

# Guidelines Respecting Financial Requirements

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National Energy  
Board



Office national  
de l'énergie

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# 1. Introduction

## **Background**

In February 2016, new financial requirements will come into force through legislative amendments, as well as new subordinate legislation.

The legislation that will be amended is as follows (collectively referred to hereafter as the “Acts”<sup>1</sup>):

- *Canada Oil and Gas Operations Act (COGOA)*
- *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act (C-NLAAIA)*
- *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act (C-NLAAINLA)*
- *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (C-NOSPRAIA)*
- *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act (CNSOPRAI(NS)A)*

(the latter four Acts are collectively referred to as the “Accord Acts” – references herein are to these statutes as amended)

The new subordinate legislation is as follows (collectively referred to hereafter as the “Regulations”):

- *Canada Oil and Gas Operations Financial Requirements Regulations*
- *Canada-Newfoundland and Labrador Offshore Petroleum Financial Requirements Regulations (Federal)*
- *Canada-Newfoundland and Labrador Offshore Petroleum Financial Requirements Regulations (Provincial)*
- *Canada-Nova Scotia Offshore Petroleum Financial Requirements Regulations (Federal)*
- *Canada-Nova Scotia Offshore Petroleum Financial Requirements Regulations (Provincial)*

The *Acts* and *Regulations* can be found on the websites of each respective Board:

Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) - [www.cnlopb.ca](http://www.cnlopb.ca)

Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) - [www.cnsopb.ns.ca](http://www.cnsopb.ns.ca)

National Energy Board (NEB) - [www.neb-one.gc.ca](http://www.neb-one.gc.ca)

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<sup>1</sup> Specific References to *Accord Acts* and *Regulations* in this Guideline will note the Federal version.

The amendments, in part, updated and strengthened the liability regime in relation to the drilling for or development or production of petroleum<sup>2</sup> or other petroleum-related work or activities in offshore and certain onshore areas discussed below. The NEB as well as the C-NLOPB and the CNSOPB (both collectively referred to as the Offshore Boards) have prepared the following draft Financial Requirements Guidelines (Guidelines) to provide clarity on the financial requirements set out in *COGOA*, the *Accord Acts* and the *Regulations*.

### ***Purpose of the Guidelines***

These Guidelines replace the *Guidelines Respecting Financial Responsibility Requirements for Work or Activity in the Newfoundland and Nova Scotia Offshore Areas (December 2000)*. While the NEB and the Offshore Boards worked cooperatively to develop the Guidelines, each Board has a unique mandate which is reflected in the Guidelines and attached Appendices.

The Guidelines explain the proof that an Applicant seeking an authorization<sup>3</sup> with respect to each work or activity proposed to be carried on (Authorization) should provide to demonstrate how it meets the financial requirements set out in *COGOA* or the *Accord Acts*. The respective Board will assess each application on a case by case basis. These Guidelines may be amended from time to time by the NEB and Offshore Boards as necessary.

### ***Definitions***

- **“Applicant”** – the person seeking an Authorization
- **“Incident”** – for the purposes of these Guidelines, the term Incident refers to a spill (the discharge, emission or escape of petroleum) or debris<sup>4</sup>
- **“Operator”** – the holder of the Authorization and operating licence
- **“Investment Policy Statement”** – a document to be provided in relation to the pooled fund which takes into account the potential for immediate and sudden fund withdrawals, and the corresponding high requirement for liquidity

In the event of a discrepancy between the Guidelines and the legislation, the *Acts* and *Regulations* will prevail.

### ***Applicability***

The Guidelines apply to all Applicants and Operators in the geographic areas set out in *COGOA* and the *Accord Acts*, as applicable. All areas regulated under *COGOA* and the *Accord Acts* are hereinafter collectively referred to as the “Regulated Areas”. Monetary values referenced in this document are in Canadian dollars.

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<sup>2</sup> With respect to *COGOA*-related matters, all references to “Petroleum” in these Guidelines should be read as “Oil” and “Gas” as defined in section 2 of *COGOA*

<sup>3</sup> *COGOA* paragraph 5(1)(b), *C-NLAAIA* paragraph 138 (1)(b), *CNSOPRAIA* paragraph 142(1)(b)

<sup>4</sup> *COGOA* section 24, *C-NLAAIA* section 160 and *CNSOPRAIA* section 165

## 2. Financial Requirements Overview

Prior to obtaining an Authorization in the Regulated Areas, an Applicant must demonstrate to the respective Board that it is capable of acting in a responsible manner for the life of the proposed work or activity.

The basic objectives of the financial requirements include:

- (a) the Applicant has the ability to respond to an Incident to pay for all actual losses or damages incurred by any person as a result of the Incident, which includes loss of income, future loss of income and, with respect to any Aboriginal peoples of Canada, loss of hunting, fishing and gathering opportunities<sup>5</sup>; and
- (b) the payment of any costs and expenses reasonably incurred by any person, including a respective Board.

In the event of an Incident, the respective Board expects the Operator to clean up the spill and debris as well as pay out all claims as appropriate. In the event an Operator fails in these duties, the Acts provide that the respective Board may manage and control that work or activity and take all reasonable measures in relation to the spill and pay out claims for damages as prescribed<sup>6</sup>.

The legislative regime sets out three (3) components of financial requirements:

- [absolute liability](#),
- [financial responsibility](#), and
- [financial resources](#).

These components of financial requirements reflect the polluter pays principle, which is consistent with the notion that liability is unlimited for an Operator who is at fault for an Incident.

### **(a) Absolute Liability**

Operators undertaking work or activities in relation to the drilling for, or development or production of petroleum, as well as other authorized activities in the Regulated Areas covered by *COGOA* or the *Accord Acts*, are liable for the loss or damage that they may cause as a result of an Incident in accordance with *COGOA*, the *Accord Acts* and the general laws of Canada. Additionally, *COGOA*, the *Accord Acts*, and where applicable the Inuvialuit Final Agreement<sup>7</sup>, hold the Operator accountable as they impose absolute liability on the Operator. Under the absolute liability provisions, an Operator is liable, regardless of negligence or fault, for losses or

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<sup>5</sup> It does not include loss of income recoverable under subsection 42(3) of the *Fisheries Act*

<sup>6</sup> *COGOA section 25, C-NLAAIA section 161, CNSOPRAIA section 166*

<sup>7</sup> Section 13 of the Inuvialuit Final Agreement, as amended, has requirements related to financial responsibility applicable to the Inuvialuit Settlement Region.

damages up to certain limits set out in legislation. The absolute liability limits for each Regulated Area are set out in [Appendix 1](#).

**(b) Financial Responsibility**

An Applicant must provide proof of financial responsibility. The objective of financial responsibility is to provide the respective Board with funds payable on demand. Given that the intent of financial responsibility is to provide the respective Board readily available access to funds in the event of an Incident where an operator has failed to meet its obligations, the respective Board will require that the financial instruments used to satisfy this objective are sufficiently liquid (set out in further detail in Section 3) and payable on demand. The following instruments may be acceptable to a respective Board as proof of financial responsibility<sup>8</sup>:

- [Letter of Credit](#);
- [Bank Letter of Guarantee](#);
- [Indemnity Bond](#);
- [Proof of participation in a pooled fund \(for offshore drilling, development or production activities\)](#); and/or,
- [Any other form that is satisfactory to the respective Board](#).

The amount of the financial responsibility required by an Applicant for each Regulated Area is set out in [Appendix 1](#).

**The Operator shall ensure that proof of financial responsibility remains in force for the duration of the work or activity for which the Authorization was issued, or in certain circumstances for a longer period as the respective Board may direct.**<sup>9</sup>

**(c) Financial Resources**

An Applicant must provide proof that it has the financial resources necessary to pay the absolute liability limit applicable to the work or activity<sup>10</sup>. The *Regulations* set out the acceptable forms of financial resources. The *Regulations* state that an Applicant will provide, to the satisfaction of the respective Board, a Statement of Net Assets or Funding Arrangements more particularly described in [Appendix 2](#). The Statement of Net Assets or Funding Arrangements shall be accompanied by one (1) or more of the following Financial Resource documents (see Subsection 4.2 for more detail):

- [Most recent audited financial statements and credit rating](#);
- [Promissory note](#);
- [An insurance policy or a certificate of insurance](#);
- [An escrow agreement](#);

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<sup>8</sup> COGOA subsection 27(1), C-NLAAIA subsection 163(1) and CNSOPRAIA subsection 168(1)

<sup>9</sup> COGOA subsection 27(1.2), C-NLAAIA subsection 163.(1.2) and CNSOPRAIA subsection 168 (1.2)

<sup>10</sup> See Section 6 of the Guidelines

- [A letter of credit](#);
- [A line of credit](#);
- [A guarantee agreement](#); or,
- [A security bond or pledge agreement or an indemnity bond or suretyship agreement](#).

The Operator shall ensure that proof of financial resources remains in force for the duration of the work or activity for which the Authorization was issued, or in certain circumstances for a longer period as the respective Board may direct.<sup>11</sup>

### 3. Proof of Financial Responsibility

If an Applicant for an Authorization is not a participant in a [pooled fund](#), the Applicant shall provide proof of financial responsibility through one of the following forms set out below.<sup>12</sup>

The respective Boards reserve the right to engage an external financial expert regarding the acceptability of this proof. The cost for such advice may be recovered from the Applicant.

#### 3.1 Letter of Credit

(a) Should the letter of credit meet the following requirements, the respective Board would likely consider it to be satisfactory:

- **Beneficiary:** The beneficiary must be identified as the respective Board for the Offshore Boards or in the case of the NEB - “Her Majesty the Queen in Right of Canada as represented by the National Energy Board”.
- **Duration:** A respective Board may permit or require the letter of credit to automatically renew on an annual basis without notice or amendment, and without a maximum number of renewals.
- **Issuer:** The issuer of the letter of credit must be a Canadian chartered bank set out in Schedule I to the *Bank Act*.
- **Access to Funds:** The full amount of the letter of credit must be payable within two (2) days to the beneficiary on demand upon presentation of the letter of credit at the bank’s main branch in the city where the head office of the respective Board is located.
- **Notification:** The beneficiary must be notified by the Issuer by way of courier or registered mail (to the attention of the respective Board employee identified in [Appendix 3](#)) at least ninety (90) days before the letter of credit may be cancelled, not renewed or expires. Upon notification, the beneficiary must be entitled to draw the entire amount of the letter of credit.

<sup>11</sup> COGOA subsection 26.1(5), C-NLAAIA subsection 162.1(5) and CNSOPRAIA subsection 167.1(5)

<sup>12</sup> COGOA subsection 27(1), C-NLAAIA subsection 163(1) and CNSOPRAIA subsection 168(1)



- **Additional terms:** The letter of credit must be irrevocable, non-transferable and non-assignable.

A **sample irrevocable letter of credit** is provided in [Appendix 4](#) herein.

(b) In the event that the respective Board must take action and demand payment under the letter of credit, the Board will present a demand for payment to the issuing bank at a branch of that bank in the city in which the respective Board has its head office.

### 3.2 Bank Letter of Guarantee

A respective Board may accept a bank letter of guarantee from an Applicant as proof of financial responsibility. No Board will accept a corporate affiliate or a parent company guarantee as required proof of financial responsibility. A corporate affiliate or a parent company guarantee may be considered as proof of financial resources as noted below in [Section 4](#).

Should the bank letter of guarantee meet the following requirements, the respective Board would likely consider it to be satisfactory:

- **Beneficiary:** The beneficiary must be identified as the respective Board for the Offshore Boards or in the case of the NEB - “Her Majesty the Queen in Right of Canada as represented by the National Energy Board”.
- **Promissory Note:** The bank letter of guarantee must be supported by a promissory note from the Applicant.
- **Duration:** At the discretion of a respective Board, the bank letter of guarantee may automatically renew on an annual basis without notice or amendment, and without a maximum number of renewals.
- **Issuer:** The issuer of the bank letter of guarantee must be a Canadian chartered bank set out in Schedule I to the *Bank Act*.
- **Access to Funds:** The full amount of the bank letter of guarantee must be payable within two (2) days to the beneficiary on demand upon presentation of the bank letter of guarantee at the bank’s main branch in the city where the head office of the respective Board is located.
- **Notification:** The beneficiary must be notified by courier or registered mail (to the attention of the respective Board employee identified in [Appendix 3](#)) at least ninety (90) days before the bank letter of guarantee may be cancelled, not renewed or expire. Upon notification, the beneficiary must be entitled to draw the entire amount of the bank letter of guarantee.

A **sample bank letter of guarantee** is found in [Appendix 5](#).

### **3.3 Indemnity Bond**

A respective Board may consider an indemnity bond as proof of financial responsibility on the condition that it provides the respective Board with funds payable on demand; the funds are sufficiently liquid; and the respective Board is satisfied with the financial capacity and creditworthiness of the guarantor. An Applicant who is proposing to rely on an indemnity bond as proof of financial responsibility should file the draft indemnity bond with the respective Board no later than one hundred and twenty (120) days in advance of the anticipated commencement of the Authorization.

### **3.4 Other Forms of Financial Responsibility**

A respective Board may consider other forms of financial responsibility on a case by case basis; however, the instrument must provide the respective Board with readily available access to the funds.

An Applicant who is proposing to rely on any other instrument as proof of financial responsibility should notify the respective Board and file the proposed instrument with the respective Board no later than one hundred and twenty (120) days in advance of the anticipated commencement of the Authorization.

### **3.5 Pooled Fund**

An Applicant may provide proof of its participation in a pooled fund<sup>13</sup> only where an Authorization is being sought in connection with the drilling for, or the development or production of, petroleum in one (1) or more of the offshore regulated areas.

#### **Criteria for the Pooled Fund**

Should the pooled fund meet the following requirements, the respective Board would likely consider it to be satisfactory:

- Funds must be maintained in a segregated account and not be commingled with the Applicant's<sup>14</sup> general funds;
- The administrator of the fund must be an independent, third party;
- Funds must be protected from creditors;
- Funds must be protected from misuse or use for a purpose other than proof of financial responsibility;
- The pooled fund shall only be used for the purpose of meeting the financial responsibility requirements and shall not otherwise be encumbered;

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<sup>13</sup> *COGOA* subsection 27(1.01), *C-NLAAIA* subsection 163(1.01) and *CNSOPRAIA* subsection 168(1.01)

<sup>14</sup> For the purposes of this section, Applicant may include a parent, proportionate interest holder, partner etc. satisfactory to the Board

- Funds must be liquid and payable to the respective Board within two (2) days of the Board's demand<sup>15</sup>;
- The process for replenishing the funds within seven (7) days of a draw down must be clearly set out for the pooled fund participants;
- The pooled fund must be located and administered in Canada;
- The pooled fund must identify the offshore regulated area(s) for which it applies. To the extent the Applicant(s) wants to rely on the pooled fund in one or more of the offshore regulated areas, the pooled fund must be satisfactory to each of the respective Boards of the Regulated Areas; and,
- The Applicant shall provide a certificate from the administrator stating that the pooled fund satisfies the requirements set out in the respective *Acts* and *Regulations*.

Monies in the pooled fund must be invested pursuant to an Investment Policy Statement which takes into account the potential for immediate and sudden fund withdrawals, and the corresponding high requirement for liquidity. The Investment Policy Statement, which must be filed with and accepted by the respective Board, must appropriately reflect this reality by allowing only liquid, high quality, low volatility investments. The Investment Policy Statement must include:

- Statement of goals and objectives;
- Description of pooled fund management, in particular the delegation of trading limits to individuals and/or external advisors;
- Procedures for valuation of pooled fund investments independent of the portfolio management and trading functions;
- Procedures for reporting daily pooled fund value and limit breaches;
- List of issuers allowed under the Investment Policy;
- Maturity limits for money market and fixed income positions;
- Concentration limits for each issuer; and,
- Maximum portfolio duration.

An acceptable Investment Policy will typically limit pooled fund investments to Canadian dollars, and treasury bills up to ninety (90) days' maturity issued by the Government of Canada or a Canadian province. A respective Board may consider an Investment Policy that allows for additional investments, at its discretion; however, a more complex pooled fund portfolio will require an expanded Investment Policy.

It is the responsibility of the administrator to<sup>16</sup>:

- i. provide the respective Board(s), on an annual basis, with audited financial statements, by an auditor acceptable to the respective Board(s), that demonstrate that the pooled fund has been maintained at a minimum of

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<sup>15</sup> Paragraph 3(b) of the Regulations

<sup>16</sup> Paragraph 3(c) of the Regulations

- \$250 million. The statements should also confirm that only investments permitted under the Fund's Investment Policy Statement have been held at all times over the period;
- ii. notify the respective Board(s) within twenty-four (24) hours of any change to the participants in the pooled fund or of any change in the amount of the pooled fund, other than one that is solely attributable to an interest charge or a banking fee;
  - iii. notify the respective Board(s) of a contravention by a participant in the pooled fund of their obligation under the Act(s)<sup>17</sup> within 24 hours of becoming aware of the contravention; and,
  - iv. provide the respective Board(s) with the phone number, email address and mailing address of the administrator of the pooled fund.

Where a payment is made from the pooled fund to a respective Board, the Operator shall reimburse the pooled fund in the amount that is paid out of that fund, within seven (7) days after the date in which such payment is made<sup>18</sup>.

### **3.6 Limitations**

An Applicant cannot rely on one instrument valued solely at \$100 million as proof of financial responsibility in support of multiple Authorizations. Nevertheless, on a case by case basis, there may be circumstances where a respective Board may permit an Applicant to use that same instrument as proof for other activities.

Additionally, a respective Board could accept a single instrument from the Applicant in a combined value in support of multiple Authorizations for drilling, production or development. For example, where there are two (2) Authorizations for drilling, production or development, the respective Board may accept a single instrument in the amount of \$200 million.

## **4. Proof of Financial Resources**

The Applicant must provide proof of financial resources<sup>19</sup> as part of its financial requirements package. Updates must also be provided annually or more frequently as requested by the respective Board or when there is a material adverse change<sup>20</sup> in financial position. The Board reserves the right to engage an external financial expert regarding the acceptability of this proof. The cost for such advice may be recovered from the Applicant.

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<sup>17</sup> COGOA subsection 27(1.1), (1.2) or (5); C-NLAAIA subsection 163(1.1), (1.2) or (5); CNSOPRAIA subsection 168(1.1), (1.2) or (5)

<sup>18</sup> Section 4 of the Regulations

<sup>19</sup> Section 2 of the Regulations

<sup>20</sup> Material adverse changes means an adverse change in the business, operations or affairs of the provider of the proof that would be considered important by a reasonable person and would include a change in funding arrangements

## 4.1 Statement of Net Assets or Funding Arrangements

A Statement of Net Assets or Funding Arrangements must accompany every application for financial requirements. The statement must demonstrate how the Applicant's net assets or funding arrangements are sufficient to meet the amount of financial resources required by the legislative regime<sup>21</sup>. This statement must be submitted annually or more frequently as requested, and must include:

- Total assets and liabilities of the Applicant;
- This statement shall be signed by the authorized financial officer of Applicant;
- A description of the corporate structure of the Applicant, and if applicable, any affiliates or parent companies, including an organizational chart, which sets out the relationship between the parties;
- Summary description of monies available via funding arrangements, including those items listed in paragraphs 2 (b), (c), (d), (e), (f), (g), and (h) of the *Regulations*; and
- The Applicant must include a summary and overview of the manner in which it intends to satisfy any financial liability which could arise from the proposed work or activity. This should include sufficient detail to identify the means or options which the Applicant will exercise in obtaining sufficient funds to satisfy these liabilities, including the timing for mobilization of funds.

The respective Board may require the Applicant to retain a qualified independent auditor to review this Statement and sign it to confirm such review has been conducted<sup>22</sup>. The cost of the auditor will be paid by the Applicant.

See [Appendix 2](#) for a sample Statement of Net Assets or Funding Arrangements.

## 4.2 Substantiating Documents

The Statement of Net Assets or Funding Arrangements must be accompanied by one or more of the following documents that substantiate it to the satisfaction of the respective Board<sup>23</sup>:

- [Most recent audited financial statements, quarterly financial statements, and credit rating](#);
- [Promissory note\(s\)](#);
- [An insurance policy\(s\) or a certificate\(s\) of insurance](#);
- [An escrow agreement\(s\)](#);
- [A letter\(s\) of credit](#);
- [A line\(s\) of credit](#);
- [A guarantee agreement\(s\)](#); and/or,

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<sup>21</sup> Subsection 2(1) of the Regulations

<sup>22</sup> Subsection 2(3) of the Regulations

<sup>23</sup> Subsection 2(2) of the Regulations

- [A security bond\(s\) or pledge agreement\(s\) or an indemnity bond\(s\) or suretyship agreement\(s\).](#)

## **4.2(a) Audited Financial Statements & Credit Rating**

### **Audited Financial Statements**

In the event an Applicant submits audited financial statements as proof of financial resources, the following requirements must be met:

- The financial statements must be that of the Applicant<sup>24</sup>;
- The financial statements are independently audited and are the most recent available;
- Audited financial statements shall include a balance sheet, income statement, statement of cash flows and be in a format consistent with generally accepted accounting principles<sup>25</sup>. An audited financial statement may be provided as part of an annual report.

Depending on the type of Authorization sought, a respective Board may consider unaudited financial statements if audited statements are unavailable.

### **Credit Ratings**

Where applicable<sup>26</sup>, the Applicant must include its most recent credit rating report(s) from all of the following internationally recognized credit rating agencies:

- Standard and Poor's;
- Moody's;
- DBRS; and,
- Fitch.

## **4.2(b) Promissory Note**

A promissory note may be presented to meet the financial resources requirements and should meet the following criteria:

- be dated;
- be identified as a non-interest bearing, non-negotiable demand promissory note;
- be unconditional;

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<sup>24</sup> If the Applicant intends to depend on financial statements of another entity, that entity must also submit a Guarantee Agreement as described in subsection 4.2(g)

<sup>25</sup> United States Generally Accepted Accounting Principles or International Financial Reporting Standards

<sup>26</sup> If the Applicant has been given a credit rating by a credit rating agency that is current at the time the application is made, the Applicant must provide this credit rating

- be on company letterhead;
- be executed by authorized signing officers of a company;
- be payable to the respective Board;
- be explicit as to the amount; and,
- If a promissory note is provided by a person other than the Applicant, or a Schedule I Bank, it must be accompanied by the most recent audited financial statements as well as any subsequently completed unaudited quarterly statements and, if available, the most recent credit rating reports pertaining to that company. The financial statements will only be relied on for the amount of the promissory note.

***A sample Promissory Note*** is found in [Appendix 6](#).

#### **4.2(c) Insurance Policy or Certificate of Insurance**

To the extent that an Applicant chooses or is required to provide insurance as proof of financial resources, the respective Board may request either the certificate(s) of insurance or seek to review the insurance policy(s) to ensure the proof of insurance is satisfactory for meeting the financial resource requirements in relation to the applied for work or activity.

The types of insurance or criteria in relation to the acceptability of such insurance can be found in [Appendix 7](#).

#### **4.2(d) Escrow Agreement**

A respective Board and the Applicant may enter into an escrow agreement with an escrow agent mutually acceptable to a respective Board and Applicant. Such agreement would acknowledge receipt of the requisite amount of financial resources that would be established in an escrow fund. The escrow fund would be managed and governed in accordance with the terms and conditions of the escrow agreement.

***A sample Escrow Agreement*** is annexed at [Appendix 8](#).

#### **4.2(e) Letter of Credit**

The letter of credit requirements are the same as those found in Subsection [3.1](#) of these Guidelines.

#### **4.2 (f) Line of Credit**

To the extent that an Applicant chooses to provide a line of credit as proof of financial resources, the following parameters apply:

- Issued by a bank acceptable to the respective Board;
- Be explicit as to the amount of financial resources covered; and,

- Contains a description of the structure of the line of credit including notice of cancellation, secured/unsecured, total amount, undrawn portion.

#### **4.2(g) Guarantee Agreement**

A guarantee agreement provides proof that there are sufficient funds to cover the financial resources for the respective Authorization. This guarantee agreement must be accompanied by the most recent audited financial statements, as well as any subsequently completed unaudited quarterly statements and, if available, the most recent credit rating reports from the guarantor. The financial statements will only be relied on for the amount of the guarantee agreement. A parental guarantee may be acceptable to the Board as such proof.

*A Sample Guarantee Agreement* is found in [Appendix 9](#).

#### **4.2(h) A Security Bond or Pledge Agreement or an Indemnity Bond or Suretyship Agreement**

If an Applicant chooses to provide a surety bond as proof of financial resources, the following parameters apply:

- The surety must be regulated by the Office of the Superintendent of Financial Institutions;
- The obligee must be identified as the respective Board for the Offshore Boards or in the case of the NEB - “Her Majesty the Queen in Right of Canada as represented by the National Energy Board”.
- The term of the bond must be indefinite. The bond may have a form of evergreen provision that automatically renews the bond unless notice of termination is given;
- The bond must be terminable by the surety providing sixty (60) days’ notice, with the obligee then having a further sixty (60) day period to make a written demand of the surety;
- The bond must be structured as an on demand instrument. This may be accomplished by requiring the surety to pay the bond amount upon receiving a written demand of the obligee;
- The bond must reference the underlying regulatory obligations of the principal; and,
- The surety may fulfill its obligations under the bond by: (i) remedying the default of the principal, (ii) completing the principal’s obligations under the relevant legislation, or (iii) paying the bond balance to the respective Board. If these options are set out in the bond, then the respective Board must have the discretion to choose among them.

For a security bond, pledge agreement, indemnity bond or any other form of suretyship agreement, an Applicant who is proposing to rely on one or more of these instruments should file the draft instruments with the respective Board no later than one hundred and twenty (120) days in advance of the anticipated commencement of the Authorization.



## 5. Proportionate Shares

At the discretion of the respective Board, all or a part of the proof of financial responsibility or financial resources may be submitted by the Applicant on a proportionate share basis in relation to the shares of each partner/interest holder, provided such proof is in a consistent form and is otherwise satisfactory to the respective Board. In such circumstances, a respective Board may require the Applicant to demonstrate through contractual means, such as a guarantee, that funds of the partner/interest holders will be available in the event of an Incident. The circumstances under which this could be done may vary; therefore, the Applicant should consult with the respective Board at its earliest possible opportunity but no later than thirty (30) days prior to the submission date of the draft financial requirements to determine and confirm such possibility.

In such circumstances, requests for replacement proof of financial responsibility or financial resources or renewals of the associated documents will be sent to the Operator, not partners/interest holders. It is the Operator's responsibility to communicate with its partners and to ensure the requisite proof is effective at all times.

## 6. Increasing or Decreasing Financial Requirements

### 6.1 Increasing Amounts

With respect to financial resources and financial responsibility for any Authorization, the respective Board may require an amount greater than those specified in [Appendix 1](#) based on the financial circumstances of the Applicant or increased risk of the applied-for work or activity<sup>27</sup>. The respective Board would consider an increase on a case by case basis, and may require the Applicant to provide a risk assessment as per Section 6.3. That Board will notify the Applicant if a greater amount of financial resources and/or financial responsibility may be required as early as practicable prior to the proposed start of the activity.

### 6.2 Decreasing Financial Requirements

Where certain offshore activities may pose significantly less risk, the Federal Minister and for each respective Offshore Board, the applicable Provincial Minister, may, on the recommendation of the respective Board, approve a lesser amount of absolute liability or financial responsibility<sup>28</sup>. Where a lesser amount of absolute liability is approved, the corresponding amount of financial resources will be reduced accordingly. The Board may consider such requests from Applicants or an Operator on these matters on a case by case basis.

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<sup>27</sup> COGOA subsections 26.1(1) and 27(1)(a), C-NLAAIA subsections 162.1(1) and 163(1)(a) and CNSOPRAIA subsections 167.1(1) and 168(1)(a)

<sup>28</sup> COGOA section 27.1, C-NLAAIA section 163.1 and CNSOPRAIA section 168.1

For such requests, the Operator or Applicant should provide sufficient time for the respective Board and Minister to review. The applicant must include the following information:

- i. The estimated total of the losses, damages, costs and expenses expected to result from an Incident;
- ii. The Applicant's/Operator's recommended amount for financial responsibility and absolute liability;
- iii. A summary of the reasons for the recommendation; and,
- iv. A risk assessment per Section 6.3 acceptable to the respective Board for the proposed activity.

### **6.3 Risk Assessment**

As discussed in Section 6.2, if an Applicant wishes any of the respective Boards to consider an amount of financial resources or financial responsibility less than those listed in [Appendix 1](#), the Applicant must provide a risk assessment that demonstrates that the potential loss or damage that could occur would be less than the absolute liability amount. Alternatively, the respective Board could require the Applicant to provide a risk assessment for the purposes of its consideration under Section 6.1. The Applicant should consider the following three categories, as applicable, when completing its risk assessment:

- cost of containing the Incident;
- cost of cleaning up the environment; and,
- cost of compensating affected third parties.

The list of factors below is meant to be a starting point for relevant considerations and should be customized for the nature, magnitude, and scale of the proposed work or activity. The list is intended to be illustrative and not exhaustive:

- Detailed costs estimates for stopping any flow of hydrocarbons into the environment as well as containing any spill or debris;
- The well, i.e. Exploration, Delineation or Development and the expected hydrocarbon type(s), e.g. oil, natural gas, condensate;
- Information on expected well pressures and temperatures;
- Any special oversight measures relating to the activity;
- Consider the type, scale, timing, and location of the proposed activity and the marine installation or structure and equipment involved, including any subsea infrastructure;
- Key response strategies and methods for spill containment and debris removal, monitoring, tracking recovery, and clean-up on surface water, the subsurface, shoreline, ice, and ice-infested waters, as applicable;
- Information on resulting impacts to navigation and potential navigation hazards;
- Information respecting water depth, sea floor formation and subsea hazards;

- The rates of release, volume and properties of the product that could be released in the event of an Incident;
- Required support systems, including vessels and ice-breakers;
- All factors that can cause harm to the proposed activities, and how such risk factors could be managed;
- Environmental, logistic, and geographic factors that affect stopping, containing and cleaning up the released product;
- Provide an estimate for environmental clean-up of Incidents that could occur as well as a rationale for how those costs were derived;
- Spill fluid characteristics (physical and chemical properties such as flow rates, volume, oil properties such as API<sup>29</sup> gravity, grade, viscosity, hydrocarbons constituent components, and wax content);
- Physical environment of the event (e.g., onshore or offshore, water depth, surface or sub-surface spill and debris, presence and make-up of ice, currents, waves, time of year, air temperature, and periods of low visibility such as during foggy conditions and at night);
- Effectiveness and efficacy of the proposed spill countermeasures in the operations time period (and possibly beyond the season as spill and debris clean-up may continue after the end of an effective operating period);
- Availability of suitable infrastructure, skilled and capable personnel, and adequate and appropriate equipment;
- Spill monitoring and spill trajectory models for effective deployment of spill countermeasures;
- Information on ecological, cultural, traditional use, commercial, and other significant areas or sites;
- Estimates of the cost for compensating potential third parties in the event of an Incident;
- Proximity of the authorized activities to communities and fishing areas;
- Extent of Aboriginal peoples' dependence on fishing or, for onshore NEB applications, hunting, traditional lifestyle and livelihood; and,
- Loss of Aboriginal peoples' actual and future income generated from fishing and, for onshore NEB applications, hunting and gathering (actual loss or damage does not include loss of income recoverable under subsection 42(3) of the *Fisheries Act*).

## National Energy Board

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<sup>29</sup> American Petroleum Institute.

In addition to the list above, a risk assessment for the National Energy Board should include the following, as applicable:

- A discussion of whether additional security is being held by another governmental organization (if so provide details);
- Value of the land to the cultural aspects of the northern people and communities;
- Obligations and responsibilities under land claim settlement agreements; and,
- Cost to replace a community's water and food sources/intakes.

## **7. Extended Obligation**

For Authorizations respecting the offshore drilling for, or development or production of petroleum, proof of financial responsibility and of financial resources must remain in force for a period of one (1) year beginning on the day on which the respective Board notifies the Operator that it has accepted a report submitted by the Operator indicating the date the last well is abandoned (the respective Board may reduce that period and it may further decide to lessen the amount of financial responsibility and proof of financial resources that are in place for that Operator during that period).<sup>30</sup>

## **8. Decommissioning and Abandonment of a Development**

The financial requirements for the decommissioning and abandonment of a development and associated infrastructure will be determined on a case by case basis. An application by an Operator may include the following information as applicable:

- the projected cost associated with the decommissioning and abandonment of the development;
- the manner and form in which the Operator will ensure that the decommissioning and abandonment costs will be paid;
- in the event that entire removal is not required, the manner, form and costs associated with maintaining the decommissioned production installation;
- the manner and form in which any post abandonment event will be dealt with by the Operator in the event of any subsequent claims, such as damages attributable to the Operator's work or activity, that arise after the decommissioning and abandonment occurs; and,
- such other information as the respective Board may consider necessary.

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<sup>30</sup> COGOA subsection 27(1.2) , C-NLAAIA subsection 163(1.2) and CNSOPRAIA subsection 168(1.2)

## 9. Submission of Proof and Approval

The process for filing the proof of the necessary financial requirements and for seeking approval of the financial requirements by each respective Board can be found in [Appendix 10](#).

Once preliminary matters, as set out in [Appendix 10](#), have been dealt with, the Applicant must submit to the respective Board, the draft documentation which evidences the required proof of financial requirements. For the Offshore Boards this is done using the Proof of Financial Requirements for Work Authorization form, attached hereto as [Appendix 11](#). For the NEB, this is done by way of a letter addressed to NEB contact listed [Appendix 3](#). **THIS SUBMISSION SHOULD BE MADE IN A TIMELY MANNER SUFFICIENTLY IN ADVANCE AND NO LATER THAN SIXTY (60) DAYS IN ADVANCE OF THE ANTICIPATED COMMENCEMENT OF THE AUTHORIZATION. IN THE EVENT THAT THE PROOF IS AN INDEMNITY BOND, SECURITY BOND, PLEDGE AGREEMENT, OR SURETYSHIP AGREEMENT OR ANY OTHER FORMS OF PROOF FOR FINANCIAL RESPONSIBILITY, THE SUBMISSION SHOULD BE NO LATER THAN ONE HUNDRED AND TWENTY (120) DAYS IN ADVANCE.**

Following submission of the required documentation, a respective Board will determine whether the submitted documentation is acceptable, and when necessary may request further information from the Applicant. Where appropriate, a respective Board may require further conditions of approval.

**AN AUTHORIZATION WILL NOT BE ISSUED UNTIL THE NECESSARY PROOF OF FINANCIAL REQUIREMENTS HAVE BEEN SUBMITTED AND THE SUBMITTED INFORMATION IS SATISFACTORY TO THE RESPECTIVE BOARD.**

## Appendix 1 – Financial Requirements for Each Respective Board

### National Energy Board

The onshore and offshore charts set out the most commonly applied for Authorizations. The NEB has provided a general range of the amount of financial responsibility and financial resources that it is likely to require for each activity. While the ranges set out below will provide Applicants with more certainty as to the NEB’s expectations, each application will continue to be assessed on a case by case basis. Subject to *COGOA*, the NEB may increase or decrease the financial resource or responsibility requirements set out below, depending on the specific facts and scope of each application.

The list below is meant to be illustrative and not exhaustive. Applicants that are applying for an Authorization for an activity that is not listed below are encouraged to contact the NEB to request a pre-application meeting to discuss the process requirements for filing the necessary proof of financial resources and financial responsibility.

#### **ONSHORE ACTIVITIES:**

Applied-for Oil and Gas Activity	Absolute Liability	Financial Resources Range	Financial Responsibility
<b>Geophysical Activity</b>	\$10M or \$25M depending on location of applied for work or activity <sup>31</sup>	\$250,000 to \$500,000	Determined on a case by case basis
<b>Exploration Drilling OIL/GAS</b>	\$10M or \$25M depending on location of applied for work or activity	\$50M or \$125M (5X times Financial Responsibility)	\$10M or \$25M depending on location of applied for work or activity  Equal to absolute liability limits <sup>32</sup>
<b>Development Drilling OIL</b>	\$10M or \$25M depending on location of applied for work or activity	\$40M or \$100M (4X Financial Responsibility)	\$10M or \$25M depending on location of applied for work or activity  Equal to absolute liability limits

<sup>31</sup> See *COGOA* para.26(2.2)(b) and (c)-the limit of absolute liability for any work or activity within the regulated area of the Northwest Territories or Nunavut covered by or located a distance of 200 metres or less from any river, stream, lake or body of inland water is \$25 million. The limit of absolute liability in respect of any other area within the regulated area of the Northwest Territories or Nunavut is \$10 million.

<sup>32</sup> If an Applicant wishes the Board to consider an amount of financial resources for financial responsibility less than those listed in the charts below, the Applicant must provide a risk assessment as set out above.

<b>Development Drilling GAS</b>	\$10M or \$25M depending on location of applied for work or activity	\$30M or \$75M (3X Financial Responsibility)	\$10M or \$25M depending on location of applied for work or activity Equal to absolute liability limits
<b>Production Facilities OIL</b>	\$10M or \$25M depending on location of applied for work or activity	\$20M or \$50M (2X Financial Responsibility)	\$10M or \$25M depending on location of applied for work or activity Equal to absolute liability limits
<b>Production Facilities GAS</b>	\$10M or \$25M depending on location of applied for work or activity	\$10M or \$25M (1X Financial Responsibility)	\$10M or \$25M depending on location of applied for work or activity Equal to absolute liability limits
<b>Other Authorizations i.e. geotechnical and geological surveys; pipeline facilities; re-entry into suspended or abandoned wells etc.</b>	\$10M or \$25M depending on location of applied for work or activity (see footnote 1)	Assessed on a case by case basis	Determined on a case by case basis

#### **OFFSHORE ACTIVITIES:**

<b>Applied-for Oil and Gas Activity</b>	<b>Absolute Liability</b>	<b>Financial Resources</b>	<b>Financial Responsibility</b>
<b>Geophysical Activity</b>	\$1B	Determined on a case by case basis <sup>33</sup>	Determined on a case by case basis
<b>Drilling for or development or production of oil or gas</b>	\$1B	\$1B (if the NEB considers it necessary, it may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount)	\$100M (or if the Board considers it necessary, in a greater amount that it determines) <sup>34</sup> or provide proof of participation in a pooled fund that is maintained at a minimum of \$250M

<sup>33</sup> Under subsection 24(1) of *COGOA*, a “spill” means a discharge, emission or escape of oil or gas, other than one that is authorized under subsection 25.4(1), the regulations or any other federal law. It does not include a discharge from a vessel to which Part 8 or 9 of the *Canada Shipping Act, 2001* applies or from a ship to which Part 6 of the *Marine Liability Act* Applies.

Spills from a seismic vessel may be covered by Part 6 of the *Marine Liability Act* and are therefore excluded from the definition of “spills” under *COGOA*. This avoids duplication as there is a separate compensation and liability scheme in legislation that is administered by Transport Canada.

<sup>34</sup> See *COGOA* para.27(1)(a)

## Canada-Newfoundland and Labrador Offshore Petroleum Board

The C-NLOPB may, subject to the *Accord Acts*, increase or decrease the financial resource or responsibility requirements set out below, depending on the specific facts and scope of each application.

The list below is meant to be illustrative and not exhaustive. Applicants that are applying for an Authorization for work or activity in the Canada-Newfoundland and Labrador offshore area that is not listed below are encouraged to contact the C-NLOPB to request a pre-application meeting to discuss the process requirements for filing the necessary proof of financial resources and financial responsibility.

Applied-for Oil and Gas Activity	Absolute Liability	Financial Resources	Financial Responsibility
<b>Geophysical, geological, environmental and geotechnical program activities with field work</b>	\$1B	Determined on a case by case basis	\$5M or greater depending on the nature of the program (i.e. multi-vessel programs) and to be determined on a case by case basis
<b>Drilling for or development or production of oil or gas (includes Authorizations in relation to construction, tow out, well intervention)</b>	\$1B	\$1B (if the C-NLOPB considers it necessary, it may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount)	\$100M (or if the Board considers it necessary, in a greater amount that it determines) <sup>35</sup> or provide proof of participation in a pooled fund that is maintained at a minimum of \$250M
<b>Decommissioning and Abandonment</b>	\$1B	\$1B (if the C-NLOPB considers it necessary, it may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount)	Determined on a case by case basis
<b>Diving Program Authorization</b>	\$1B	Determined on a case by case basis	\$30M if the diving program is being conducted in the safety zone

<sup>35</sup> See *C-NLAAIA* subsection 163(1)(a)



## Canada-Nova Scotia Offshore Petroleum Board

The CNSOPB may increase or decrease the financial resource or responsibility requirements set out below, depending on the specific facts and scope of each application.

Applied-for Oil and Gas Activity	Absolute Liability	Financial Resources	Financial Responsibility
<b>Geophysical Activity involving vessels</b>	\$1B	Determined on a case by case basis <sup>36</sup>	Determined on a case by case basis
<b>Drilling for or development or production of oil or gas</b>	\$1B	\$1B (if the CNSOPB considers it necessary, it may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount)	\$100M (or if the Board considers it necessary, in a greater amount that it determines) <sup>37</sup> or provide proof of participation in a pooled fund that is maintained at a minimum of \$250M
<b>Decommissioning and Abandonment</b>	\$1B	\$1B (if the CNSOPB considers it necessary, it may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount)	Determined on a case by case basis
<b>Diving Program Authorization</b>	\$1B	Determined on a case by case basis <sup>36</sup>	Determined on a case by case basis
<b>Geotechnical/Geological/Engineering/Environmental Program Authorization</b>	\$1B	Determined on a case by case basis <sup>36</sup>	Determined on a case by case basis

<sup>36</sup> Under subsection 165(1) of *CNSOPRAIA*, a “spill” means a discharge, emission or escape of oil or gas, other than one that is authorized under the regulations or any other federal law. It does not include a discharge from a vessel to which Part 8 or 9 of the *Canada Shipping Act, 2001* applies or from a ship to which Part 6 of the *Marine Liability Act* Applies.

Spills from a seismic vessel may be covered by Part 6 of the *Marine Liability Act* and are therefore excluded from the definition of “spills” under *CNSOPRAIA*. This avoids duplication as there is a separate compensation and liability scheme in legislation that is administered by Transport Canada.

<sup>37</sup> See *CNSOPRAIA* subsection 168 (1)(a)

## Appendix 2 - Statement of Net Assets or Funding Arrangements

Net Assets is defined as Shareholders' Equity (total assets minus total liabilities).

Applicant to provide the following information, substantiated by complete set of financial statements for:

1. Latest fiscal year (audited)
2. Latest quarter (unaudited)

Applicant will convert all amounts reported below to Canadian dollars at the Bank of Canada noon rate for the relevant date. If such date is not a Canada business day, the prior day's exchange rate will be used.

Applicant will provide a description of the corporate structure of the Applicant and if applicable any affiliates or parent companies, including an organizational chart, which sets out the relationship between the parties.

Applicant will describe the manner in which it intends to satisfy any financial liability which could arise from the proposed work or activity. This should include sufficient detail to identify the means or options which the Applicant will exercise in obtaining sufficient funds to satisfy these liabilities, including the timing for mobilization of funds (both funding arrangements and net assets) described in the statement below.

Applicant will also provide current credit rating report(s), if available, from all of the following rating agencies:

1. Moody's Investors Service
2. Standard & Poor's
3. DBRS
4. Fitch

Applicant Full Legal Name and Business Address:

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Responsible Financial Officer (name, position, date, signature):

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Date of Applicant financial statements for latest fiscal year:

Date of Applicant financial statements for latest quarter:

**Net Assets from Financial Statements:**

	<b>Latest Fiscal Year End</b>	<b>Latest Quarter End</b>
Current Assets		
Intangible Assets		
Total Assets		
Current Liabilities		
Total Liabilities		
Shareholders' Equity		
Shareholders' Equity less Intangible Assets		

**Credit Ratings:**

	<b>Long Term Debt Rating</b>	<b>Issuer Rating</b>
Moody's		
Standard & Poor's		
Fitch Ratings		
DBRS		

**Funding Arrangements:**

	<b>Amount (CAD)</b>	<b>Provider(s)</b>
Promissory note		
Insurance		
Escrow Agreement		
Letter of credit		
Line of Credit		

Guarantee Agreement		
Security bond, pledge agreement, indemnity bond or suretyship agreement		

**Total Available funding** from Net Assets and Funding Arrangements:

	<b>Latest Fiscal Year End</b>	<b>Latest Quarter End</b>
Shareholders Equity		
Funding Arrangements		
Total Net Assets and Funding Arrangements		

**Funding Arrangements:**

Funding Arrangements may take the form of a Promissory Note, Insurance Policy or Certificate of Insurance, Escrow Agreement, Letter of Credit, Line of Credit, Guarantee Agreement, Security Bond, Indemnity Bond, Pledge Agreement or Suretyship Agreement (“Funding Arrangement”):

1. In the form specified in this Guidance or in a form satisfactory to a respective Board, and
2. Issued by a corporation or financial institution acceptable to the Board (“Funding Arrangement Provider”).

Attach a draft unexecuted copy of the proposed Funding Arrangement for review and approval by a respective Board.

For each Funding Arrangement Provider, specify the following information, substantiated by complete set of financial statements for:

1. Latest fiscal year (audited)
2. Latest quarter (unaudited)

Funding Arrangement Provider will convert all amounts reported below to Canadian dollars at the Bank of Canada noon rate for the relevant date. If such date is not a Canada business day, the prior day’s exchange rate will be used.

Funding Arrangement Provider will also provide current credit rating report(s), if available, from all of the following rating agencies:

1. Moody’s Investors Service
2. Standard & Poor’s
3. DBRS
4. Fitch

Funding Arrangement Provider Full Legal Name and Business Address:

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Form of Funding Arrangement:

Notional amount of Funding Arrangement (CAD):

Effective date of Funding Arrangement:

Termination date of Funding Arrangement:

Relationship of Funding Arrangement Provider to Applicant:

Date of Funding Arrangement Provider financial statements for latest fiscal year:

Date of Funding Arrangement Provider financial statements for latest quarter:

**Funding Arrangement Provider Net Assets from Financial Statements:**

	<b>Latest Fiscal Year End</b>	<b>Latest Quarter End</b>
Current Assets		
Intangible Assets		
Total Assets		
Current Liabilities		
Total Liabilities		
Shareholders' Equity		
Shareholders' Equity less Intangible Assets		

**Funding Arrangement Provider Credit Ratings:**

	<b>Long Term Debt Rating</b>	<b>Issuer Rating</b>
Moody's		
Standard & Poor's		
Fitch Ratings		
DBRS		

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## Appendix 3 – List of Board Contacts

### **Canada-Newfoundland and Labrador Offshore Petroleum Board**

140 Water Street  
5<sup>th</sup> Floor, TD Place  
St. John's, NL A1C 6H6

Attention: Legal Counsel  
E-Mail: [cquigley@cnlopb.ca](mailto:cquigley@cnlopb.ca)  
Phone: 709-778-1458  
Fax: 709-778-1473

### **Canada-Nova Scotia Offshore Petroleum Board**

1791 Barrington Street  
8th Floor TD Center  
Halifax, NS B3J 3K9

Attention: Director, Regulatory Affairs & Finance  
E-Mail: [fradmin@cnsopb.ns.ca](mailto:fradmin@cnsopb.ns.ca)  
Phone: 902-422-5588  
Fax: 902-422-1799

### **National Energy Board**

517 Tenth Ave SW  
Calgary, Alberta T2R 0A8

Attention: Secretary of the Board  
Phone: 403-292-4800  
Toll Free: 1-800-899-1265  
Fax: 403-292-5503  
Toll Free Fax: 1-877-288-8803

## Appendix 4 – Sample Irrevocable Letter of Credit

### BANK LETTERHEAD

**[NOTE: THE FOLLOWING IS A PROFORMA SAMPLE OF A LETTER OF CREDIT WHICH SHOULD BE USED AS A GUIDE. PLEASE CONSULT A BOARD REGARDING ANY VARIATION OF THE WORDING WHICH A BOARD MAY DESIRE IN ORDER TO SATISFY THE CIRCUMSTANCES RELEVANT TO THE WORK OR ACTIVITY.]**

ISSUING BANK: (NAME & ADDRESS)

DATE OF ISSUE: (...)

REFERENCE NUMBER: (...)

EXPIRY DATE:

APPLICANT: (NAME OF APPLICANT)

BENEFICIARY: (NAME AND ADDRESS OF RESPECTIVE BOARD)  
("THE BOARD")

AMOUNT: (AMOUNT AND CURRENCY)

IRREVOCABLE STANDBY LETTER OF CREDIT NO: .....

WHEREAS [..... NAME OF RESPECTIVE BOARD] (HEREINAFTER REFERRED TO AS 'THE BOARD') INTENDS TO GRANT (NAME AND ADDRESS OF APPLICANT) (HEREINAFTER REFERRED TO AS 'THE APPLICANT') A (NAME OF AUTHORIZATION) (HEREINAFTER REFERRED TO AS THE 'AUTHORIZATION');

AND WHEREAS THE APPLICANT DESIRES TO SATISFY CERTAIN LIABILITY REQUIREMENTS SPECIFIED IN THE: [CITE APPLICABLE ACT(S) .... CANADA-NEWFOUNDLAND AND LABRADOR ATLANTIC ACCORD IMPLEMENTATION ACT (C-NLAAIA); THE CANADA-NEWFOUNDLAND AND LABRADOR ATLANTIC ACCORD IMPLEMENTATION NEWFOUNDLAND AND LABRADOR ACT (C-NLAAINLA); THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT (C-NSOPRAIA); AND THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION (NOVA SCOTIA) ACT (C-NSOPRAI(NS)A); CANADA OIL AND GAS OPERATIONS ACT (COGOA)] WITH RESPECT TO THE CONDUCT OF THE WORK OR ACTIVITY ASSOCIATED WITH THE AUTHORIZATION;

AND WHEREAS THE BOARD REQUIRES THE APPLICANT TO FURNISH EVIDENCE OF FINANCIAL RESPONSIBILITY IN THE AMOUNT OF [AMOUNT WRITTEN OUT] CANADIAN DOLLARS (\$\_\_\_\_\_)] IN A FORM ACCEPTABLE TO THE BOARD IN COMPLIANCE WITH THE AFOREMENTIONED LEGISLATION.



NOW THEREFORE [..... ISSUING BANK NAME & ADDRESS] (HEREINAFTER REFERRED TO AS 'THE BANK')  
HEREBY AGREES TO THE FOLLOWING:

1. AT THE REQUEST AND FOR THE ACCOUNT OF THE APPLICANT, THE BANK HEREBY ESTABLISHES AN IRREVOCABLE STANDBY LETTER OF CREDIT IN FAVOUR OF THE BOARD IN THE AMOUNT OF [AMOUNT WRITTEN OUT] CANADIAN DOLLARS (\$\_\_\_\_\_)]
2. THIS STANDBY LETTER OF CREDIT IS AVAILABLE BY PAYMENT AGAINST THE BOARD'S WRITTEN DEMAND ADDRESSED TO [ISSUING BANK NAME & ADDRESS] BEARING THE CLAUSE: "DRAWN UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NO. .... ISSUED BY [ISSUING BANK NAME AND ADDRESS]" SIGNED BY AN AUTHORISED REPRESENTATIVE OF THE BOARD SPECIFYING THE AMOUNT CLAIMED AND STATING THAT THE AMOUNT REQUESTED BY THE BOARD IS IN RESPECT OF:  
[TO BE DETERMINED BY THE RESPECTIVE BOARD AS APPLICABLE]
3. THE BANK HEREBY UNDERTAKES THAT THE BOARD'S WRITTEN DEMAND WILL BE DULY HONOURED WITHIN TWO (2) DAYS OF RECEIPT BY THE BANK OF THE ABOVE DOCUMENT WITHOUT ENQUIRING WHETHER THE BOARD HAS A RIGHT BETWEEN ITSELF AND THE APPLICANT TO MAKE SUCH PRESENTATION AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT, PROVIDED THAT THE TERMS AND CONDITIONS [IF ANY] OF THIS STANDBY LETTER OF CREDIT ARE COMPLIED WITH.
4. IT IS UNDERSTOOD THAT THE BANK IS OBLIGED UNDER THIS LETTER OF CREDIT FOR PAYMENT OF MONIES ONLY.
5. PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.
6. THIS STANDBY LETTER OF CREDIT SHALL EXPIRE ON ..... [1 YEAR FROM DATE OF ISSUE] (THE 'EXPIRY DATE'); IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO ANY SUCH DATE, THE BANK NOTIFIES THE BOARD IN WRITING BY REGISTERED MAIL OR COURIER (THE 'NOTICE') THAT THE BANK ELECTS NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. UPON RECEIPT BY THE BOARD OF SUCH NOTICE, THE BOARD MAY CLAIM BY WAY OF A WRITTEN DEMAND ADDRESSED TO THE BANK STATING:  
  
**QUOTE:** "THE AMOUNT OF THIS DRAWING, ....., UNDER STANDBY LETTER OF CREDIT NUMBER\_\_\_\_\_ REPRESENTS FUNDS OWED TO US AS WE HAVE RECEIVED NOTICE FROM [ISSUING BANK NAME] OF THEIR DECISION NOT TO EXTEND THIS STANDBY LETTER OF CREDIT FOR AN ADDITIONAL YEAR". **UNQUOTE**
7. **THE FINAL EXPIRY DATE OF THIS STANDBY LETTER OF CREDIT SHALL BE THE EARLIER OF 20 ..... [ENTER A DATE],** OR SUCH DATE UPON WHICH SUCH WORK OR ACTIVITY HAS BEEN COMPLETED TO THE WRITTEN SATISFACTION OF THE BOARD, AND ANY LIABILITY FOR PAYMENT BY THE BANK UNDER THIS LETTER OF CREDIT WILL BE EXTINGUISHED WITH RESPECT TO ANY CLAIMS THEREAFTER.
8. THIS STANDBY LETTER OF CREDIT MAY ALSO BE CANCELLED BY THE BOARD PRIOR TO THE EXPIRY DATE UPON OUR RECEIPT AT OUR ABOVE-NOTED ADDRESS OF THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND

THE BOARD'S SIGNED LETTER ADDRESSED TO US REQUESTING CANCELLATION OF THE STANDBY LETTER OF CREDIT.

9. EXCEPT AS OTHERWISE EXPRESSLY STATED THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO INTERNATIONAL STANDBY PRACTICES (ISP98), ICC PUBLICATION NO. 590.
10. **FOR THE OFFSHORE BOARDS:** FOR MATTERS NOT GOVERNED BY ISP98, THIS STANDBY LETTER OF CREDIT SHALL BE GOVERNED BY THE LAWS OF THE PROVINCE OF THE BOARD'S HEAD OFFICE AND SHALL BE DEALT WITH BY THE COURTS WITHIN THAT JURISDICTION.

(NAME OF BANK)

\_\_\_\_\_  
AUTHORISED SIGNATURE  
NAME AND TITLE

\_\_\_\_\_  
AUTHORISED SIGNATURE  
NAME AND TITLE

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## Appendix 5 -Sample Bank Letter of Guarantee

### BANK LETTERHEAD

**[NOTE: THE FOLLOWING IS A PROFORMA SAMPLE OF A BANK LETTER OF GUARANTEE WHICH SHOULD BE USED AS A GUIDE. PLEASE CONSULT A BOARD REGARDING ANY VARIATION OF THE WORDING WHICH A BOARD MAY DESIRE IN ORDER TO SATISFY THE CIRCUMSTANCES RELEVANT TO THE WORK OR ACTIVITY.]**

ISSUING BANK: (NAME & ADDRESS)  
DATE OF ISSUE: (...)  
REFERENCE NUMBER: (...)  
EXPIRY DATE: (ONE YEAR FROM DATE OF ISSUANCE)  
APPLICANT: (NAME OF APPLICANT)  
BENEFICIARY: (NAME AND ADDRESS OF RESPECTIVE BOARD)  
("THE BOARD")  
AMOUNT: (AMOUNT AND CURRENCY)

DEMAND GUARANTEE NO: .....

WHEREAS [..... NAME OF RESPECTIVE BOARD] (HEREINAFTER REFERRED TO AS 'THE BOARD') INTENDS TO GRANT (NAME AND ADDRESS OF APPLICANT) (HEREINAFTER REFERRED TO AS 'THE APPLICANT') A (NAME OF AUTHORIZATION) (HEREINAFTER REFERRED TO AS THE 'AUTHORIZATION');

AND WHEREAS THE APPLICANT DESIRES TO SATISFY CERTAIN LIABILITY REQUIREMENTS SPECIFIED IN THE: [CITE APPLICABLE ACT(S) .... CANADA-NEWFOUNDLAND AND LABRADOR ATLANTIC ACCORD IMPLEMENTATION ACT (C-NLAAIA); THE CANADA-NEWFOUNDLAND AND LABRADOR ATLANTIC ACCORD IMPLEMENTATION NEWFOUNDLAND AND LABRADOR ACT (C-NLAAINLA); THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT (C-NSOPRAIA); AND THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION (NOVA SCOTIA) ACT (C-NSOPRAI(NS)A); CANADA OIL AND GAS OPERATIONS ACT (COGOA)] WITH RESPECT TO THE CONDUCT OF THE WORK OR ACTIVITY ASSOCIATED WITH THE AUTHORIZATION;

AND WHEREAS THE BOARD REQUIRES THE APPLICANT TO FURNISH EVIDENCE OF FINANCIAL RESPONSIBILITY IN THE AMOUNT OF [AMOUNT WRITTEN OUT] CANADIAN DOLLARS (\$\_\_\_\_\_)] IN A FORM ACCEPTABLE TO THE BOARD IN COMPLIANCE WITH THE AFOREMENTIONED LEGISLATION.

NOW THEREFORE (... ISSUING BANK NAME & ADDRESS... ) ('THE BANK') HEREBY AGREES TO THE FOLLOWING:

1. AT THE REQUEST AND FOR THE ACCOUNT OF THE APPLICANT, THE BANK HEREBY ESTABLISHES AN IRREVOCABLE GUARANTEE IN FAVOUR OF THE BOARD IN THE AMOUNT OF [AMOUNT WRITTEN OUT] CANADIAN DOLLARS (\$\_\_\_\_\_)].
2. THIS GUARANTEE IS AVAILABLE BY PAYMENT AGAINST THE BOARD'S WRITTEN DEMAND ADDRESSED TO [ISSUING BANK NAME & ADDRESS] BEARING THE CLAUSE: "DRAWN UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NO. .... ISSUED BY [ISSUING BANK NAME AND ADDRESS]" SIGNED BY AN AUTHORISED REPRESENTATIVE OF THE BOARD SPECIFYING THE AMOUNT CLAIMED AND STATING THAT THE AMOUNT

REQUESTED BY THE BOARD IS IN RESPECT OF:

- a. APPLICANT'S FAILURE TO PROVIDE AN ALTERNATIVE GUARANTEE OR ACCEPTABLE SECURITY WITHIN THE FIRST 30 DAYS OF BOARD'S RECEIPT OF NOTICE OF NON-EXTENSION FROM [NAME OF ISSUING BANK], STATING:

"THE AMOUNT OF THIS DRAWING, ....., UNDER GUARANTEE NUMBER \_\_\_\_\_ REPRESENTS FUNDS OWED TO US AS WE HAVE RECEIVED NOTICE FROM (ISSUING BANK NAME & ADDRESS) OF THEIR DECISION NOT TO EXTEND THIS GUARANTEE FOR AN ADDITIONAL YEAR".

- b. [TO BE DETERMINED BY THE RESPECTIVE BOARD AS APPLICABLE]

3. THE BANK HEREBY UNDERTAKES THAT THE BOARD'S WRITTEN DEMAND WILL BE DULY HONOURED WITHIN TWO (2) DAYS OF RECEIPT BY THE BANK OF THE ABOVE DOCUMENTS WITHOUT ENQUIRING WHETHER THE BOARD HAS A RIGHT BETWEEN ITSELF AND THE APPLICANT TO MAKE SUCH PRESENTATION AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT, PROVIDED THAT THE TERMS AND CONDITIONS OF THIS GUARANTEE ARE COMPLIED WITH.
4. IT IS UNDERSTOOD THAT THE BANK IS OBLIGED UNDER THIS GUARANTEE FOR PAYMENT OF MONIES ONLY.
5. PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.
6. THIS GUARANTEE SHALL EXPIRE ON THE EARLIER OF:
- a. ....[THIS DATE SHALL BE AT LEAST ONE YEAR FROM THE ANTICIPATED ISSUE DATE]('THE EXPIRY DATE'); OR
- b. UPON RECEIPT BY THE BANK OF THE BOARD'S WRITTEN NOTICE ADDRESSED TO THE BANK CONFIRMING THAT THE APPLICANT'S OBLIGATION HAS BEEN COMPLETED TO THE SATISFACTION OF THE BOARD AND AUTHORIZING THE BANK TO CANCEL, ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INCLUDING AMENDMENTS, IF ANY.
7. IT IS A CONDITION OF THIS GUARANTEE THAT IT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO ANY SUCH DATE, THE BANK NOTIFIES THE BOARD IN WRITING BY COURIER OR REGISTERED MAIL (THE 'NOTICE') THAT THE BANK ELECTS NOT TO CONSIDER THIS GUARANTEE EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.
8. EXCEPT AS OTHERWISE EXPRESSLY STATED THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) REVISION 2010 OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NUMBER 758.
9. **FOR THE OFFSHORE BOARDS:** FOR MATTERS NOT GOVERNED BY URDG THIS GUARANTEE, SHALL BE GOVERNED BY THE LAWS OF THE PROVINCE OF THE BOARD'S HEAD OFFICE AND SHALL BE DEALT WITH BY THE COURTS WITHIN THAT JURISDICTION.

(NAME OF BANK)

\_\_\_\_\_  
AUTHORISED SIGNATURE  
NAME AND TITLE

\_\_\_\_\_  
AUTHORISED SIGNATURE  
NAME AND TITLE

## Appendix 6 – Sample Promissory Note

LETTERHEAD OF COMPANY

[date]

[name and address of Respective Board]

Dear Sirs: **Non-Negotiable and Non-Interest Bearing Demand Promissory Note**

**CDN [amount – numeric format]**

[name of company], including its successors and assigns, hereby promises to pay on demand to the order of the [name of the Respective Board] (the “Board”) the sum of [amount in writing ](CDN \$[amount-numeric format])

[as demanded in writing by the Board within two (2) business days of receipt of demand]

[if this Note is presented at the (Bank name and full address for service – City of Respective Board head office)].

This Note is issued respecting [name of Operator/Applicant] for [type of Authorization] and for the purposes of [sections of the Acts].

[This Note is unconditional;]

The undersigned hereby waives protest, presentment and notice of dishonor.

[name of company]

[signature of the Authorized Signing Officer of the Company]

[name and title of the Authorized Signing Officer of the Company]

NOTE: Where this Note is submitted in support of a Bank Letter of Guarantee, the following approval by the issuing bank is required on this Note.

Approved for issue:

\_\_\_\_\_

[Bank officer and full address]

Accepted and agreed [date]:

[Name of Respective Board]

\_\_\_\_\_

[Authorized Officer of the Board]

## Appendix 7 – Types of Insurance or Criteria

- (a) An Applicant may only provide insurance issued by insurers who have a Secure rating for their ability to pay claims in the latest review by A. M. Best's Insurance Reports, Standard & Poor's Insurance Rating Services or other rating provider acceptable to a respective Board. The Secure rating proof should be filed with the respective Board.
- (b) Depending upon the nature of the Authorization, a respective Board may require the Applicant to insure one or more of the following risks:
- i. removal of debris liabilities to third parties;
  - ii. well control/making wells safe (including pollution and cleanup costs in relation to same);
  - iii. pollution clean-up;
  - iv. hull and machinery;
  - v. comprehensive general liability;
  - vi. property insurance;
  - vii. protection and indemnity; and
  - viii. operator's extra expense.
- (c) Insurance may be accepted by a respective Board as proof of financial resources, subject to the insurance meeting the following criteria:
- i. the insurance provider(s) must be acceptable to the respective Board;
  - ii. a written notice of cancellation must be received by a respective Board no later than sixty (60) days in advance of the cancellation of the policy;
  - iii. the amount of any self-assumed risk, including deductibles and retention, is satisfactory to a respective Board. The Applicant has the financial assets to pay the deductible;
  - iv. each policy must provide for Canadian jurisdiction;
  - v. such insurance shall include all contractor activity; unless proof of insurance has been separately provided by the contractor. Subject to the Applicant undertaking to obligate the contractor to insure such risks as are appropriate for the work or activity, a respective Board may waive the requirement for separate proof of insurance to be submitted from contractors;
  - vi. be explicit to the amount of each type of coverage provided; and
  - vii. the value of coverage must be satisfactory to the respective Board and commensurate with the risk of the work or activity;
  - viii. all exclusions must be provided to the Board.

## Appendix 8 - Sample Escrow Agreement

This Escrow Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 20xx.

**BETWEEN:** [Bank/Financial Institution]  
of [city of Respective Board]  
(hereinafter called the “Escrow Agent”)

### OF THE FIRST PART

**AND:** The [**Respective Board**], a Board, established under the provisions of the [*cite applicable Act*] (the “Act”) with head office at the City of xxxxxxx in the Province of xxxxxxx (hereinafter called the “Board”);

### OF THE SECOND PART

**AND:** [Applicant], a body corporate duly incorporated under the laws of [incorporating jurisdiction]  
(hereinafter called “Applicant”)

### OF THE THIRD PART

WHEREAS Applicant desires to satisfy certain financial resource requirements specified in the Act with respect to approvals or authorizations for the activities in the [cite relevant Regulated Area], hereinafter referred to as the Regulated Area;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants contained in this Agreement, it is mutually agreed that the Escrow Property, as defined herein, shall be paid to the Escrow Agent by Applicant and, together with any other property which from time to time be held by the Escrow Agent in lieu of or in addition to this property (including any and all interest accrued thereto), shall be held by the Escrow Agent upon the following conditions:

1. The fund created by this Agreement shall be known as the [“Respective Board/Applicant Name Escrow Fund”].
2. The Escrow Property shall consist of the amount of [**\$100 Million or other amount as may be determined**] to be provided to the Escrow Agent by Applicant as part of its evidence of financial resource for activities within the Regulated Area and thereby meet its obligations to the Board pursuant to the Act. The Escrow Property shall include all property in which the original Escrow Property may be invested or into which the same may be converted at

any time, as well as any additions or accretions thereto.

3. Any interest earned on the Escrow Property shall accrue to and be the property of Applicant.
4. No documents shall be required to be presented by the Board to the Escrow Agent in order to receive payment, other than the demand letter as set forth in Schedule "A".
5. Partial drawings under this Agreement are permitted, irrespective of whether such drawings relate to more than one authorized activity and when such drawings are made hereunder the Escrow Agent shall forthwith notify Applicant in writing.
6. It is understood that the Escrow Agent is obliged under this Agreement for payment of monies only.
7. The Escrow Agent hereby undertakes that an appropriate demand for payment will be honored upon presentation of Schedule "A" without inquiring whether the Board has the right between itself and Applicant to make such presentation and without recognizing any claim of Applicant, provided that the terms and conditions of this Agreement are complied with.
8. The Agreement can be terminated upon direction of the Board as set forth in Schedule "B" attached hereto. Upon receipt of Schedule "B", the Escrow Property will be returned to Applicant.
9. The relevant Schedule for demand of payment or the cancellation of this Agreement is to be presented to:

[BANK/FINANCIAL INSTITUTION ADDRESS]  
xxxxxxx  
xxxxxxx

If presented for payment, the cheque or draft will be payable in such manner as the Board shall require.

10. The Escrow Agent, by joining in the execution of this Agreement, signifies its acceptance of this Agreement and the duties and obligations contained herein.
11. The Escrow Agent may, at any time during the term of this Agreement, upon appoint another person or corporation to act as Escrow Agent in addition to or in substitution for the existing Escrow Agent. No such appointment shall take effect until the existing Escrow Agent has provided proper accounting of the Escrow Property from the time of appointment of the Escrow Agent until the date of such new appointment. The consent of



the Board and Applicant must first be obtained to the new appointment, which said consent shall not unreasonably be withheld.

12. Upon termination of the Agreement, or the resignation of the Escrow Agent as described herein, the Escrow Agent shall provide to the Board and Applicant an accounting of the said Escrow Property.
13. This Agreement enures to the benefit of and is binding upon the Escrow Agent, the Board and Applicant and their respective heirs, administrators, successors and assigns.
14. [For the Offshore Boards: this agreement letter of credit shall be governed by the laws of the province of the Board's head office and shall be dealt with by the courts within that jurisdiction.]
15. All notices or other communications necessary for the purpose of this Agreement shall be in writing and delivered personally or by courier or shall be sent by registered mail or by prepaid post or by facsimile, addressed

(a) In case of the Escrow Agent, to:

Xxxxxxx  
Xxxxxxx

Or to such other address or facsimile number or addressed to such other person as the Escrow Agent may, from time to time, designate in writing to the Board and to Applicant and

(b) in the case of the Board, to:

[Respective Board Address]

Or to such other address or facsimile number or addressed to such other person as the Board may, from time to time, designate in writing to the Escrow Agent and Applicant; and

(c) in the case of Applicant, to:

[Applicant address]

Or to such other address or facsimile number or addressed to such person as Applicant may, from time to time, designate in writing to the Escrow Agent and the Board.

Any notice or other communication is considered to have been received:

(a) in the case of facsimile, on the actual receipt, and

(b) in all other cases, on the date of delivery.

If postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

IN WITNESS WHEREOF the Escrow Agent, the Board and Applicant have set their hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED  
By the Escrow Agent, in the presence of

**[BANK/ FINANCIAL INSTITUTION ]**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

\_\_\_\_\_

Witness

SIGNED, SEALED AND DELIVERED  
By the Board, in the presence of

**[Respective Board]**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

\_\_\_\_\_

Witness

**SIGNED, SEALED AND DELIVERED**  
By the Applicant, in the presence of

**[Applicant]**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

\_\_\_\_\_

Witness

SCHEDULE "A" to the Respective Board/Applicant Escrow Agreement

[ Respective Board Letterhead]

DEMAND FOR PAYMENT

[Date]

[BANK]

XXX

Attention: [Name]

[Account Manager Title]

**Re: Respective Board /Applicant Escrow Agreement**

We write pursuant to the terms and conditions of the above-noted agreement for which you are the Escrow Agent. More specifically, pursuant to clause 6 therein, the Board now demands payment of [\$xxxxx CDN], to be made payable to the ["Respective Board"] forthwith upon presentation of this DEMAND FOR PAYMENT.

Yours very truly,

[Representative of the Board]

SCHEDULE "B" Respective Board/Applicant Escrow Agreement

[Board Letterhead]

[Date]

[BANK]

XXX

Attention: [Name]

[Account Manager Title]

**Re: Respective Board/Applicant Escrow Agreement**

We write pursuant to the terms and conditions of the above-noted agreement for which you are the Escrow Agent. More specifically, pursuant to clause 8 therein, the Board now writes to direct you to terminate the Escrow Agreement and return the Escrow Property to Applicant [insert Applicant name]. The Board further requests, an accounting of the Escrow Property to be provided to both parties in accordance with clause 12.

Yours very truly,

[Representative of the Board]

## Appendix 9 - A Sample Guarantee Agreement

[Guarantor address]

[Date]

[Name and Address of Respective Board]

Dear Sir,

**Re: Guarantee**

[Name of Guarantor] (the "Guarantor"), for and in consideration of the respective covenants, undertakings, promises and agreements set forth in this Agreement and the sum of \$1.00 paid by each party to the other, the receipt and adequacy of which are hereby acknowledged, hereby irrevocably and unconditionally guarantees to [name of respective Board] (the "Board") the prompt and complete performance and execution of all financial obligations under the [name of applicable Act(s)] of our subsidiary, [name of subsidiary], (the "Applicant"), arising directly or indirectly from third party liabilities that may occur in conducting [type of work authorization] and related work in [applicable area], subject to a maximum amount of [amount written out] Canadian Dollars (\$\_\_\_\_\_).

### 1. Guarantee

1.1 If the Applicant fails to discharge any such obligation in accordance with the [Act references], the Guarantor shall forthwith discharge the same and shall pay the Board within [X] days of written demand any and all damages the Board may incur or reasonably expect to incur by reason of any such failure of the Applicant. Guarantor agrees that the Board is the sole calculation agent for the amount of such damages. The amount guaranteed to be paid by the Guarantor hereunder shall include all legal fees and expenses incurred by the Board in connection with the enforcement of this Guarantee or of the underlying obligation of the Applicant.

1.2 The Guarantor hereby agrees that it shall not be necessary, as a condition to enforce this Guarantee, that suit be first instituted against the Applicant or that all rights or remedies against the Applicant be first exhausted. This Guarantee is a guarantee of payment not of collection. Guarantor waives all defenses which may be available.

1.3 No waiver of any provision of this Guarantee shall be effective unless it is in writing and signed by the Board and any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given. The failure of the Board to exercise any right or remedy in any one or more instances, or the acceptance of the Board of partial payment, shall not constitute a waiver of the right to exercise any other right or remedy at any time.

## **2. Effective date and expiry**

2.1 This Guarantee shall be effective from the date the [type of work authorization] is issued.

2.2 This Guarantee shall expire or terminate automatically upon the earliest occurrence of any of the following (the "Expiry Date"): [date and conditions]

## **3. Assignment**

3.3 This Guarantee shall not be assigned or transferred by either party without the prior written consent of the other party and such consent shall not be unreasonably withheld.

3.4 This Guarantee shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

## **4. Notices**

4.1 Any request or notice to be given by the Board or the Guarantor under this Guarantee shall be given in writing and only by letter, facsimile, e-mail or any other form of recorded electronic transmission acceptable to the Board. Any such request or notice shall be given at the following address, facsimile number or e-mail address or such other address, facsimile number or e-mail address, as may be specified by any party by at least [x] days' notice to the other as provided herein:

[address of Guarantor]

[address of Board]

4.2 Any such request or notice shall be effective only when received and then only if the same is expressly marked for the attention of such department or officer specified above (or such other department or officer as we shall from time to time specify in writing to the Board for this purpose).

## **5. Representations and Warranties of Guarantor**

5.1 The Guarantor is duly incorporated and organized, is a subsisting corporation [in good standing] under the laws of [jurisdiction] and has the corporate power and capacity and is duly qualified to carry on business.

5.2 The Guarantor's status and contingent liability as Guarantor under this Guarantee has been duly authorized by all necessary corporate action and is a valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to bankruptcy, insolvency and other legislation affecting creditors' rights generally.

5.3 The Guarantor has full corporate power and capacity to execute and deliver this Guarantee.

5.4 The execution of this Guarantee and compliance with its terms and conditions does not conflict with or result in a violation of the Guarantor's articles of incorporation or by-laws or any applicable law or administrative decree or order, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature, or default of the terms of any agreement to which the Guarantor is a party.

5.5 No consent, permission or authorization of any government authority is necessary in connection with the execution of this Guarantee, except as has been obtained or made and is in full force and effect.

## **6. Governing law and jurisdiction**

6.1 This Guarantee, and any obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, the laws of the Province of [location of respective Board] and the laws of Canada applicable herein and the parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of [location of respective Board].

## **7. Miscellaneous**

7.1 This Guarantee cannot be amended, modified or supplemented except in writing signed by the Board and the Guarantor.

7.2 This Guarantee may be executed in any number of counterparts, either in original or facsimile form, each of which shall constitute an original, and this has the same effect as if the signatures on the counterparts were on a single copy of the Guarantee.

7.3 Time shall be of the essence of this Guarantee and of every part hereof and no extension or variation to this Guarantee shall be deemed a waiver of this provision.

7.4 This Guarantee constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior or other agreements, undertakings, negotiations, discussions, whether written or oral, between the parties.

[Guarantor Company Name]

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Name of Board]

Accepted and agreed to this \_\_\_ day of \_\_\_\_\_:

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## Appendix 10 – Submission of Proof of Financial Requirements

### NEB

An Applicant is encouraged to contact the NEB to request a pre-application meeting to discuss the process requirements for filing financial requirements.

### Offshore Boards

The following preliminary procedures should be undertaken by an Applicant before the proof of financial requirements is formally submitted. The most effective way of achieving this would be to meet, if possible, with the appropriate representatives of the respective offshore Board:

- (a) Notify the respective Offshore Board of the specific representative(s) who, on the Applicant's behalf, will deal directly with matters respecting financial requirements;
- (b) Notify a respective Offshore Board if the Applicant will not solely be providing proof but instead providing proportionate shares from other partners/interest holders. In such circumstances the Applicant shall be the sole point of contact with that Board for matters relating to financial requirements;
- (c) Inform the respective Offshore Board of the Applicant's preference respecting the form, substance and arrangements for the required proof of financial requirements, having regard to the information and requirements provided herein. This presents an opportunity for a respective Board and the Applicant to discuss any potential deficiencies or irregularities and to address particular requirements before the documentation providing such proof of financial requirements is finalized;
- (d) Inform the respective Offshore Board that it will be providing proof of its participation in a pooled fund; and
- (e) Where possible provide a respective Offshore Board with draft proof for review and comment before submitting the signed originals to the respective offshore Board.

## Appendix 11 - Proof of Financial Requirements for Work Authorization Form

### PROOF OF FINANCIAL REQUIREMENTS FOR WORK AUTHORIZATION FOR THE OFFSHORE BOARDS

1. *[Applicant Name]* (the "**Applicant**") hereby provides the documentation described below and attached or incorporated hereto (the "**Proof**") as proof of financial requirements in compliance with [cite relevant Act] for the purpose of obtaining an Authorization for the *[describe work or activity]* (the "**Authorization**");
2. The following is a list and description of the Proof which in no way limits or supersedes any term or condition or other detail provided therein:

The Proof is comprised evidence of financial requirements (financial responsibility and financial resources) to be provided by the Applicant and required to be provided in respect of the Authorization. The Proof is as follows:

#### **(a) Financial Responsibility**

Applicant/Proportionate partner or interest holder share	Percentage	Document Amount	Financial Institution	Document Description (letter of credit, bank letter of guarantee or indemnity bond)
Total	100%	Per Appendix 1		

The original, supporting Proof of Financial Responsibility is annexed hereto.

#### **(b) Financial Resources**

– **Statement of Net Assets and Funding Arrangements (attached)**

#### **(c) Pooled Fund**

[The Applicant shall reference the title of the pooled fund and annex the required information more particularly described in Subsection [3.5](#) of the Guidelines.]

Signed: \_\_\_\_\_ Date:

**Applicant's Representative**

Name: Title:

Address: Telephone:

3. The Board hereby accepts the Proof for the purpose of the Authorization subject to the condition(s) listed [in paragraph 4]below:

Signed: Date:

**[Authorized Board Representative]**

Authorization No:

4. Conditions of Acceptance:

[If any.]