



SUBROGATION AND RELEASE
BCAP GUARANTEE - MID-MARKET

Date: _____

To: Export Development Canada
("EDC")
150 Slater Street
Ottawa, ON K1A 1K3
Canada

Institution (on its own behalf or as Administrative Agent, as applicable): _____

Obligor (borrower): _____

Payment Amount (specify if CAD or USD): _____

Reference Number: _____

THIS SUBROGATION AND RELEASE AGREEMENT (hereinafter the "**Subrogation and Release**") dated at the top of this page is entered into:

BY
The Institution

AND
EDC

EDC issued a BCAP Mid-Market Guarantee with the Reference Number listed above (as amended or restated from time to time, the "**Guarantee**"). This Guarantee provides for some loans granted by the Institution to Obligors to be guaranteed by EDC, and one such loan has been granted by the Institution to the Obligor and guaranteed by EDC (the "**Transaction**").

In consideration of the payment of the Payment Amount that EDC has already made or will concurrently with the effectiveness of this Subrogation and Release make to the Institution under the Guarantee in respect of the Transaction and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Institution and EDC agree to the following conditions.

All capitalized terms used in this form defined in the Guarantee have the meanings ascribed to them therein, except to the extent that such terms are defined or modified in this form or the context otherwise requires. If any conflict or inconsistency exists between the terms of this form and the Guarantee, the terms of the Guarantee shall govern and prevail.

SECTION I - FULL AND FINAL RELEASE

1.1 - Release and discharge

Notwithstanding article 2364 of the Civil Code of Québec, if the Institution's headquarters are in the province of Quebec, the Institution hereby:

- (a) irrevocably and unconditionally releases, remises and forever discharges EDC from and against any and all claims, demands, obligations, actions, causes of action, suits, charges, covenants, agreements, contracts and liabilities whatsoever, both in law and in equity or by statute, known or unknown, whether implied or expressed, which the Institution ever had, may have or now has, or which the Institution's successors, trustees, assigns or any of them hereinafter can, shall or may have for or by reason of any cause arising under or with regard to the Transaction;
- (b) represents and warrants to and agrees with EDC that the Institution has not assigned, transferred or subrogated and will not assign, transfer or subrogate to any other person, firm entity or corporation any of the claims, demands, rights, actions, causes of action, suits, charges, executions or damages which are or become subject to this Guarantee, and that it has not agreed and will not agree to do any of the foregoing; and
- (c) declares that the consideration stated herein is the sole consideration for this Guarantee and that it voluntarily accepts the said consideration for the purpose of making full and final compromise, adjustment and settlement of any and all matters described herein.

1.2 - Reservation of Rights under the Guarantee

Without derogation from the rights of EDC under the Guarantee, the Institution hereby acknowledges and agrees that EDC shall be entitled to exercise its rights under Section 7 and Section 12 of the Guarantee.

SECTION 2 - SUBROGATION AND ASSIGNMENT

2.1 - Representations and Warranties of the Institution

The Institution represents and warrants to EDC that:

- (a) none of the exclusions listed in Section 4 or Section 5 of the Guarantee has occurred;
- (b) it has the right to assign the EDC Acquired Rights if requested by EDC;
- (c) it has not assigned, transferred or subrogated, or agreed to assign, transfer or subrogate any interest in the Transaction Documentation except to EDC in accordance with the Guarantee;
- (d) it has not received any payment or exercised any right of set-off or combination or consolidation of accounts in respect of the Guaranteed Amount or any part thereof except as indicated in the Claim or as permitted in the Guarantee;
- (e) it has not released, waived, discharged or sold its interest in the Transaction Documentation or any part thereof except as consented to in writing by EDC or as permitted in the Guarantee; and
- (f) it has not subordinated or agreed to subordinate, its priority or any other rights in respect of the Transaction Documentation other than as permitted in the Guarantee or as consented to in writing by EDC.

2.2 - Subrogation, Proceedings and Distribution

Upon successful transfer of the Payment Amount by EDC to the Institution, EDC shall be immediately, irrevocably and absolutely subrogated to all rights title, and interest of the Institution under the Transaction Documentation to the extent of the Payment Amount and EDC and the Institution hereby agree that:

- (a) if, in respect of the Transaction, the Institution receives any payment or proceeds whatsoever (whether in the form of cash, property, securities or otherwise) in respect of the Security or the Guaranteed Amount or any part thereof, it shall hold the same in trust and promptly advise EDC of the receipt of such payment or proceeds, which shall be distributed in conformity with the provisions of Sections 15 and 21 of the Guarantee;
- (b) all documentation evidencing the Security (the “**Security Documentation**”) shall, unless otherwise requested by EDC, remain registered or recorded in the name of the Institution, but held for the benefit of the parties to the extent of their interest herein created; and
- (c) as between EDC and the Institution, the Institution shall, unless otherwise requested by EDC, have the exclusive right (in its discretion, but subject to Section 2.4 hereof and applicable law) to make demands, exercise rights of set-off, file proofs of claim, vote, enforce and commence proceedings in respect of the EDC Acquired Rights or any part thereof.

2.2.1 - Subrogation, enforcement and distribution

Notwithstanding Section 2.2 above, if the Institution, has its headquarters in the province of Quebec, the following paragraphs apply in place of Section 2.2:

The Institution acknowledges that under article 1651 of the *Civil Code of Québec*, at the time of the successful transfer of the Payment Amount by EDC to the Institution, EDC will be irrevocably and absolutely subrogated to all of the Institution’s, rights, titles and interests (but not its obligations), until payment in full of the Guaranteed Amount to the Institution, under the Transaction Documentation. Notwithstanding the provisions of article 1658 of the *Civil Code of Québec*, EDC may immediately exercise these rights. EDC and the Institution, hereby agree that:

- (a) if the Institution receives a payment or proceeds of any kind (in cash or in the form of goods, titles or other items) under the Security or the Guaranteed Amount, in whole or in part, it must hold the payment or proceeds as a deposit at no charge and notify EDC as soon as possible that it received the payment or proceeds, which will be distributed in accordance with Sections 15 and 21 of the Guarantee;
- (b) unless indicated otherwise by EDC, all Security Documentation remains perfected or published in the Institution’s name, but for the benefit of the parties until payment in full of the interest owing to them herein; and
- (c) unless indicated otherwise by EDC, the Institution has the exclusive right (at its discretion, but subject to Section 2.4 herein and applicable law to make demands, exercise rights of set-offs, file proofs of claim, vote, enforce and commence proceedings in respect of the EDC Acquired Rights or any part thereof.

2.3 – Assignment

EDC and the Institution hereby agree that:

- (a) at the request of EDC, the Institution will assign, transfer and set over unto EDC the EDC Acquired Rights to enable EDC to enforce such rights jointly with the Institution or in EDC’s own name, provided that EDC shall cooperate with the Institution to ensure an orderly realization of the Security; and
- (b) the Security Documentation shall remain registered or recorded in the name of the Institution, but held for the benefit of the parties to the extent of their interest herein created, unless otherwise requested by EDC, in which case the Institution agrees to comply with its obligations under Section 2.5 herein.

2.4 - Enforcement and Reporting

The Institution hereby covenants and agrees with EDC that, unless compliance has been waived in writing by EDC, it will:

- (a) give EDC notice of any demand, claim, notice or other communication from time to time received or sent by the Institution in respect of the EDC Acquired Rights or any part thereof;
- (b) at the request and expense of EDC, provide such information, documents, assistance and co-operation as EDC may reasonably require to formulate, initiate, pursue, respond to or defend any claim, defence, counterclaim, enforcement step or other action or proceeding in respect in the EDC Acquired Rights or any part thereof, including (without limitation) providing certificates or other statements of debt or interest, interest calculations and witnesses; and
- (c) at the request of EDC, provide information to EDC with regards to the Collateral, including realization efforts and proceeds derived therefrom, expected further recoveries (if any) by the Institution and disbursements incurred by the Institution in connection with the enforcement.

2.5 - Further Assurances

The Institution agrees that it will, at EDC's cost and expense, execute and deliver or cause to be executed and delivered all such instruments (including all necessary endorsements) and take all such action and execute all such further assurances as EDC may reasonably request from time to time in order to carry out the purpose and intent of this Guarantee, and in particular (without limitation on the foregoing) the Institution will at the request of EDC:

- (a) either:
 - (i) endorse and deliver to EDC any promissory notes or other instruments relating to the Guaranteed Amount or any part thereof and deliver to EDC originals or true copies of all agreements, statements, records and other documents or instruments evidencing the Guaranteed Amount and the Security or any item or part thereof (including, without limitation, the Transaction Documentation), and all demands, statutory notices, financing, verification or other registration statements or other documents held by, given to or issued by the Institution in respect of the Transaction Documentation as it relates to the EDC Acquired Rights or any part thereof; or
 - (ii) keep any originals (if/as required to ensure the enforceability of the pertinent documents), or else copies, of all promissory notes, agreements, statements, records and other documents or instruments evidencing the Guaranteed Amount and the Security or any item or part thereof (including, without limitation, the Transaction Documentation), and of all demands, statutory notices, financing, verification or other registration statements or other documents held by, given to or issued by the Institution in respect of the Transaction Documentation as relates to the EDC Acquired Rights or any part thereof in a safe place, deliver to EDC copies of any such documents as requested by EDC, and lend the originals of such documents to EDC as required and requested by EDC;
- (b) execute, deliver and take all necessary steps, to cause the insertion of EDC's name to any policy of insurance in respect of which the Obligor is an insured and in which the Institution's name is set out as co-insured, mortgagee or loss payee; and
- (c) execute and deliver to EDC all discharges, financing statements, registrations and other documents as may be necessary or appropriate in any jurisdiction to remove or discharge any registration or filing in respect of Security or any part thereof to the extent of the Payment Amount, or to transfer into the name of EDC as the secured party any registration or filing in respect of the Security or any part thereof to the extent of the Payment Amount.

2.6 - Retainer of Receivers and Legal Counsel

The Institution hereby covenants and agrees that, unless compliance has been waived in writing by EDC, it will use commercially reasonable efforts to ensure that the retainers and/or related or similar documentation between the Institution and any receiver, receiver-manager, monitor or other similar professional appointed by the Institution and any legal counsel retained by the Institution in connection with the Default provides the right for EDC to consult with any such professional and benefit from their work and reports, it being understood that Section 22 of the Guarantee shall apply in relation to the costs incurred by the Institution with respect to such professionals.

SECTION 3 – MISCELLANEOUS

3.1 - Successors and Assigns

This Subrogation and Release shall enure to the benefit of the Institution, EDC and their respective successors and assigns.

3.2 - Governing Law

If the Institution's headquarters are outside the province of Quebec, this Guarantee shall be governed by the laws of the province of Ontario and by the laws of Canada as applicable therein. The parties submit to the non-exclusive jurisdiction of the Courts of Ontario.

If the Institution has its headquarters in the province of Quebec, this Guarantee is governed by the laws of the province of Quebec and by the laws of Canada as applicable therein. The parties submit to the non-exclusive jurisdiction of the courts of Quebec.

3.3 - Entire Agreement

This Subrogation and Release and the Guarantee constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any and all prior agreements or understandings, written or oral, with respect thereto.

3.4 - Counterparts;

This Subrogation and Release may be executed in any number of counterparts each of which shall be an original, and all of which taken together shall constitute one and the same instrument, and the parties agree that receipt by electronic mail of an executed copy of this Guarantee shall be deemed to be receipt of an original.

3.5 - Severability of Provisions

Any provision of this Subrogation and Release that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

3.6 - Effectiveness of this Subrogation and Release

This Subrogation and Release shall become effective simultaneously with the successful transfer of the Payment Amount by EDC to the Institution without further action. No transfer of the Payment Amount shall occur until EDC has received reasonably satisfactory evidence of the Institution's compliance with Section 2.6 hereof.

IN WITNESS WHEREOF, the parties have duly executed this Subrogation and Release by their duly authorized representatives.

The Institution

Select and attach an electronic signature

(or)

Print and sign

Name: _____

Title: _____

Date: _____

Lender Name: _____

Select and attach an electronic signature

(or)

Print and sign

Name: _____

Title: _____

Date: _____

Lender Name: _____

Select and attach an electronic signature

(or)

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Name: _____

Title: _____

Date: _____

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Select and attach an electronic signature

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Name: _____

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Name: _____

Title: _____

Date: _____

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Select and attach an electronic signature

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Print and sign

Name: _____

Title: _____

Date: _____

Lender Name: _____

Select and attach an electronic signature

(or)

Print and sign

Name: _____

Title: _____

Date: _____

EXPORT DEVELOPMENT CANADA

Select and attach an electronic signature

(or)

Print and sign

Name: _____

Title: _____

Date: _____

Select and attach an electronic signature

(or)

Print and sign

Name: _____

Title: _____

Date: _____