement or suspend further performance by it without terminating this Agreement upon the occurrence of any of the following: (a) Retailer fails to fulfill the requirements under the Distribution Terms required to be fulfilled to receive Distribution Access Service, (b) Retailer ceases to operate in Alberta or is no longer permitted to provide Electricity Services under the conditions of Retailer's license under the Fair Trading Act (Alberta) and the regulations made under that Act or Retailer is no longer permitted to Exchange electric energy through the Alberta Electric System Operator in accordance with the rules of the Alberta Electric System Operator; (c) Retailer becomes subject to any bankruptcy or insolvency proceeding, becomes bankrupt or insolvent, becomes subject to control of a trustee, receiver or similar authority, or makes an assignment for the benefit of creditors, (d) Retailer fails to make, when due, any payment owing to the Town of Ponoka under this Agreement or the Distribution Terms and has not cured such failure within five (5) days after receipt of written notice from the Town of Ponoka or (e) Retailer commits a material breach of any of its other obligations under this Agreement or the Terms and Conditions and has not cured such breach within thirty (30) days after receipt of a written notice from the Town of Ponoka specifying the nature of the breach.

### **6.2 No Waiver**

Any delay by the Town of Ponoka in enforcing any of its rights under this Agreement shall not be deemed a waiver of such rights, and a waiver of one default shall not be deemed a waiver of any other or subsequent default.

### **6.3 Remedies not Limited**

The enumeration of remedies in this Article 6 shall not be deemed a waiver of any other remedies to which the Town of Ponoka is legally entitled.

## **7.0 DISPUTE RESOLUTION**

### **7.1 Resolution by Town of Ponoka and Retailer**

If any dispute between the Town of Ponoka and a Retailer shall arise at any time in connection with this Agreement or the Distribution Terms, the Town of Ponoka and Retailer acting reasonably and in good faith, will endeavor to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved, an officer of the Town of Ponoka and an officer of the Retailer shall meet to attempt to resolve the dispute.

## **7.2 Resolution by Arbitration**

If any dispute has not been resolved pursuant to Section 7.1 within thirty (30) days after notice from The Town of Ponoka or Retailer to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Sections 7.3 to 7.10 hereof. The Town of Ponoka and Retailer shall abide by the terms of any award rendered without delay.

## **7.3 Arbitrators**

All disputes or differences between The Town of Ponoka and Retailer pursuant to this Agreement or the Distribution Terms shall be referred (unless The Town of Ponoka and the Retailer concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one arbitrator to be appointed by each of The Town of Ponoka and Retailer who shall, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed matters between The Town of Ponoka and the Retailer relating to an order or direction made or approved by the Regulator or falling within the exclusive jurisdiction of the Regulator shall be referred to the Regulator for resolution.

## **7.4 Failure to Concur**

The Town of Ponoka and Retailer shall be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator shall not have been appointed within fifteen (15) days after the serving by either The Town of Ponoka or Retailer on the other of notice requesting it to concur in the appointment of such an arbitrator.

## **7.5 Refusal to Appoint an Arbitrator**

If either The Town of Ponoka or the Retailer shall neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served The Town of Ponoka or Retailer, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator shall be entitled to apply upon notice to the other party to a Justice of the Court of Queens Bench of Alberta to appoint an arbitrator for the party in default.

## **7.6 Failure to Appoint a Third Arbitrator**

If the arbitrators appointed by The Town of Ponoka and Retailer have not, within fifteen (15) days after the appointment of the arbitrator last appointed, as the case may be, appoint a third arbitrator, either The Town of Ponoka or Retailer shall be entitled to apply upon notice to the other party to a Justice of the Court of Queens Bench of Alberta to appoint such an arbitrator.

## **7.7 Technical Competence**

Any arbitrator appointed under the provisions of this clause whether by concurrence of The Town of Ponoka and Retailer, by either party, by the arbitrators, or by a Justice of the Court of Queens Bench of Alberta shall, in the opinion of the Person or Persons making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

## **7.8 Application of the *Arbitration Act* (Alberta)**

Except as herein modified, the provisions of the *Arbitration Act* (Alberta), as amended, re-enacted or replaced from time to time, shall apply to any arbitration proceeding.

## **7.9 Decisions Binding**

A decision of the single arbitrator or the majority of the three arbitrators named or appointed shall be final and binding upon each of the parties to the dispute or difference.

## 7.10 Continuity of Service

All performance required under this Agreement or the Distribution Terms by The Town of Ponoka and Retailer and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article, provided that in the case of any such proceedings pertaining to amounts payable under this Agreement or the Distribution Terms, any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the daily rate of interest at which The Town of Ponoka receives short-term financing from the date so determined until paid.

## 7.11 Terms and Conditions Prevail

In the event that a provision in this Agreement conflicts with the Distribution Terms, or a conflict with the Distribution Terms develops during the term of this Agreement, the Distribution Terms shall prevail.

## 8.0 MISCELLANEOUS PROVISIONS

### 8.1 Notices

Except as otherwise provided in this Agreement, any notice or other communication required or permitted to be given by either Party to the other Party under this Agreement shall be in writing and shall be deemed given to the other Party if addressed to the other Party as follows and delivered personally or by facsimile transmission at the following address or facsimile number for the other Party:

**If to Town of Ponoka:**

Town of Ponoka  
5102 48 Avenue  
Ponoka, Alberta, T4J 1P7  
**Attention:** Chief Administrative Officer

**Facsimile Number: (403) 783-6745**

**If to <insert name of Retailer>:**

<insert address>  
<insert address>  
<insert address>  
**Attention:** <insert contact name, title, phone number and email address>

**Facsimile Number:**

Any communication received by a Party after the close of business shall be deemed to have been received on the next Business Day. A Party may change its address, contact person or facsimile number for communications by a communication given in accordance with this Section 8.1; provided that the change will only be effective upon receipt thereof by the other Party.

### 8.2 Governing Law

This Agreement is made under and shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, regardless of Alberta conflict of law provisions. The courts of the Province of Alberta shall have jurisdiction to determine all disputes and claims arising between the Parties and each Party hereby attorns to the jurisdiction of the courts of the Province of Alberta.

**8.3 Restriction on Assignment**

The rights of the Retailer under this Agreement are not assignable.

**8.4 Amendments in Writing**

This Agreement may be amended only by a written instrument duly executed by the Parties hereto that makes express reference to this Agreement.

**8.5 Counterpart Execution**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

**8.6 Headings for Reference**

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and provisions thereof.

**8.7 Severability**

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such terms, covenants, or conditions to a Party, shall be held by any court or regulatory authority having competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of its terms, covenants and conditions to the Party shall not be affected thereby.

**IN WITNESS WHEREOF** the Parties have caused their names to be subscribed to this Agreement, each by its appropriate agent, hereto duly authorized, as of the date below.

**TOWN OF PONOKA**

Signature: \_\_\_\_\_

Print Name

Print Title

Date

***[INSERT NAME OF RETAILER]***

Signature: \_\_\_\_\_

Print Name

Print Title

Date

### **3. SCHEDULE B – STATUTORY DECLARATION**

## STATUTORY DECLARATION

CANADA ) IN THE MATTER OF THE TOWN OF PONOKA  
PROVINCE OF ALBERTA 20\_\_

TO WIT: ) Distribution Tariff for access to the transmission  
) and distribution systems of The Town of Ponoka  
)

I, \_\_\_\_\_, an authorized representative of \_\_\_\_\_ of  
\_\_\_\_\_, in the Province of Alberta, DO SOLEMNLY DECLARE:

1. That I have read the Distribution Service Agreement dated \_\_\_\_\_, 20\_\_ between the Town of Ponoka and \_\_\_\_\_.
  
2. That I have received the 20\_\_ Distribution Tariff of The Town of Ponoka dated \_\_\_\_\_, 20\_\_ that contains among other things the terms and conditions relevant to the said Distribution Service Agreement.
  
3. That I confirm that this Statutory Declaration is made for the purpose of inducing the Town of Ponoka to allow access to its transmission and distribution systems by \_\_\_\_\_.
  
4. That I have reviewed the records, working papers and calculations of \_\_\_\_\_ and the Prudential Requirement Estimator attached to this Statutory Declaration as Exhibit "A" and I am satisfied that the estimated annual tariff to be paid by \_\_\_\_\_ to the Town of Ponoka is \$\_\_\_\_\_.
  
5. That I confirm that \_\_\_\_\_ has established a credit rating of \_\_\_\_\_ with the following accredited rating agencies:
  - (a)
  - (b)
  - (c)

and attached hereto are copies of the most current credit rating reports in the possession of

\_\_\_\_\_  
AND I make this declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the City of )  
\_\_\_\_\_, in the \_\_\_\_\_ of )  
\_\_\_\_\_ this \_\_\_\_ day of )  
\_\_\_\_\_, 20\_\_\_\_. )

\_\_\_\_\_)  
A COMMISSIONER FOR )  
OATHS/NOTARY PUBLIC IN AND FOR )  
THE \_\_\_\_\_ OF )  
\_\_\_\_\_.)

\_\_\_\_\_

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DATED

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**STATUTORY DECLARATION**

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**PARLEE McLAWS  
Barristers & Solicitors  
1500 ManuLife Place  
10180 - 101 Street  
Edmonton, Alberta  
T5J 4K1**

FILE NO.

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## **5. SCHEDULE C – GUARANTEE AGREEMENT**

**GUARANTEE AGREEMENT**

This Guarantee Agreement (the "Guarantee") dated as of \_\_\_\_\_, 20\_\_\_\_, is made and entered into, AMONG:

**TOWN OF PONOKA**, an Alberta Municipality  
(hereinafter referred to as "the Town")

OF THE FIRST PART

- and -

\_\_\_\_\_, a \_\_\_\_\_ corporation  
(hereinafter referred to as the "Guarantor")

OF THE SECOND PART

- and -

\_\_\_\_\_, an Alberta corporation  
(hereinafter referred to as the "Retailer")

OF THE THIRD PART

WHEREAS The Town of Ponoka and the Retailer have entered into a Distribution Service Agreement (the "DSA Agreement");

AND WHEREAS the Guarantor is an affiliate (within the meaning of the Business Corporations Act of Alberta) of the Retailer;

AND WHEREAS the Guarantor will directly or indirectly benefit from the DSA Agreement;

NOW THEREFORE in consideration of the premises and of the sum of \$10.00 paid by THE TOWN OF PONOKA

Distribution to the Guarantor and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Guarantor, the parties agree as follows:

**1. Payment Guarantee**

1.1 The Guarantor absolutely, irrevocably and unconditionally guarantees to The Town of Ponoka all payment obligations of the Retailer set forth in the DSA Agreement and interest thereon accrued as provided in the DSA Agreement (the "Obligations"). This guarantee of payment is a continuing guarantee effective during the term of the DSA Agreement and until complete performance by Retailer of its obligations under the DSA Agreement and payment in full of all Obligations.

1.2 The obligations of the Guarantor are several from those of the Retailer or any other person or entity, including, without limitation, any other surety for the Retailer, and are primary payment obligations of which the Guarantor is the principal obligor. To the extent the Retailer shall fail to timely make payment of any Obligations, the Guarantor shall satisfy its obligations hereunder regardless of whether The Town of Ponoka or any other person or entity shall have taken any steps to enforce its rights against the Retailer or any other person or entity except the Guarantor.

- 1.3 The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason of subsequent dealings between The Town of Ponoka and the Retailer, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:
- 1.3.1 Extensions (whether or not material) of the time for payment of all or any portion of the Obligations;
  - 1.3.2 Any failure, delay or lack of diligence on the party of The Town of Ponoka, or any other person or entity to enforce, assert or exercise any right, privilege, power or remedy conferred on The Town of Ponoka or any person or entity in the DSA Agreement or at all, or any action on the party of The Town of Ponoka or such other person or entity granting indulgence or extension of any kind;
  - 1.3.3 The settlement or compromise of any Obligations;
  - 1.3.4 The status, composition, structure or change of name of the Retailer including, without limitation, by reason of merger, consolidation, dissolution, amalgamation or reorganization;
  - 1.3.5 The release or waiver by operation of law or otherwise, of the performance of observance by Retailer of any express or implied covenant, term or condition in the DSA Agreement;
  - 1.3.6 The release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the DSA Agreement or related document; and
  - 1.3.7 The failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Retailer to The Town of Ponoka or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security device, guarantee, surety or other indemnity agreement in respect of such collateral.

## **2. Maximum Limit**

- 2.1 The amount covered by this Guarantee for all Obligations in respect of the DSA Agreement that ever shall be required to be paid by the Guarantor shall not exceed the amount set forth in Schedule “A” attached hereto (the “Maximum Limit”); provided, this Guarantee shall cover and the Guarantor shall pay, in addition to the Maximum Limit, all reasonable expenses, including, without limitation, legal fees on a solicitor and own client basis, court costs and similar costs, of The Town of Ponoka in the event of judgment, settlement or other enforcement against the Guarantor.

## **3. Distribution Access Terms and Conditions**

- 3.1 The Guarantor covenants that it has received a copy of the DSA Agreement and the Distribution Terms which are the terms and conditions applicable to the Retailer’s obligations to The Town of Ponoka pursuant to the DSA Agreement.
- 3.2 Without limiting the generality of any other provision of this Guarantee the Guarantor agrees to pay to The Town of Ponoka all amounts due and owing pursuant to the said Distribution Terms including without limitation the following:
- 3.2.1 Section 6.7 in respect of the Retailer’s obligation to pay bills;
- 3.2.2 Section 6.8 in respect of interest payments, late payment charges and administration and collection service fees;
- 3.2.43 Section 6.9 in respect of amounts payable by the Retailer for adjusted bills.

## **4. Representations and Warranties**

- 4.1 The Guarantor represents and warrants that:
- 4.1.1 It is a corporation duly organized and validly existing under the laws of [state/province] and has the power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
- 4.1.2 No authorization, approval, consent or order of, or registration of filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee;

- 4.1.3 Assuming due authorization, execution and delivery hereof by The Town of Ponoka, this Guarantee constitutes a legal, valid and binding agreement of the Guarantor enforceable in accordance with its terms;
- 4.1.4 The Retailer is licensed in Alberta by Alberta Government Services; and
- 4.1.5 The Retailer is certified by the Alberta Electric System Operator

## **5. Financial Information**

- 5.1 The Guarantor shall provide The Town of Ponoka, within one hundred and twenty (120) days following the end of each fiscal year of the Guarantor, a copy of the Guarantor's annual report, containing financial statements for such fiscal year certified by independent chartered accountants or certified public accountants, and within sixty (60) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Guarantor, a copy of the Guarantor's quarterly report, containing unaudited financial statements for such fiscal quarter, and in each case such report shall be prepared in accordance with generally accepted accounting principles.
- 5.2 The Guarantor shall provide to The Town of Ponoka any credit rating report received from the Canadian Bond Rating Service or an equivalent rating from any other major reputable bond rating service within ten (10) business days of receipt of any such report.
- 5.3 Notwithstanding the generality of paragraph 5.2, the Guarantor covenants to provide to The Town of Ponoka, any downgrading of the Guarantor's corporate bond rating within two (2) business days of any such rating revision.

**6. Notice**

6.1 All notices and communications made pursuant to this Guarantee shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or sent by facsimile, as follows:

To the Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To TOWN OF PONOKA:

Town of Ponoka  
5102 48 Avenue  
Ponoka, Alberta T4J 1P7

Attention: Chief Administrative Officer

Facsimile: (403) 783-6745

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning or recipient's next business day after receipt if not received during recipient's normal business hours. Any party may change its address to which notice is to be given hereunder by providing notice of same in accordance with this Section 6.

**7. Law, Waivers, Miscellaneous**

7.1 This Guarantee shall in all respects be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. No term or provision of this Guarantee shall be amended, modified, altered, waived, supplemented or terminated except in a writing signed by the parties hereto. This Guarantee shall be binding upon and enure to the benefit of and be enforceable by the respective successors and assigns of The Town of Ponoka. This Guarantee embodies the entire agreement and understanding between the Guarantor and The Town of Ponoka and supersedes all prior agreements and understandings, relating to the subject matter hereof. The headings in this Guarantee are for the purposes of reference only, and shall not affect the meaning hereof. The Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one document.

## **8. Further Covenants**

- 8.1 The Retailer represents and warrants that it has entered into the DSA Agreement and the Retailer acknowledges to The Town of Ponoka that it will notify The Town of Ponoka in the event that the Guarantor ceases to become the parent corporation of the Retailer.
- 8.2 For the purposes of this Guarantee, the Retailer agrees to provide to The Town of Ponoka all of the financial information required to be given by the Guarantor pursuant to Article 5 of this Guarantee.
- 8.3 The Guarantor and the Retailer covenant that in the event that any dispute between The Town of Ponoka and the Retailer pursuant to the DSA including any arbitration proceedings will not affect any of the payment obligations of the Guarantor hereunder and in such event the Guarantor covenants that it will make all payments required hereunder even in the event that dispute resolution proceedings are being contemplated or undertaken pursuant to the DSA Agreement.
- 8.4 The Guarantor agrees that if THE TOWN OF PONOKA should receive from the Guarantor a payment or payments under this Guarantee, the Guarantor shall not be entitled to claim repayment from the Retailer until THE TOWN OF PONOKA has been paid in full pursuant to the DSA Agreement and in the case of liquidation, winding-up or bankruptcy of the Retailer, whether voluntary or compulsory, or in the event that the Retailer shall make any composition with creditors or scheme of arrangement, THE TOWN OF PONOKA shall have the right to rank in priority to the Guarantor for THE TOWN OF PONOKA's full claim until THE TOWN OF PONOKA's claim has been paid in full.

IN WITNESS WHEREOF the parties hereto have caused this Guarantee to be executed as of the day and year first above written.

**TOWN OF PONOKA**

Per \_\_\_\_\_

Per \_\_\_\_\_

\_\_\_\_\_

Per \_\_\_\_\_

Per \_\_\_\_\_

\_\_\_\_\_

Per \_\_\_\_\_

Per \_\_\_\_\_

SCHEDULE "A"

At the time of execution of this Guarantee, the amount required to be paid by the Guarantor shall not exceed Cdn \$ .