

## **AMENDED AND RESTATED CREDIT AGREEMENT**

This Agreement dated May 2<sup>nd</sup>, 2019 is made between:

**RELIANT WEB HOSTING INC.**  
(the “**Borrower**”)

- and -

**BANK OF MONTREAL**  
(the “**Bank**”)

**WHEREAS** the Borrower and the Bank are parties to a credit agreement dated January 31, 2018, as amended by the first amendment to credit agreement dated February 6, 2018 (as amended, the “**Original Credit Agreement**”);

**AND WHEREAS** the Borrower and the Bank wish to amend and restate the Original Credit Agreement in its entirety;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained, the parties hereto agree that, subject to Section 11.01, the Original Credit Agreement is hereby amended and restated in its entirety as follows:

### **ARTICLE I - INTERPRETATION**

#### **1.01 Definitions**

In this Agreement, the following words and phrases shall have the meanings set forth below:

“**Acceleration Date**” means the date on which an Acceleration Event occurs.

“**Acceleration Event**” means the earlier of: (i) the occurrence of an Insolvency Event; and (ii) the delivery by the Bank to the Borrower of written notice that the Obligations are immediately due and payable, following the occurrence and during the continuation of an Event of Default, other than an Insolvency Event.

“**Accounts**” means accounts receivable of the Companies arising from services rendered in the ordinary course of business.

“**Accrual Stage SR&ED Refunds**” means expenses related to scientific research and experimental development activities which are refundable or payable to any Company from time to time on account of income tax credits, pursuant to the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any other legislation of a similar nature in Canada or any other jurisdiction in which any Company conducts business, and supported by comfort letter(s) (or, in the sole discretion of

the Bank, Year-end Financial statements) delivered by an independent third party accountant of national standing or other professional advisor satisfactory to the Bank, which, among other things: (i) identifies the applicable statute and the related regulatory interpretive forms required to be filed with the applicable Governmental Authority in respect of such scientific research and experimental development activities; and (ii) certifies the eligibility of such scientific research and experimental development activities and the amount of income tax credits available for such activities, provided that such income tax credits must be payable to a Company prior to the Maturity Date.

**“Accrued Funding”** means, at any given time, the amount of Permitted Funded Debt and any proceeds from an Equity Issuance, which have not been used to fund acquisitions made in accordance with this Agreement, which together is available to finance Capital Expenditures or Deferred Development Costs not otherwise funded in that fiscal period. Accrued Funding does not include (i) Eventi Proceeds that have been used to prepay, in part, the Obligations in accordance with Section 9.01(m), or (ii) Eventi Proceeds that have been used to make Earn-outs not otherwise payable out of cash on hand at the time of payment. For further clarity once an amount of Accrued Funding has been applied to a given fiscal period, it may not be applied again to a future fiscal period. For further clarity, amounts of Accrued Funding which have not been applied to a previous fiscal period may be applied to any future fiscal period even if the amount was received by the Borrower in any prior fiscal period.

**“Advance”** means an extension of credit by the Bank to the Borrower pursuant to this Agreement, including for greater certainty an extension of credit in the form of a Loan, a Bankers’ Acceptance, a Letter of Credit, a Hedging Agreement or an extension of credit under a MasterCard issued under the MasterCard Line.

**“Affiliate”** has the meaning ascribed thereto in the OBCA.

**“Agreement”** means this amended and restated credit agreement (including the exhibits and schedules) as it may be amended, replaced or restated from time to time.

**“AML Legislation”** means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and all other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, whether within Canada or elsewhere, including any guidelines or orders thereunder.

**“Annual Business Plan”** is defined in Section 9.04(d).

**“Applicable Margin”** means, in respect of any Fiscal Quarter and in respect of any Availment Option or standby fee, the percentage in the column relating to such Availment Option or standby fee in the following table which corresponds to the Senior Funded Debt to EBITDA Ratio in respect of such Fiscal Quarter described in the first column; subject to adjustment from time to time in accordance with Section 7.01(d):

| Senior Funded Debt to EBITDA Ratio:                         | Applicable Margin for Canadian Dollar Loans and U.S. Dollar Loans | Applicable Margin for Bankers' Acceptances, Letters of Credit and LIBOR Loans | Standby Fee under Facility A, B, and D |
|---|---|---|--|
| Less than 3.00 to 1, but equal to or greater than 2.50 to 1 | 1.50%   | 3.00 %  | 0.60%                                  |
| Less than 2.50 to 1, but equal to or greater than 2.00 to 1 | 1.25%   | 2.75%   | 0.50%                                  |
| Less than 2.00 to 1   | 1.00%   | 2.50%   | 0.40%                                  |

**"Approval Stage SR&ED Refunds"** means expenses related to scientific research and experimental development activities which are refundable or payable to any Company from time to time on account of income tax credits, pursuant to the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any other legislation of a similar nature in Canada or any other jurisdiction in which any Company conducts business and which have been approved in writing by a Governmental Authority, satisfactory to the Bank, as an income tax credit payable to a Company prior to the Maturity Date.

**"Availment Option"** means a method of borrowing which is available to the Borrower as provided herein.

**"Bank"** means Bank of Montreal and its successors and permitted assigns.

**"Bankers' Acceptance"** means a bill of exchange or a blank non-interest bearing depository bill as defined in the *Depository Bills and Notes Act* (Canada) drawn by the Borrower and accepted by the Bank in respect of which the Borrower becomes obligated to pay the face amount thereof to the holder (which may be a third party or the Bank) upon maturity.

**"BIA"** means the *Bankruptcy and Insolvency Act* (Canada).

**“Borrower”** means Reliant Web Hosting Inc. (being the corporate entity operating as Tenzing Managed IT Services).

**“Borrowing Base Certificate”** means a certificate delivered by the Borrower to the Bank in the form of Exhibit “F”.

**“Business Day”** means any day, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario, and, where used in the context of an Advance in U.S. Dollars, is also a day on which banks are not required or authorized to close in either Chicago, Illinois or New York, New York.

**“Canadian Dollar Loan”** means a loan made by the Bank to the Borrower in Canadian Dollars in respect of which interest is determined by reference to the Prime Rate.

**“Canadian Dollars”** or **“\$”** or **“Cdn \$”** means the lawful money of Canada.

**“Canadian Vendors”** means, collectively, the Persons listed on exhibit 1 to the Thinkwrap Purchase Agreement.

**“Capital Expenditures”** means expenditures, which in accordance with GAAP, are considered to be in respect of the acquisition (but not leasing) of capital assets including the acquisition or improvement of Land, plant, machinery or equipment, whether fixed or removable; but excluding any expenditure which constitutes an Investment.

**“Capital Lease”** means any lease of assets which, in accordance with GAAP, is required to be capitalized on the balance sheet of the lessee.

**“Cash Equivalents”** means:

- marketable direct obligations issued by, or unconditionally guaranteed by, the government of Canada or any province thereof or the government of the United States or any agency or instrumentality of any of them, and backed by the full faith and credit of Canada or any province thereof or the United States, as the case may be, in each case maturing within one year from the date of acquisition;
- term deposits, certificates of deposit or overnight bank deposits having maturities of one year or less from the date of acquisition issued by the Bank or any of its Affiliates; and
- commercial paper of an issuer rated at least A-1+ or the equivalent thereof by Standard & Poor’s Ratings Group, Inc. or at least P-1 or the equivalent thereof by Moody’s Investors Service, Inc. or at least R-1 (Low) or the equivalent thereof by DBRS Limited, and in each case maturing within six (6) months from the date of acquisition.

**“Cash Taxes”** means, in respect of any fiscal period, amounts actually paid by the Companies in such fiscal period in respect of income and capital taxes (whether relating to such fiscal period or any other fiscal period).

**“CDOR Rate”** means, for any day and relative to Bankers’ Acceptances having any specified term and face amount, the average of the annual rates for Bankers’ Acceptances having such specified term and face amount (or a term and face amount as closely as possible comparable to such specified term and face amount) of the banks named in Schedule I of the *Bank Act* (Canada) that appears on the Reuters Screen CDOR page as of 10:15 a.m. (Toronto time) on such day (or, if such day is not a Business Day, as of 10:15 a.m. (Toronto time) on the preceding Business Day), provided that if such rate does not appear on the Reuters Screen CDOR page at such time on such date, CDOR Rate for such date will be the annual discount rate of interest (rounded upward to the nearest whole multiple of 1/100 of 1%) as of 10:15 a.m. (Toronto time) on such date at which the Bank is then offering to purchase bankers’ acceptances accepted by it having a comparable aggregate face amount and identical maturity date to the aggregate face amount and maturity date of such Bankers’ Acceptances, as the case may be.

**“Claim Stage SR&ED Refunds”** means expenses related to scientific research and experimental development activities which satisfy the criteria for Accrual Stage SR&ED Refunds and which are supported by: (i) a project plan and description of such activities consistent with the Annual Business Plan and which sets out monthly and quarterly expenditures and project milestones; (ii) a summary, with such detail satisfactory to the Bank, which sets out scientific research and experimental development expenditures to date with estimated corresponding income tax credit amounts; and (iii) copies of the applicable Governmental Authority filings in respect thereof (including, without limitation, applicable corporate tax returns and prepared claim forms and any other supporting documents required by the Bank).

**“Closing”** means the completion of the Thinkwrap Purchase Transaction and the concurrent disbursement by the Bank of the Advance under Facility B Tranche 1.

**“Closing Date”** means the date on which Closing occurs.

**“Collateral”** means all property, assets and undertaking of the Companies encumbered by the Security and all proceeds thereof, but shall not include Excluded Capital Leases.

**“Companies”** means the Borrower, Spark Red (immediately after giving effect to the transactions contemplated by the Spark Red Purchase Agreement), Thinkwrap (immediately after giving effect to the transactions contemplated by the Thinkwrap Purchase Agreement) and each of their Subsidiaries from time to time; and **“Company”** means any of them as the context requires.

**“Compliance Certificate”** means a certificate delivered by the Borrower to the Bank in the form of Exhibit “E”.

**“Control”** means, in respect of any Person, the power to direct or cause the direction of management and policies of such Person, directly or indirectly, through the ownership of voting securities, contract or otherwise; and **“Controlled”** has a corresponding meaning.

**“Conversion”** means the substitution of one Availment Option for another, and does not constitute a fresh or new Advance.

**“Conversion Notice”** means a notice substantially in the form of Exhibit “C” given by the Borrower to the Bank for the purposes of requesting a Conversion.

**“Currency Hedging Agreements”** means any agreements which may be entered into between the Borrower and any Person from time to time for the purpose of hedging currency risk, including currency exchange agreements and foreign exchange forward contracts.

**“Deemed Hedge Risk”** means, with respect to any Hedging Agreement, a percentage of the principal amount thereof as is determined appropriate by the Bank in accordance with its policies in effect from time to time.

**“Default”** means any event, act, omission or condition which with the giving of notice or the passage of time, or both, would result in an Event of Default.

**“Deferred Development Costs”** means, from and after April 1, 2019, the net deferred development costs of the Companies (after subtracting the Accrual Stage SR&ED Refunds related to such deferred development costs for such applicable fiscal period) as such costs are identified in or otherwise described in the most recent Annual Business Plan delivered to the Bank in accordance with Section 9.04(d); provided that the amount and the nature of such deferred development costs shall have been approved by the Bank in its reasonable discretion.

**“Distribution”** means any amount paid to or on behalf of the directors, officers, shareholders, partners or unitholders of any Company, or to any Related Person thereto, by way of bonus, commission, management fees, directors’ fees, dividends, redemption of shares, distribution of profits or otherwise, and whether payments are made to such Persons in their capacity as shareholders, partners, unitholders, directors, officers, employees, owners or creditors of any Company or otherwise, or any other direct or indirect payment in respect of the earnings or capital of any Company; provided however that the payment of reasonable salaries, bonuses and commissions from time to time to the officers and employees of a Company, and the payment of reasonable directors’ fees and reimbursement of reasonable expenses to the directors of a Company, in each case in the ordinary course of business, shall not be considered Distributions.

**“Draw Request”** means a notice in the form of Exhibit “A” given by the Borrower to the Bank for the purpose of requesting an Advance.

**“Earn-outs”** means payments made to either: (i) the U.S. Vendors, pursuant to section 2.4 of the Spark Red Purchase Agreement; or (ii) the Canadian Vendors, pursuant to section 2.4 of the Thinkwrap Purchase Agreement.

**“EBITDA”** means, in respect of any fiscal period of the Borrower, the consolidated net income of the Borrower in such fiscal period before deduction of the following amounts (but only to the extent such amounts were deducted in the determination of such net income): Interest, income taxes, depreciation and amortization; and determined without including any extraordinary gains (such as unrealized gains on Hedging Agreements and gains on the disposition of capital assets) or deducting any of the following: unrealized losses on Hedging Agreements, losses incurred on the disposition of capital assets, non-cash charges such as charges relating to the impairment of goodwill and other intangible assets, expenses and any and all restructuring costs, including those related to or arising in connection with the Purchase Transactions, and extraordinary or non-recurring expenses to the extent approved in writing by the Bank, acting reasonably, but in no event shall the Borrower have to seek approval of the Bank for the following extraordinary or non-recurring expenses: termination pay or other payments due and payable as a result of terminating a relationship with any personnel of a Company.

**“Effective Date”** has the meaning given to such term in Section 11.01.

**“Eligible Account”** means an Account which satisfies the following criteria:

- the Account is subject to a First-Ranking Security Interest in favour of the Bank pursuant to the Security and is not subject to any other Lien except Permitted Liens;
- the Account arises from a *bona fide* fully-completed transaction consisting of the sale of goods or the rendering of services by a Company in the ordinary course of business;
- the Account is not in dispute or subject to any defence, counterclaim or claim by the account debtor for credit, set-off, allowance or adjustment;
- no Company has any obligation to hold any portion of the Account in trust or as agent for any other Person (except pursuant to a Statutory Lien securing obligations which are not overdue);
- the Account is evidenced by an invoice which has been issued by a Company and sent to the account debtor;
- the Account is not outstanding for more than sixty-one (61) days from the date of the invoice relating thereto (regardless of the due date specified in such invoice for payment);
- the account debtor in respect of the Account is not insolvent or subject to any proceeding under any Insolvency Legislation;

- the Account is not subject to undue credit risk in the opinion of the Bank, acting reasonably;
- the Account is payable in Canadian Dollars or U.S. Dollars;
- the Account does not arise under terms under which payment by the account debtor may be conditional or contingent;
- neither the account debtor nor any officer or employee of the account debtor with respect to the Account is a Related Person to any Company; and
- the account debtor with respect to the Account is not a foreign government, the federal government of Canada, any province, political subdivision, department, agency or instrumentality thereof unless, upon the Bank's request, the *Financial Administration Act* (Canada) or any similar provincial or local Law, if applicable, has been complied with in a manner satisfactory to the Bank.

**"Eligible Canadian Account"** means an Eligible Account in respect of which the account debtor is located in Canada.

**"Eligible Insured Account"** means an Account insured by Export Development Canada (or such other insurance as may be acceptable by the Bank) upon terms satisfactory to the Bank.

**"Eligible US Account"** means an Eligible Account in respect of which the account debtor is located in the United States.

**"Equity Issuance"** means any issuance or sale by any Company of any shares, partnership interests or other equity interests, except any such issuance or sale: (i) to any other Company; or (ii) to management or employees of any Company under any employee stock option or stock purchase plan, stock appreciation rights plan, phantom stock plan or other employee benefit plan or arrangement in existence from time to time.

**"Equivalent Amount"** means, in relation to an amount in one currency, the amount in another currency that could be purchased by the amount in the first currency, determined by reference to the applicable Exchange Rate at the time of such determination.

**"Event of Default"** is defined in Section 12.01.

**"Eventi Proceeds"** means the proceeds from a short-term credit facility available to be drawn at the request of the Borrower, with total available funds in such credit facility to be not less than Cdn\$2,000,000 and not exceeding Cdn\$3,000,000, substantially in accordance with the Eventi Term Sheet.

**"Eventi Term Sheet"** means, the term sheet dated April 10, 2019 between the Borrower and Eventi Credit Inc.



**“Eventi Loan Documents”** means the principal documents, instruments and agreements (including, for greater certainty, and without limitation, any loan or credit agreements, guarantees or security) given by or among the Borrower and the Companies in connection with the credit facilities established by Eventi Credit Inc. in accordance with the Eventi Term Sheet.

**“Excess Cash Flow”** in respect of any Fiscal Year means EBITDA in such Fiscal Year, less the following amounts (without duplication):

- Cash Taxes paid during such Fiscal Year;
- Interest paid during such Fiscal Year in respect of Funded Debt;
- scheduled principal payments paid during such Fiscal Year in respect of the Facilities and other Permitted Funded Debt (except the portion of any final payment thereunder which the Bank considers to be a “balloon payment”), and scheduled payments paid during such Fiscal Year in respect of Capital Leases;
- voluntary Repayments under any Facility paid during such Fiscal Year;
- Capital Expenditures, to the extent not financed by Accrued Funding;
- Deferred Development Costs, to the extent not financed by Accrued Funding;
- extraordinary expenses incurred on a cash basis to the extent such expenses were added back in the determination of EBITDA; and
- Earn-outs paid from sources other than from the proceeds from any Advance.

**“Exchange Rate”** in connection with any amount of Canadian Dollars to be converted into another currency pursuant to this Agreement for any reason, or *vice-versa*, means the spot rate of exchange for converting Canadian Dollars into such other currency or *vice-versa*, as the case may be, quoted by the Bank of Canada at approximately noon (Toronto time) on the effective date of such conversion.

**“Excluded Capital Leases”** means any Capital Lease pursuant to which the granting of a security interest therein to the Bank would constitute a breach or cause the acceleration thereof.

**“Facilities”** means collectively, Facility A, Facility B, Facility C, Facility D, the Hedging Agreements and the MasterCard Line; and **“Facility”** means any of them as the context requires.

**“Facility A”** is defined in Section 2.01.

**“Facility A Margin Limit”** is defined in Section 2.07(a).

**“Facility A Maximum Amount”** means, following the Closing Date, Two Million Dollars (\$2,000,000) and following the Spark Red Closing Date, Three Million Dollars (\$3,000,000).

**“Facility B”** is defined in Section 3.01.

**“Facility B Limit”** means Ten Million Dollars (\$10,000,000), or such lesser amount in accordance with Section 3.03.

**“Facility B Tranche 1”** is defined in Section 3.01(a).

**“Facility B Tranche 1 Limit”** means Four Million Dollars (\$4,000,000), or such lesser amount in accordance with Section 3.03(a).

**“Facility B Tranche 2”** is defined in Section 3.01(b).

**“Facility B Tranche 2 Limit”** means Six Million Dollars (\$6,000,000), or such lesser amount in accordance with Section 3.03(b).

**“Facility C”** is defined in Section 4.01.

**“Facility C Limit”** means, following the Closing Date, Two Million Dollars (\$2,000,000) and following the Spark Red Closing Date, Three Million Six Hundred Thousand Dollars (\$3,600,000).

**“Facility D”** is defined in Section 5.01.

**“Facility D Margin Limit”** is defined in Section 5.07(a).

**“Facility D Maximum Amount”** means Five Hundred Thousand Dollars (\$500,000).

**“Federal Funds Rate”** means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of one percent) of the per annum interest rates on overnight federal funds transactions with members of the Federal Reserve System in respect of such day on the next succeeding Business Day by the Federal Reserve Bank of New York or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of one percent) of the quotations for such day for such transactions received by the Bank from three (3) federal funds brokers of recognized standing selected by it; provided that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**“First-Ranking Security Interest”** in respect of any Collateral means a Lien in such Collateral which is registered to the extent required pursuant to this Agreement and which ranks in priority to all other Liens in such Collateral except for those Permitted Liens (if any) which have priority in accordance with applicable Law.

**“Fiscal Quarter”** means in respect of any Company a fiscal quarter of such Company, ending on the last days of March, June, September and December in each calendar year.

**“Fiscal Year”** means in respect of any Company a fiscal year of such Company, ending on the last day of December in each calendar year.

**“Fixed Charge Coverage Ratio”** means, in respect of any twelve (12) month fiscal period, the ratio of: (i) EBITDA in such fiscal period less, without duplication, the aggregate of the following amounts in respect of such fiscal period: Cash Taxes, Distributions paid in cash, Capital Expenditures, to the extent not financed by Accrued Funding, and Deferred Development Costs, to the extent not financed by Accrued Funding, to (ii) Funded Debt Service in respect of such fiscal period; provided, however for greater certainty, for the purposes of this definition any payments made by the Borrower in respect of any Earn-outs in the twelfth (12<sup>th</sup>) and twenty-fourth (24<sup>th</sup>) months following the Closing Date shall not be included in the calculation of the Fixed Charge Coverage Ratio; provided that, for greater certainty, prior to March 31, 2019, Deferred Development Costs shall be zero (\$0) for the purposes of calculating the Fixed Charge Coverage Ratio.

**“Funded Debt”** means, without duplication, (i) the Outstanding Advances, Subordinated Debt and all other obligations of the Companies which are considered to constitute debt in accordance with GAAP, including for greater certainty indebtedness for borrowed money, interest-bearing liabilities, obligations secured by Purchase-Money Security Interests, capitalized interest, and the redemption price of any securities issued by the Companies which are redeemable at the option of the holder; plus (ii) the net aggregate amount of the Borrower’s liability under all Hedging Agreements in the event of a default or termination thereunder determined in accordance with the terms thereof; but excluding accounts payable, short term non-interest bearing liabilities and future income taxes (both current and long-term).

**“Funded Debt Service”** means, in respect of any fiscal period, without duplication: (i) the aggregate amount of Interest paid or payable in respect of Funded Debt in respect of such fiscal period (for greater certainty, excluding Interest which would have been payable in such fiscal period but was capitalized instead; and including any interest paid in such fiscal period which was capitalized in a previous fiscal period); plus (ii) the aggregate amount of scheduled principal payments in respect of Funded Debt and scheduled Capital Lease payments in such fiscal period (except the portion of any final payment due in respect of Funded Debt which the Bank, acting reasonably, determines to be a “balloon payment” and any amount paid in connection with the exercise of an option to purchase equipment under a Capital Lease).

**“GAAP”** means generally accepted accounting principles in Canada as approved by the Handbook of Chartered Professional Accountants Canada in effect from time to time adopted by the Canadian Accounting Standards Board; and the parties hereby acknowledge that when used in relation to the Companies **“GAAP”** shall mean Accounting Standards for Private Enterprises as

approved by the Handbook of Chartered Professional Accountants Canada in effect from time to time.

**“Governmental Authority”** means any: (i) federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental, judicial or administrative body exercising any regulatory, expropriation or taxing authority.

**“Guarantee”** means any agreement by which any Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes liable upon, the obligation of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person or otherwise assures any creditor of such Person against loss, and shall include any contingent liability under any letter of credit or similar document or instrument.

**“Hazardous Materials”** means any contaminant, pollutant, waste or substance that is likely to cause immediately or at some future time harm or degradation to the surrounding environment or risk to human health; and without restricting the generality of the foregoing, including any pollutants, contaminants, waste, hazardous waste or dangerous goods that are regulated by any Requirements of Environmental Law or that are designated, classified, listed or defined as hazardous, toxic, radioactive or dangerous or as a contaminant, pollutant or waste by any Requirements of Environmental Law.

**“Hedging Agreements”** means Interest Rate Hedging Agreements and Currency Hedging Agreements.

**“Hedging Obligations”** means all obligations of the Borrower to the Bank pursuant to or arising in connection with Hedging Agreements made between the Borrower and the Bank.

**“IFRS”** means the International Financial Reporting Standard used by the International Accounting Standards Board.

**“Indemnitees”** means the Bank and its successors and permitted assignees, any agent of any of them (specifically including a receiver or receiver-manager) and the respective officers, directors and employees of the foregoing.

**“Insolvency Event”** means, in respect of any Person:

- such Person ceases to carry on its business; or commits an act of bankruptcy or becomes insolvent (as such terms are used in the BIA); or makes an assignment for the benefit of creditors, files a petition in bankruptcy, makes a proposal or commences a proceeding under Insolvency Legislation; or petitions or applies to any tribunal for, or consents to, the appointment of any receiver, trustee or similar liquidator in respect of all or a

substantial part of its property; or admits the material allegations of a petition or application filed with respect to it in any proceeding commenced in respect of it under Insolvency Legislation; or takes any corporate action for the purpose of effecting any of the foregoing; or

- any proceeding or filing is commenced against such Person seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any Insolvency Legislation, or seeking appointment of a receiver, trustee, custodian or other similar official for it or any of its property or assets; unless (i) such proceeding is stayed, or (ii) (A) such Person is diligently defending such proceeding in good faith and on reasonable grounds as determined by the Bank and (B) such proceeding does not in the reasonable opinion of the Bank materially adversely affect the ability of such Person to carry on its business and to perform and satisfy all of its obligations hereunder.

**“Insolvency Legislation”** means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the BIA, the *Companies’ Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada).

**“Interest”** means interest on loans, stamping fees in respect of bankers’ acceptances, the difference between the proceeds received by the issuers of bankers’ acceptances and the amounts payable upon the maturity thereof, issuance fees in respect of letters of credit, the interest component of amounts payable under Capital Leases, and any other payments in the nature of interest (and for greater certainty, including capitalized interest), plus standby fees in respect of the unutilized portion of any credit facility; but for greater certainty “Interest” shall not include agency fees, arrangement fees, structuring fees, fees relating to the granting of consents, waivers, amendments, extensions or restructurings, the reimbursement of costs and expenses, and any similar amounts which may be charged from time to time in connection with the establishment, administration or enforcement of credit facilities.

**“Interest Rate Hedging Agreements”** means any agreements which may be entered into between the Borrower and any Person from time to time for the purpose of hedging interest rate risk, including interest rate exchange agreements (commonly known as “interest rate swaps”) and forward rate agreements; and for greater certainty, including interest rate exchange agreements in U.S. Dollars (commonly known as “cross-currency swaps”).

**“Interim Financial Statements”** means, in respect of any Fiscal Quarter, the unaudited financial statements of the Borrower on a consolidated basis in respect of the most recently completed Fiscal Quarter and the immediately preceding three (3) Fiscal Quarters prepared in accordance with GAAP except that such financial statements shall not include any notes thereto and shall be subject to normal year-end adjustments.

**“Investment”** means an investment made or held by a Person, directly or indirectly, in another Person (whether such investment was made by the first-mentioned Person in such other Person or was acquired from a third party), including a contribution of capital and including the acquisition or holding of the following: all or substantially all of the assets used in connection with a business; common or preferred shares; debt obligations; partnership interests; and investments in joint ventures; provided however that if a transaction would satisfy the definition of “Capital Expenditure” herein and also the definition of “Investment” herein, it shall be deemed to constitute an Investment and not a Capital Expenditure.

**“Land”** means real property (including a leasehold interest therein) and all buildings, improvements, fixtures and plant situated thereon.

**“Landlord Agreement”** means, in respect of any Leased Real Property under which a Company is the tenant, an agreement in form and substance satisfactory to the Bank given by the landlord of such Leased Real Property in favour of the Bank, which shall include the following provisions (except to the extent otherwise agreed by the Bank in its discretion, acting reasonably): such landlord consents to the granting of a security interest in the lease by such Company in favour of the Bank, agrees to give written notice to the Bank in respect of and a reasonable opportunity to cure any default before terminating the lease, agrees not to unreasonably withhold its consent to any assignment by the Bank of such Company’s rights under the lease, agrees to waive (or subordinate and defer the enforcement of) its rights and remedies and any security it may hold in respect of any assets owned by such Company located on or affixed to such Leased Real Property, and agrees to permit the Bank reasonable access to the Leased Real Property in connection with the enforcement of its security against any assets of such Company located thereon.

**“Laws”** means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, or any provisions of such laws, including general principles of common and civil law and equity or policies or guidelines, to the extent such policies or guidelines have the force of law, binding on the Person referred to in the context in which such word is used; and **“Law”** means any of the foregoing.

**“Leased Real Properties”** means all Land leased by the Companies as tenants from time to time, specifically including as at the date of this Agreement the Land described in Schedule 8.01(k) attached hereto.

**“Letter of Credit”** means a stand-by letter of guarantee or documentary letter of credit issued by the Bank under Facility A at the request of and on behalf of the Borrower.

**“LIBO Rate”** or **“LIBOR”** means, with respect to any LIBOR Period for any LIBOR Loan, the rate expressed on the basis of a Three Hundred and Sixty (360) day year which is applicable to U.S. Dollars and appearing on the display referred to as “LIBOR01 Page” (or any display substituted therefor) of Reuters Limited (or any successor thereto or Affiliate thereof) that displays ICE

Benchmark Administration Limited (or its successor) interbank borrowing rate applicable to such LIBOR Period as at 11:00 a.m. (London local time) on the date two (2) Business Days in advance of the commencement of the applicable LIBOR Period; provided that if the Reuters Limited "LIBOR01 Page" is not available, "LIBO Rate" or "LIBOR" shall mean the rate at which the Bank, in accordance with its normal practice, has offered on such date (or if no such offer has been made on such date, would be prepared to offer) to leading banks in the London interbank market for delivery by the Bank on the first day of the applicable LIBOR Period for a period equal to the number of days in such LIBOR Period, deposits in U.S. Dollars of amounts comparable to the principal amount of such Libor Loan to be outstanding during such LIBOR Period; provided that the LIBOR Rate shall not be less than zero.

**"LIBOR Loan"** means an Advance made by the Bank to the Borrower by way of a direct loan in U.S. Dollars, in respect of which the Borrower is obliged to pay interest based upon the LIBO Rate;

**"LIBOR Market"** means the London interbank Eurodollar offering market.

**"LIBOR Period"** means, in respect of a LIBOR Loan, the period commencing on the date of the Advance of such LIBOR Loan and ending on the scheduled maturity date of such LIBOR Loan;

**"Lien"** means: (i) a lien, charge, mortgage, pledge, security interest or conditional sale agreement; (ii) an assignment, lease, consignment, trust or deemed trust that secures payment or performance of an obligation; (iii) any other encumbrance of any kind; and (iv) any commitment or agreement to enter into or grant any of the foregoing.

**"Loan"** means a Canadian Dollar Loan, a U.S. Dollar Loan or a LIBOR Loan.

**"Loan Documents"** means this Agreement, the Security and all other agreements, documents, instruments and assurances required or contemplated herein to be provided by any Company.

**"MasterCard Line"** means the line of credit in the maximum principal amount of Two Hundred and Fifty Thousand Dollars (\$250,000), in respect of credit cards issued by the Bank to the employees of any Company for corporate purposes, including purchasing supplies and funding miscellaneous business expenses.

**"Material Adverse Change"** means any change or event which: (i) constitutes a material adverse change in the business, operations, financial condition or properties of the Companies taken as a whole; or (ii) could materially impair the Companies' ability, taken as a whole, to timely and fully perform their obligations under the Loan Documents; or (iii) materially impair the ability of the Bank to enforce its rights and remedies under this Agreement or the Security.

**"Material Agreements"** means, all agreements made between the Companies and other Persons which if terminated would result, or would reasonably be expected to result, or would

have a reasonable likelihood of resulting, in a Default or a Material Adverse Change, specifically including, as at the date of this Agreement, each agreement listed in Schedule 8.01(n).

**“Material Permits”** means, all licences, permits, approvals, registrations or qualifications granted to or held by a Company which if terminated would result, or would reasonably be expected to result, or would have a reasonable likelihood of resulting, in a Default or a Material Adverse Change; specifically including, as at the date of this Agreement, each licence, permit, approval, registration or qualification listed in Schedule 8.01(h).

**“Maturity Date”** means January 31, 2023.

**“Minor Title Defects”** in respect of any Land means encroachments, restrictions, easements, rights-of-way, servitudes and defects or irregularities in the title to such Land which are of a minor nature and which, in the aggregate, will not materially impair the use of such Land for the purposes for which such Land is held by the owner thereof.

**“OBCA”** means the *Business Corporations Act* (Ontario).

**“Obligations”** means, at any time: (i) all direct and indirect, contingent and absolute obligations and liabilities of the Borrower to the Bank under or in connection with this Agreement and the Security (specifically including for greater certainty all Guarantees provided hereunder) at such time, specifically including the Outstanding Advances, all accrued and unpaid interest thereon, and all fees, expenses and other amounts payable pursuant to this Agreement and the Security; plus (ii) the Hedging Obligations at such time; plus (iii) all obligations under Service Agreements at such time; provided that if otherwise specified or required by the context, “Obligations” shall mean any portion of the foregoing.

**“Outstanding Advances”** means, at any time, the aggregate of all Advances made under the Facilities (or if the context requires, under any Facility) which have not been repaid or satisfied at such time, determined as follows: (i) in the case of Canadian Dollar Loans and Advances under the MasterCard Line, the principal amount thereof; (ii) in the case of Bankers’ Acceptances and Letters of Credit, the face amount thereof; and (iii) in the case of U.S. Dollar Loans and LIBOR Loans, the Equivalent Amount thereof in Canadian Dollars.

**“Owned Real Properties”** means all Land owned by the Companies from time to time; and **“Owned Real Property”** means any of the Owned Real Properties as the context requires.

**“Pension Plan”** means: (i) a “pension plan” or “plan” which is subject to the funding and registration requirements of applicable pension benefits legislation in any jurisdiction, and is applicable to employees of any Company; or (ii) any pension benefit plan or similar arrangement applicable to employees of any Company.

**“Permitted Funded Debt”** means, without duplication: (i) the Outstanding Advances; (ii) indebtedness of the Borrower to each holder of a Bankers’ Acceptance (the Borrower’s



contingent obligation to the Bank as acceptor of the Bankers' Acceptance comprising part of the Outstanding Advances); (iii) Subordinated Debt (if any); (iv) Funded Debt of the Companies secured by Permitted Purchase-Money Security Interests; (v) indebtedness of any Company to another Company; and (vi) the Capital Leases.

**"Permitted Guarantees"** means: (i) Guarantees which comprise part of the Security; and (ii) Guarantees in respect of Permitted Funded Debt which are unsecured.

**"Permitted Liens" means:**

- (a) Statutory Liens in respect of any amount which is not at the time overdue;
- (b) Statutory Liens in respect of any amount which may be overdue but the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Bank;
- (c) Liens or rights of distress reserved in or exercisable under any lease for rent not at the time overdue or for compliance with the terms of such lease not at the time in default; and security deposits given under leases not in excess of three (3) months' rent;
- (d) any obligations or duties affecting any Land due to any public utility or to any municipality or government, or to any statutory or public authority, with respect to any franchise, grant, licence or permit in good standing and any defects in title to structures or other facilities arising solely from the fact that such structures or facilities are constructed or installed on Land under government permits, leases or other grants in good standing; which obligations, duties and defects in the aggregate do not materially impair the use of such property, structures or facilities for the purpose for which they are held;
- (e) Liens incurred or deposits made in connection with contracts, bids, tenders or expropriation proceedings, surety, performance or appeal bonds, costs of litigation when required by law, public and statutory obligations, and warehousemen's, storers', repairers', carriers' and other similar Liens and deposits;
- (f) security or letters of credit given to a public utility or any municipality or government or to any statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not at the time overdue and not then entitled to be drawn upon;
- (g) Liens and privileges arising out of judgments or awards in respect of which: an appeal or proceeding for review has been commenced; a stay of execution pending such appeal or proceedings for review has been obtained; and in respect of which reserves have been established as reasonably required by the Bank;

- (h) any Lien in connection with the construction or improvement of any Land or arising out of the furnishing of materials or supplies therefor, provided that such Lien secures moneys not at the time overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Bank), notice of such Lien has not been given to the Bank and such Lien has not been registered against title to such Land;
- (i) reservations, limitations, provisos, exceptions, restrictions and conditions affecting any Land (expressed in any original grants from the Crown or otherwise) which do not materially impair the value of the said Land or materially affect the use of the said Land for the purpose for which it is being used;
- (j) zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licences, easements and/or servitudes rights-of-way, servitudes, restrictive covenants and other land use limitations and rights in the nature of easements affecting any Land (including, without limiting the generality of the foregoing, licences, easements, servitudes, rights-of-way and rights in the nature of easements and/or servitudes for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the value of the said Land or materially affect the use of the said Land for the purpose for which it is being used;
- (k) servicing agreements, development agreements, site plan agreements, and other agreements with Governmental Authorities pertaining to the servicing, use or development of any Land, which do not materially impair the value of the said Land or materially affect the use of the said Land for the purpose for which it is being used;
- (l) applicable municipal and other governmental restrictions, including municipal by-laws and regulations affecting the use of any Land or the nature of any structures which may be erected thereon, which do not materially impair the value of the said Land or materially affect the use of the said Land for the purpose for which it is being used;
- (m) Minor Title Defects;
- (n) Permitted Purchase-Money Security Interests;
- (o) the Specific Permitted Liens, including any extension or renewal thereof provided that the amount secured thereby is not increased and the scope of the Lien is not increased to affect any additional property;
- (p) the Security;
- (q) Liens securing the Capital Leases; and

(r) Liens securing Subordinated Debt;

provided that the use of the term “Permitted Liens” to describe the foregoing Liens shall mean that such Liens are permitted to exist (whether in priority to or subsequent in priority to the Security, as determined by applicable Law); and for greater certainty such Liens shall not be entitled to priority over the Security by virtue of being described in this Agreement as “Permitted Liens”.

**“Permitted Purchase-Money Security Interests”** means Purchase-Money Security Interests incurred or assumed in connection with the purchase, leasing or acquisition of capital equipment (for greater certainty, excluding Capital Leases) in the ordinary course of business, not in excess of the aggregate principal amount of Five Hundred Thousand Dollars (\$500,000) outstanding at any time.

**“Person”** includes an individual, corporation, partnership, trust, unincorporated association, Governmental Authority or any combination of the above.

**“Potential Priority Amount”** in respect of any Company at any time means the aggregate of all employee source deductions, goods and services tax and all other similar amounts payable by such Company which have not been paid by such Company when due and could result in a Statutory Lien, except the portion thereof being contested in good faith by such Company and in respect of which reserves have been established as required by the Bank acting reasonably.

**“Prime Rate”** means, on any day, the greater of: (i) the floating annual rate of interest announced from time to time by the Bank as its reference rate then in effect for determining rates of interest on Canadian dollar loans to its customers in Canada and designated as its prime rate, as in effect on such day; and (ii) the thirty (30) day CDOR Rate applicable on such day plus one percent (1%) per annum.

**“Purchase Agreements”** means, collectively, the Spark Red Purchase Agreement and the Thinkwrap Purchase Agreement.

**“Purchase Documents”** means, collectively, the Spark Red Purchase Documents and the Thinkwrap Purchase Documents.

**“Purchase-Money Security Interest”** means a Lien on any property or asset which is created, issued or assumed to secure the unpaid purchase price thereof, provided that such Lien is restricted to such property or asset and secures an amount not in excess of the purchase price thereof and any interest and fees payable in respect thereof.

**“Purchase Transactions”** means, collectively, the transactions contemplated by the Spark Red Purchase Agreement and the Thinkwrap Purchase Agreement.

**“Purchased Business”** means the business of the Targets as conducted by them on the Closing Date.

**“Purchased Shares”** means, collectively, the Spark Red Purchased Shares and the Thinkwrap Purchased Shares.

**“Real Properties”** means the Owned Real Properties and the Leased Real Properties.

**“Real Property Leases”** means the leases pertaining to the Leased Real Properties.

**“Related Person”** in relation to any Person means a subsidiary, affiliate, associate or employee of such Person, or an associate of such employee (the terms “subsidiary”, “affiliate” and “associate” having the respective meanings ascribed thereto in the OBCA).

**“Repayment”** means a repayment by the Borrower on account of the Outstanding Advances, other than a payment under the MasterCard Line.

**“Repayment Notice”** means a notice substantially in the form of Exhibit “D” given by the Borrower to the Bank for the purpose of committing it to make a Repayment.

**“Requirements of Environmental Law”** means: (i) obligations under common law; (ii) requirements imposed by or pursuant to statutes, regulations and by-laws whether presently or hereafter in force; (iii) directives, policies and guidelines issued or relied upon by any Governmental Authority to the extent such directives, policies or guidelines have the force of law; (iv) permits, licenses, certificates and approvals from Governmental Authorities which are required in connection with air emissions, discharges to surface or groundwater, noise emissions, solid or liquid waste disposal, the use, generation, storage, transportation or disposal of Hazardous Materials; and (v) requirements imposed under any clean-up, compliance or other order made pursuant to any of the foregoing, in each and every case relating to environmental, occupational health or safety matters including all such obligations and requirements which relate to (A) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation and (B) exposure to Hazardous Materials.

**“Rollover”** means the renewal of an Availment Option upon its maturity in the same form.

**“Rollover Notice”** means a notice substantially in the form of Exhibit “B” given by the Borrower to the Bank for the purpose of requesting a Rollover.

**“Schedule I Canadian Banks”** means the banks listed on schedule “I” of the *Bank Act* (Canada).

**“Security”** means all guarantees, security agreements, mortgages, debentures and other documents mentioned in Article X and all other documents and agreements delivered by the Companies or other Persons to the Bank for the benefit of the Bank from time to time as security for the payment and performance of the Obligations, and the security interests, assignments and Liens constituted by the foregoing.

**“Senior Funded Debt”** means, at any time, the Funded Debt of the Companies on a consolidated basis, other than Subordinated Debt or Capital Leases.

**“Senior Funded Debt to EBITDA Ratio”** means, in respect of any Fiscal Quarter, the ratio of (i) Senior Funded Debt as at the end of such Fiscal Quarter to (ii) EBITDA in the fiscal period comprised of such Fiscal Quarter and the immediately preceding three (3) Fiscal Quarters.

**“Service Agreements”** means agreements made between any Company and the Bank in respect of cash management, payroll, credit card or other banking services.

**“Solvent”** means, with respect to any Company as of the date of determination, (i) the aggregate property of such Company is, at a fair valuation, sufficient to enable payment of all its obligations, due and accruing due; (ii) such Company is able to meet its obligations as they generally become due; and (iii) such Company has not ceased paying its current obligations in the ordinary course of business as they generally become due; and for purposes of clause (i) of this definition, the amount of any contingent obligation at such time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability; provided however that with respect to any Company incorporated or organized under the laws of a jurisdiction other than Canada, such Company shall be considered “Solvent” if it satisfies the foregoing requirements and also satisfies all other solvency requirements under the applicable Law in such jurisdiction.

**“Specific Permitted Liens”** means the Liens described in Schedule 8.01(i).

**“Spark Red”** means Spark::red Inc., a Delaware State corporation.

**“Spark Red Closing”** means the completion of the Spark Red Purchase Transaction and the concurrent disbursement by the Bank of the Advance under Facility B Tranche 2.

**“Spark Red Closing Date”** means the date on which the Spark Red Closing occurs.

**“Spark Red Purchase Agreement”** means the securities purchase agreement to be among the Borrower and the U.S. Vendors providing for the acquisition by the Borrower of the Spark Red Purchased Shares.

**“Spark Red Purchased Business”** means the business of Spark Red as conducted by it on the Spark Red Closing Date.

**“Spark Red Purchase Documents”** means, collectively, the Spark Red Purchase Agreement and all other agreements, documents, instruments and assurances required or contemplated therein.

**“Spark Red Purchase Transaction”** means the transaction contemplated by the Spark Red Purchase Documents.

**“Spark Red Purchased Shares”** means all of the issued and outstanding common shares in the capital of Spark Red.

**“Statutory Lien”** means a Lien in respect of any property or assets of a Company created by or arising pursuant to any applicable Law in favour of any Governmental Authority, including a Lien for the purpose of securing such Company’s obligation to deduct and remit employee source deductions and goods and services tax pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Canada Pension Plan* (Canada), the *Employment Insurance Act* (Canada) and any federal or provincial legislation similar to or enacted in replacement of the foregoing from time to time.

**“Subordinated Debt”** means any indebtedness of any Company to any Person in respect of which the holder thereof has entered into a subordination and postponement agreement in favour of the Bank, in form and substance satisfactory to the Bank and registered in all places where necessary or desirable to protect the priority of the Security, which shall include (among other things): (i) restrictions on the entitlement of the holder of such indebtedness to receive payments on account of principal and interest, to the extent required by the Bank in its sole discretion; (ii) a provision to the effect that any security held in respect of such indebtedness is subordinated to the Security; and (iii) a provision to the effect that the holder of such indebtedness may not take any enforcement action in respect of any such security without the prior written consent of the Bank.

**“Subsidiary”** means a business entity which is Controlled by another business entity (as used herein, “business entity” includes a corporation, company, partnership, limited partnership, trust or joint venture).

**“Targets”** means, collectively Spark Red and Thinkwrap.

**“Thinkwrap”** means ThinkWrap Solutions Inc., an Ontario corporation.

**“Thinkwrap Purchase Agreement”** means the share purchase agreement among the Borrower and the Canadian Vendors dated January 31, 2018 providing for the acquisition by the Borrower of the Thinkwrap Purchased Shares.

**“Thinkwrap Purchased Business”** means the business of Thinkwrap as conducted by it on the Closing Date.

**“Thinkwrap Purchase Documents”** means, collectively, the Thinkwrap Purchase Agreement and all other agreements, documents, instruments and assurances required or contemplated therein.

**“Thinkwrap Purchase Transaction”** means the transaction contemplated by the Thinkwrap Purchase Documents.

**“Thinkwrap Purchased Shares”** means all of the issued and outstanding shares in the capital of Thinkwrap.

**“U.S. Base Rate”** means, on any day, the greater of the following: (i) the floating annual rate of interest established from time to time by the Bank as the rate it will use to determine rates of interest on U.S. Dollar loans to its customers in Canada and designated as its U.S. base rate on such day; and (ii) the Federal Funds Rate applicable on such day plus one percent (1%) per annum.

**“U.S. Dollar Loan”** means an Advance made by the Bank to the Borrower by way of a direct loan in U.S. Dollars, in respect of which interest is determined by reference to the U.S. Base Rate.

**“U.S. Dollars”** or **“U.S. \$”** means the lawful money of the United States.

**“U.S. Vendors”** means, collectively, the Persons listed on exhibit 1 to the Spark Red Purchase Agreement.

**“Vendors”** means, collectively, the U.S. Vendors and the Canadian Vendors.

**“Working Capital Ratio”** means, in relation to the Borrower on a consolidated basis, the ratio of its current assets to its current liabilities calculated in accordance with GAAP.

**“Year-end Financial Statements”** means the audited financial statements of the Borrower on a consolidated basis (together with management prepared financial statements on an unconsolidated basis) in respect of the most recently completed Fiscal Year prepared in accordance with GAAP (and for greater certainty including the notes thereto and an unqualified opinion of such Person’s auditor with respect thereto).

## **1.02 Headings; Sections**

The division of this Agreement into articles (in this Agreement, collectively, the **“Articles”** and each, an **“Article”**) and sections (in this Agreement, collectively, the **“Sections”** and each, a **“Section”**) and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.03 Accounting Principles**

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given to such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing. If there occurs after the date hereof (a) any change in GAAP from that used in the preparation of the financial statements referred to herein, or (b) after the date hereof the Companies adopt any other accounting principles for use in the preparation of their financial statements, including IFRS (such changes in GAAP and such adoption being referred to herein as

“Accounting Changes”) that affects in any respect the calculation of any financial covenants contained in this Agreement (including those in Section 9.03), the Bank and the Borrower shall discuss whether they wish to amend any relevant provisions of this Agreement that relate to the calculation of such financial covenants with the intent of having their respective intentions after such Accounting Changes conform as nearly as possible to their respective positions as of the date of this Agreement. Unless any such amendments have been agreed upon by all parties hereto in writing, compliance with the financial covenants in this Agreement shall be determined as if no such Accounting Change had occurred. In such event, the financial statements required to be provided by the Borrower hereunder shall be prepared in accordance with GAAP in effect on the date of such financial statements (after giving effect to such Accounting Change), and the Borrower shall concurrently deliver to the Bank a reconciliation in form and substance satisfactory to the Bank showing all adjustments made to financial statements in order to determine compliance with such financial covenants on the basis of GAAP in effect prior to such Accounting Change.

#### **1.04 Currency References**

All amounts referred to in this Agreement are in Canadian Dollars unless otherwise noted.

#### **1.05 References to Statutes**

Whenever in this Agreement reference is made to a statute or regulations made pursuant to a statute, such reference shall, unless otherwise specified, be deemed to include all amendments to such statute or regulations from time to time and all statutes or regulations which may come into effect from time to time substantially in replacement for the said statutes or regulations.

#### **1.06 Extended Meanings**

Terms defined in the singular have the same meaning when used in the plural, and *vice-versa*. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation”, and the term “includes” shall mean “includes, without limitation”. Any reference herein to the exercise of discretion by the Bank (including phrases such as “in the discretion of”, “in the opinion of”, “to the satisfaction of” and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein.

#### **1.07 Amendment and Restatement**

(a) This Agreement amends and restates the provisions of the Original Credit Agreement and shall not be considered a novation thereof. This Agreement shall supersede the Original Credit Agreement insofar as it constitutes the entire agreement between the Borrower and the Bank concerning the subject matter of this Agreement. With respect to (i) any date or time period occurring and ending prior to the Effective Date, the rights and obligations of the Borrower and the Bank shall be governed by the Original Credit Agreement (including, the exhibits and schedules thereto) and the other Loan Documents (as defined therein), which for such purposes shall remain in full force and effect; and



(ii) any date or time period occurring or ending on or after the Effective Date, the rights and obligations of the Borrower hereto shall be governed by this Agreement (including, the Schedules and Exhibits hereto) and the other Loan Documents (as defined herein). Any provision hereof which differs from or is inconsistent with a provision of the Original Credit Agreement constitutes an amendment to the Original Credit Agreement with each such amendment being effective as and from the Effective Date. This Agreement will not discharge or constitute a novation of any debt, obligation, covenant or agreement contained in the Original Credit Agreement or in any other Loan Documents, agreements, certificates and other documents executed and delivered by or on behalf of the Companies thereto in respect thereof or in connection therewith, but same shall remain in full force and effect save to the extent same are amended and restated by the provisions of this Agreement and are hereby ratified and confirmed in all respects. All representations and warranties set out in this Agreement are freshly made on the date hereof, but nothing herein shall release or otherwise affect the liability of the Borrower or any other Company in connection with the representations and warranties provided by them in the Original Credit Agreement or other Loan Documents.

(b) The Companies hereby represent, warrant, acknowledge and agree with the Bank that all Loan Documents executed and delivered by them to the Bank prior to the date of this Agreement (including any Security) continue in full force and effect and remain valid and enforceable in accordance with their terms, save to the extent same are amended by the provisions of this Agreement, and are hereby ratified and confirmed.

(c) Furthermore, each of the Companies hereby confirms, acknowledges and agrees that on and after the Effective Date (a) all Security granted by it pursuant to the Original Credit Agreement and the other Loan Documents secures and continues to secure payment and performance of the Obligations as defined in this Agreement and (b) any reference to the Original Credit Agreement in any Loan Document delivered pursuant to the Original Credit Agreement shall be a reference to this Agreement and the Loan Documents are hereby amended to that effect.

#### **1.08 Exhibits and Schedules**

The following exhibits and schedules are attached to this Agreement and incorporated herein by reference:

##### Exhibits

- "A" - Draw Request
- "B" - Rollover Notice
- "C" - Conversion Notice
- "D" - Repayment Notice
- "E" - Compliance Certificate
- "F" - Borrowing Base Certificate

Schedules

- 8.01(b) - Corporate Information
- 8.01(d) - Pending Corporate Changes
- 8.01(h) - Conduct of Business; Material Permits
- 8.01(i) - Ownership of Assets; Specific Permitted Liens
- 8.01(j) - Owned Real Properties
- 8.01(k) - Leased Real Properties
- 8.01(l) - Intellectual Property
- 8.01(m) - Insurance Policies
- 8.01(n) - Material Agreements
- 8.01(o) - Labour Agreements
- 8.01(p) - Environmental Matters
- 8.01(q) - Litigation
- 8.01(r) - Pension Plans
- 8.01(x) - Sources and Application of Funds relating to the Purchase Transactions

**ARTICLE II- FACILITY A**

**2.01 Establishment of Facility A**

The Bank hereby establishes a revolving credit facility (“**Facility A**”) for the Borrower in a maximum principal amount equal to the Facility A Margin Limit. The Borrower shall be entitled to receive Advances under Facility A from time to time, provided that the aggregate amount of the Outstanding Advances under Facility A may not exceed the Facility A Margin Limit at any time.

**2.02 Purpose**

Advances under Facility A shall be used by the Borrower for working capital and general corporate purposes.

**2.03 Revolving Nature**

Facility A shall be a revolving facility. For greater certainty, the Borrower shall be entitled to obtain Advances under Facility A from time to time and repay all or any portion of the Outstanding Advances under Facility A from time to time; provided that the Outstanding Advances under Facility A shall not at any time exceed the Facility A Margin Limit.

**2.04 Repayment**

The Obligations under Facility A shall become due and payable on the earlier of: (i) the Acceleration Date; and (ii) the Maturity Date, provided that the Borrower immediately reimburse the Bank in respect of all amounts paid by the Bank pursuant to each drawing under any Letter of Credit. In

addition, if any Letter of Credit is outstanding on (i) the Acceleration Date; or (ii) the Maturity Date, the Borrower shall immediately pay to the Bank an amount equal to the face amount thereof, which amount shall be held by the Bank and applied on account of any subsequent drawing thereunder. If the Bank, in its discretion, invests such funds held by it (the Bank having no obligation to do so), any interest earned thereon shall be credited to the Borrower.

## **2.05 Availment Options**

Subject to the restrictions contained in this Agreement (and in particular, Sections 7.02 and 7.03), the Borrower may receive Advances under Facility A by any one or more of the following Availment Options (or any combination thereof):

- (i) Canadian Dollar Loans;
- (ii) U.S. Dollar Loans; or
- (iii) the issuance of Letters of Credit, in the aggregate maximum amount of Five Hundred Thousand Dollars (\$500,000), in any major currency offered by the Bank, subject to Section 7.08;

provided that no Letter of Credit will be issued with an expiry date later than the Maturity Date or which in the opinion of the Bank could result in the Facility A Margin Limit being exceeded at any time. The Borrower may convert the Outstanding Advances under Facility A in the form of any above Availment Option into another form of Availment Option, subject to and in accordance with the terms and conditions of this Agreement (but for greater certainty, Letters of Credit may not be converted into another Availment Option prior to the expiry thereof).

## **2.06 Interest and Fees**

In respect of Advances under Facility A, the Borrower agrees to pay to the Bank:

- (a) interest on Canadian Dollar Loans at the Prime Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;
- (b) interest on U.S. Dollar Loans at the U.S. Base Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;
- (c) in respect of each Letter of Credit, an issuance fee equal to the face amount of such Letter of Credit multiplied by the Applicable Margin in effect at the time of issuance, with the product thereof further multiplied by the number of days to expiry of the Letter of Credit and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366), as the case may be, payable quarterly in advance (the first such quarterly payment to be made on the date of issuance of such Letter of Credit) and each quarterly payment thereafter to be made on the date which is three (3) months after the previous quarterly payment; plus an application fee (payable at the time of issuance), renewal

fees and other incidental fees generally applicable to Letters of Credit from time to time at the Bank's usual and customary rates for borrowers similar to the Borrower; and

- (d) a standby fee with respect to the unused portion of Facility A, calculated on a daily basis as being the difference between the Facility A Maximum Amount and the Outstanding Advances under Facility A, multiplied by the Applicable Margin and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366), as the case may be; which standby fee shall be payable quarterly in arrears on the last day of each Fiscal Quarter.

## **2.07 Facility A Margin Limit**

- (a) In this Agreement, "**Facility A Margin Limit**" at any time means the lesser of: (A) the Facility A Maximum Amount; and (B) with respect to, collectively, the Companies, an amount determined at such time as follows:
  - (i) seventy-five percent (75%) of Eligible Canadian Accounts; plus
  - (ii) seventy-five percent (75%) of Eligible US Accounts; plus
  - (iii) ninety percent (90%) of Eligible Insured Accounts; less
  - (iv) the Potential Priority Amount at such time.
- (b) The Facility A Margin Limit shall be adjusted as at the date of each receipt by the Bank of a Borrowing Base Certificate and shall remain in effect until receipt by the Bank of a subsequent Borrowing Base Certificate; provided that if the Bank does not receive a Borrowing Base Certificate on or before the date required pursuant to Section 9.04(a), the Facility A Margin Limit shall be reduced to the lowest Facility A Margin Limit in the preceding twelve (12) months or such lower amount estimated by the Bank acting reasonably to be the Facility A Margin Limit determined in accordance with the formula in paragraph (a), until such time as a Borrowing Base Certificate is thereafter received by the Bank.
- (c) The Bank shall have no obligation to make any Advance under Facility A if after making such Advance the Outstanding Advances under Facility A would exceed the Facility A Margin Limit then in effect.
- (d) If at any time the aggregate amount of the Outstanding Advances under Facility A is in excess of the Facility A Margin Limit for any reason (specifically including as a result of a fluctuation in currency exchange rates), the Borrower agrees that immediately after receipt of a written request from the Bank it will make a Repayment under Facility A in order for the aggregate amount of the Outstanding Advances under Facility A to not exceed the Facility A Margin Limit. The Bank shall firstly apply such Repayment against

Loans under Facility A; and any remaining portion of such Repayment shall be held by the Bank and applied against Bankers' Acceptances under Facility A upon the maturity thereof. If the Bank, in its discretion, invests such funds held by it (the Bank having no obligation to do so), any interest earned thereon shall be credited to the Borrower.

## **2.08 Cancellation of Unused Portion of Facility A**

The Borrower may at any time and from time to time upon three (3) Business Days' prior written notice to the Bank, without penalty or fee, cancel any unadvanced portion of Facility A in a minimum amount and a multiple of One Hundred Thousand Dollars (\$100,000), in which event the Facility A Maximum Amount shall be reduced by the amount so cancelled.

## **ARTICLE III - FACILITY B TRANCHE 1**

### **3.01 Establishment of Facility B**

The Bank hereby establishes a non-revolving credit facility ("**Facility B**") for the Borrower in a maximum principal amount equal to the Facility B Limit, consisting of:

- (a) a tranche (the "**Facility B Tranche 1**") in the maximum principal amount of the Facility B Tranche 1 Limit; and
- (b) a tranche (the "**Facility B Tranche 2**") in the maximum principal amount of the Facility B Tranche 2 Limit; provided, however, that Facility B Tranche 2 will only be available to the Borrower until February 19, 2018.

### **3.02 Purpose**

- (a) The Advance under Facility B Tranche 1 shall be used by the Borrower to assist it with satisfying the purchase price under the Thinkwrap Purchase Agreement.
- (b) The Advance under Facility B Tranche 2 shall be used by the Borrower on or before February 19, 2018 to assist it with satisfying the purchase price under the Spark Red Purchase Agreement.

### **3.03 Non-Revolving Nature; Single Advance**

Facility B shall be a non-revolving facility and any Repayment under Facility B may not be reborrowed.

- (a) A single Advance under Facility B Tranche 1 in the maximum amount of the Facility B Tranche 1 Limit shall be made on the Closing Date. If the said Advance under Facility B Tranche 1 on the Closing Date is less than the Facility B Tranche 1 Limit, the Facility B Tranche 1 Limit shall be reduced to the amount of the said Advance.

- (b) A single Advance under Facility B Tranche 2 in the maximum amount of the Facility B Tranche 2 Limit shall be made on the Spark Red Closing Date. If the said Advance under Facility B Tranche 2 on the Spark Red Closing Date is less than the Facility B Tranche 2 Limit, the Facility B Tranche 2 Limit shall be reduced to the amount of the said Advance.

### **3.04 Repayment**

- (a) The Obligations under Facility B shall become due and payable on the earlier of: (i) the Acceleration Date; and (ii) the Maturity Date.
- (b) Subject to the Obligations under Facility B becoming due and payable in accordance with paragraph (a), the Borrower agrees to make Repayments in respect of Facility B Tranche 1 in the following manner:
  - (i) Interest only in respect of the Facility B Tranche 1 Limit, payable on the last day of each month commencing March 31, 2018 and ending on August 31, 2018;
  - (ii) 0.834% of the Facility B Tranche 1 Limit, payable on the last day of each month commencing September 30, 2018 and ending on March 31, 2019;
  - (iii) 0.834% of the Facility B Tranche 1 Limit, payable on the last day of each month commencing April 30, 2019 and ending on April 30, 2020;
  - (iv) 1.250% of the Facility B Tranche 1 Limit, payable on the last day of each month commencing May 31, 2020 and ending on May 31, 2021;
  - (v) 1.667% of the Facility B Tranche 1 Limit, payable on the last day of each month commencing June 30, 2021 and ending on June 30, 2022;
  - (vi) 1.667% of the Facility B Tranche 1 Limit, payable on the last day of each month commencing on July 31, 2022 and ending on December 31, 2022; and
  - (vii) on the Maturity Date the Borrower shall make a Repayment in an amount equal to the remaining Obligations under Facility B Tranche 1.
- (c) Subject to the Obligations under Facility B becoming due and payable in accordance with paragraph (a), the Borrower agrees to make Repayments in respect of Facility B Tranche 2 in the following manner:
  - (i) Interest only in respect of the Facility B Tranche 2 Limit, payable on the last day of each month commencing at the end of the first full month following the Spark Red Closing Date and ending on August 31, 2018;
  - (ii) 0.834% of the Facility B Tranche 2 Limit, payable on the last day of each month commencing September 30, 2018 and ending on March 31, 2019;

- (iii) 0.834% of the Facility B Tranche 2 Limit, payable on the last day of each month commencing April 30, 2019 and ending on April 30, 2020;
  - (iv) 1.250% of the Facility B Tranche 2 Limit, payable on the last day of each month commencing May 31, 2020 and ending on May 31, 2021;
  - (v) 1.667% of the Facility B Tranche 2 Limit, payable on the last day of each month commencing June 30, 2021 and ending on June 30, 2022;
  - (vi) 1.667% of the Facility B Tranche 2 Limit, payable on the last day of each month commencing on July 31, 2022 and ending on July 31, 2023; and
  - (vii) on the Maturity Date the Borrower shall make a Repayment in an amount equal to the remaining Obligations under Facility B Tranche 2.
- (d) In addition to the Repayments required under Sections 3.04(b) and 3.04(c), the Borrower shall be required to make a Repayment in respect of Facility B (applied *pro rata* as between Facility B Tranche 1 and Facility B Tranche 2) in each Fiscal Year where the Senior Funded Debt to EBITDA Ratio at the end of such Fiscal Year is greater than 2.25 to 1. Each such Repayment shall be made not later than the date that is four (4) months after the end of such Fiscal Year in an amount equal to fifty percent (50%) of the Excess Cash Flow in such Fiscal Year up to a maximum amount of Two Million Dollars (\$2,000,000) per Fiscal Year. Any Repayment made under this paragraph (d) shall be applied against the Borrower's obligations to make Repayments under paragraphs (b) and (c), in inverse order of maturity.
- (e) In addition to the Repayments required under Sections 3.04(b), 3.04(c) and 3.04(d), if any Company receives net proceeds from:
- (i) a policy of property insurance, business interruption insurance or key-man life insurance except to the extent that such net proceeds are permitted to be retained by such Company as provided in Section 10.07;
  - (ii) an Equity Issuance or the creation of Subordinated Debt if an Event of Default has occurred and is continuing at such time; or
  - (iii) a transaction involving the sale, leasing or other disposition of any individual asset or group of related assets (other than inventory sold in the ordinary course of business), unless, within one hundred and eighty (180) days after such disposition, such Company has either used the net proceeds to purchase similar assets or has entered into a written agreement with a supplier to do so within a further period of one hundred and eighty (180) days;

then, unless otherwise agreed to by the Bank, the Borrower shall make a Repayment to the Bank in an amount equal to the amount of such net proceeds (net of any applicable reasonable transaction expenses, taxes and usual adjustments) within three (3) Business Days after receipt thereof in the case of clauses (i) and (ii) above, and within one hundred and eighty-three (183) days from the date of the disposition in the case of clause (iii) above.

- (f) If at any time the amount of the Outstanding Advances under Facility B is in excess of the Facility B Limit for any reason (specifically including as a result of a fluctuation in currency exchange rates), the Borrower agrees that immediately after receipt of a written request from the Bank it will make a Repayment under Facility B (applied *pro rata* as between Facility B Tranche 1 and Facility B Tranche 2) in order for the aggregate amount of the Outstanding Advance under Facility B to not exceed the Facility B Limit.

### **3.05 Availment Options**

Subject to the restrictions contained in this Agreement (and in particular, Sections 7.02 and 7.03), the Borrower may receive the Advance under Facility B by any of the following Availment Options:

- (i) Canadian Dollar Loans;
- (ii) U.S. Dollar Loans;
- (iii) Bankers' Acceptances in a minimum amount of One Million Dollars (\$1,000,000), and in multiples of One Hundred Thousand Dollars (\$100,000), each having a maturity of between twenty-eight (28) and one hundred and eighty-two (182) days (inclusive), subject to availability; or
- (iv) LIBOR Loans in a minimum amount of One Million U.S. Dollars (U.S. \$1,000,000), and in multiples of One Hundred Thousand U.S. Dollars (U.S. \$100,000) and with a LIBOR Period of 1, 2, and 3 months, subject to availability,

provided that no Bankers' Acceptance or LIBOR Loan will be issued with a maturity date later than the Maturity Date or which, in the opinion of the Bank, could result in the Facility B Limit being exceeded at any time. The Borrower may convert Outstanding Advances under Facility B in the form of any above Availment Option into another form of Availment Option, subject to and in accordance with the terms and conditions of this Agreement (but for greater certainty, a Bankers' Acceptance or a LIBOR Loan may not be converted into another Availment Option prior to the maturity thereof).

### **3.06 Interest and Fees**

In respect of Facility B, the Borrower agrees to pay to the Bank:

- (a) interest on Canadian Dollar Loans at the Prime Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;



- (b) interest on U.S. Dollar Loans at the U.S. Base Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;
- (c) in respect of each Bankers' Acceptance, a stamping fee equal to the face amount of the Bankers' Acceptance, multiplied by the Applicable Margin in effect at the date of issuance, multiplied by the number of days to maturity of the Bankers' Acceptance (but excluding the day on which the Bankers' Acceptance matures), and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366); as the case may be, payable at the time of acceptance;
- (d) interest on LIBOR Loans at the LIBO Rate plus the Applicable Margin per annum calculated on the basis of a year of three hundred and sixty (360) days, payable in the manner set out in Section 7.09(b); and
- (e) a standby fee with respect to Facility B Tranche 2, commencing on the Closing Date and calculated on a daily basis as being the Facility B Tranche 2 Limit, multiplied by the Applicable Margin and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366), as the case may be; which standby fee shall be payable quarterly in arrears on the last day of each Fiscal Quarter.

### **3.07 Voluntary Repayments**

The Borrower may from time to time, upon three (3) Business Days' prior written notice to the Bank, without penalty or fee, make a voluntary Repayment in respect of the Outstanding Advances under Facility B in a minimum amount and multiples of Two Hundred Fifty Thousand Dollars (\$250,000) (applied *pro rata* as between Facility B Tranche 1 and Facility B Tranche 2), provided that voluntary Repayments may not be made in respect of: (i) a Bankers' Acceptance prior to the scheduled maturity thereof; or (ii) a LIBOR Loan. The Facility B Limit shall be automatically and permanently reduced by the amount of any such voluntary Repayment. Any such voluntary Repayment shall be applied firstly against the Borrower's obligation to make the final Repayment under Facility B on the Maturity Date and thereafter against the scheduled Repayments under Facility B as set out in Sections 3.04(b), 3.04(c) and 3.04(d) in reverse chronological order.

## **ARTICLE IV - FACILITY C**

### **4.01 Establishment of Facility C**

The Bank hereby establishes a non-revolving, uncommitted credit facility ("**Facility C**") for the Borrower in a maximum principal amount equal to the Facility C Limit; provided that Facility C shall be available from and after the day that is twenty-four (24) months from the Closing Date. The Bank shall, in its discretion, permit Advances under Facility C from time to time, provided that the aggregate amount of the Outstanding Advances under Facility C may not exceed the Facility C Limit at any time.

#### **4.02 Purpose**

Facility C shall be used for funding Capital Expenditures permitted hereunder and for funding Earn-outs.

#### **4.03 Non-Revolving Nature**

Facility C shall be a non-revolving facility and any Repayment under Facility C may not be reborrowed. The Borrower shall be entitled to obtain Advances under Facility C from time to time provided that any Advance under Facility C for the purposes of funding a Capital Expenditure must be in the minimum amount of Five Hundred Thousand Dollars (\$500,000).

#### **4.04 Repayment**

- (a) The Obligations under Facility C shall become due and payable on the earlier of: (i) the Acceleration Date; and (ii) the Maturity Date.
- (b) Subject to the Obligations under Facility C becoming due and payable in accordance with paragraph (a), the Borrower agrees to make Repayments in respect of Facility C in the following manner:
  - (i) 2.083% of each Advance under Facility C, payable on last day of each month commencing the first full month following such Advance; and
  - (ii) on the Maturity Date the Borrower shall make a Repayment in an amount equal to the remaining Obligations under Facility C.
- (c) In addition to the Repayments required under Section 4.04(b), if any Company receives net proceeds from:
  - (i) a policy of property insurance, business interruption insurance or key-man life insurance except to the extent that such net proceeds are permitted to be retained by such Company as provided in Section 10.07;
  - (ii) an Equity Issuance or the creation of Subordinated Debt, except to the extent that the net proceeds thereof are concurrently used to fund an Investment, Capital Expenditure or Deferred Development Costs, which is approved in writing by the Bank; or
  - (iii) a transaction involving the sale, leasing or other disposition of any individual asset or group of related assets (other than inventory sold in the ordinary course of business) in one or a series of transactions, unless, within 180 days after such disposition, such Company has either used the net proceeds to purchase similar assets or has entered into a written agreement with a supplier to do so within a further period of 180 days,

then the Borrower agrees to make a Repayment to the Bank in an amount equal to the amount of such net proceeds (net of any applicable reasonable transaction expenses, taxes and usual adjustments) within three (3) Business Days after receipt thereof in the case of clauses (i) and (ii) above, and within one hundred and eighty-three (183) days from the date of the disposition in the case of clause (iii) above.

- (d) If at any time the amount of the Outstanding Advances under Facility C is in excess of the Facility C Limit for any reason (specifically including as a result of a fluctuation in currency exchange rates), the Borrower agrees that immediately after receipt of a written request from the Bank it will make a Repayment under Facility C in order for the aggregate amount of the Outstanding Advance under Facility C to not exceed the Facility C Limit.

#### **4.05 Availment Options**

Subject to the restrictions contained in this Agreement (and in particular, Sections 7.02 and 7.03), the Borrower may receive Advances under Facility C by any of the following Availment Options:

- (i) Canadian Dollar Loans;
- (ii) U.S. Dollar Loans;
- (iii) Bankers' Acceptances in a minimum amount of One Million Dollars (\$1,000,000), and in multiples of One Hundred Thousand Dollars (\$100,000), each having a maturity of between twenty-eight (28) and one hundred and eighty-two (182) days (inclusive), subject to availability; or
- (iv) LIBOR Loans in a minimum amount of One Million U.S. Dollars (U.S. \$1,000,000), and in multiples of One Hundred Thousand U.S. Dollars (U.S. \$100,000) and with a LIBOR Period of 1, 2, and 3 months, subject to availability,

provided that no Bankers' Acceptance or a LIBOR Loan will be issued with a maturity date later than the Maturity Date. The Borrower may convert Outstanding Advances under Facility C in the form of any above Availment Option into another form of Availment Option, subject to and in accordance with the terms and conditions of this Agreement (but for greater certainty, a Bankers' Acceptance or a LIBOR Loan may not be converted into another Availment Option prior to the maturity thereof).

#### **4.06 Interest and Fees**

In respect of Facility C, the Borrower agrees to pay to the Bank:

- (a) interest on Canadian Dollar Loans at the Prime Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;

- (b) interest on U.S. Dollar Loans at the U.S. Base Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month;
- (c) in respect of each Bankers' Acceptance, a stamping fee equal to the face amount of the Bankers' Acceptance, multiplied by the Applicable Margin in effect at the date of issuance, multiplied by the number of days to maturity of the Bankers' Acceptance (but excluding the day on which the Bankers' Acceptance matures), and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366), as the case may be, payable at the time of acceptance; and
- (d) interest on LIBOR Loans at the LIBO Rate plus the Applicable Margin per annum calculated on the basis of a year of three hundred and sixty (360) days, payable in the manner set out in Section 7.09(b).

#### **4.07 Voluntary Repayments**

The Borrower may from time to time, upon three (3) Business Days' prior written notice to the Bank, without penalty or fee, make a voluntary Repayment in respect of the Outstanding Advances under Facility C in a minimum amount and multiples of Two Hundred Fifty Thousand Dollars (\$250,000), provided that voluntary Repayments may not be made in respect of: (i) a Bankers' Acceptance prior to the scheduled maturity thereof; or (ii) a LIBOR Loan. The Facility C Limit shall be automatically and permanently reduced by the amount of any such voluntary Repayment. Any such voluntary Repayment shall be applied firstly against the Borrower's obligation to make the final Repayment under Facility C on the Maturity Date and thereafter against the scheduled Repayments under Facility C as set out in Section 4.04(b) in reverse chronological order.

### **ARTICLE V - FACILITY D**

#### **5.01 Establishment of Facility D**

The Bank hereby establishes a non-revolving demand credit facility ("**Facility D**") for the Borrower in a maximum principal amount equal to the Facility D Margin Limit. The Borrower shall be entitled to receive Advances under Facility D from time to time, provided that the aggregate amount of the Outstanding Advances under Facility D may not exceed the Facility D Margin Limit at any time.

#### **5.02 Purpose**

Advances under Facility D shall be used to fund working capital needs related to scientific research and experimental development activities.

#### **5.03 Non-Revolving Nature**

Facility D shall be a non-revolving demand facility and any Repayment under Facility D may not be reborrowed.

#### **5.04 Repayment**

- (a) The Obligations under Facility D shall become due and payable on the earlier of: (i) the day on which the Bank gives written notice to the Borrower that the Obligations under Facility D are due and payable; (ii) the day on which an Insolvency Event occurs; and (ii) the Maturity Date.
- (b) Subject to the Obligations under Facility D becoming due and payable in accordance with paragraph (a), the Borrower agrees to make payments on account of Interest only in respect of the Outstanding Advances under Facility D payable on the last day of each month.
- (c) If at any time the aggregate amount of the Outstanding Advances under Facility D is in excess of the Facility D Margin Limit for any reason (specifically including as a result of a fluctuation in currency exchange rates), the Borrower agrees that immediately after receipt of a written request from the Bank it will make a Repayment under Facility D in order for the aggregate amount of the Outstanding Advances under Facility D to not exceed the Facility D Margin Limit.

#### **5.05 Availment Options**

Subject to the restrictions contained in this Agreement (and in particular, Sections 7.02 and 7.03), the Borrower may receive Advances under Facility D by any one or more of the following Availment Options (or any combination thereof):

- (i) Canadian Dollar Loans; or
- (ii) U.S. Dollar Loans;

The Borrower may convert the Outstanding Advances under Facility D in the form of any above Availment Option into another form of Availment Option, subject to and in accordance with the terms and conditions of this Agreement.

#### **5.06 Interest and Fees**

In respect of Advances under Facility D, the Borrower agrees to pay to the Bank:

- (a) interest on Canadian Dollar Loans at the Prime Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month; and
- (b) interest on U.S. Dollar Loans at the U.S. Base Rate plus the Applicable Margin per annum, payable monthly in arrears on the last day of each and every month.

## **5.07 Facility D Margin Limit**

- (a) In this Agreement, “**Facility D Margin Limit**” at any time means the lesser of: (A) the Facility D Maximum Amount; and (B) with respect to, collectively, the Companies, an amount determined at such time as follows:
  - (i) sixty percent (60%) of Accrual Stage SR&ED Refunds; plus
  - (ii) seventy-five percent (75%) of Claim Stage SR&ED Refunds; plus
  - (iii) eight-five percent (85%) of Approval Stage SR&ED Refunds.
- (b) The Facility D Margin Limit shall be adjusted as at the date of each receipt by the Bank of a Borrowing Base Certificate and shall remain in effect until receipt by the Bank of a subsequent Borrowing Base Certificate; provided that if the Bank does not receive a Borrowing Base Certificate on or before the date required pursuant to Section 9.04(a), the Facility D Margin Limit shall be reduced to the lowest Facility D Margin Limit in the preceding twelve (12) months or such lower amount estimated by the Bank acting reasonably to be the Facility D Margin Limit determined in accordance with the formula in paragraph (a), until such time as a Borrowing Base Certificate is thereafter received by the Bank.

The Bank shall have no obligation to make any Advance under Facility D if after making such Advance the Outstanding Advances under Facility D would exceed the Facility D Margin Limit then in effect.

If at any time the aggregate amount of the Outstanding Advances under Facility D is in excess of the Facility D Margin Limit for any reason (specifically including as a result of a fluctuation in currency exchange rates), the Borrower agrees that immediately after receipt of a written request from the Bank it will make a Repayment under Facility D in order for the aggregate amount of the Outstanding Advances under Facility D to not exceed the Facility D Margin Limit.

## **5.08 Voluntary Repayments**

The Borrower may from time to time, upon three (3) Business Days’ prior written notice to the Bank, without penalty or fee, make a voluntary Repayment in respect of the Outstanding Advances under Facility D in a minimum amount and multiples of Fifty Thousand Dollars (\$50,000). The Facility D Margin Limit shall be automatically and permanently reduced by the amount of any such voluntary Repayment.

## **ARTICLE VI- HEDGING AGREEMENTS**

### **6.01 Hedging Agreements**

The Bank may in its sole discretion offer to enter into Hedging Agreements with the Borrower from time to time for the purpose of hedging against the risk of fluctuations in interest rates or currencies and not for speculative purposes, upon such terms and conditions as the Bank may in its discretion consider appropriate, subject to the following restrictions and limitations:

- (a) the Bank will not offer to enter into Hedging Agreements if a Default has occurred and is continuing;
- (b) Hedging Agreements may not be entered into for speculative purposes;
- (c) the Bank will not offer to enter into a Hedging Agreement having a duration of more than the earlier of (a) twelve (12) months from the date of such Hedging Agreement, and (b) the Maturity Date;
- (d) the aggregate of the notional amounts of all Hedging Agreements outstanding at any time shall not exceed One Million Dollars (\$1,000,000);
- (e) the aggregate of the Deemed Hedge Risk in respect of all Hedging Agreements outstanding at any time shall not at any time exceed One Million Dollars (\$1,000,000); if such limit is exceeded at any time, then upon receipt of a written request by the Bank, the Borrower shall immediately unwind all or any of such Hedging Agreements, as designated by the Bank, in order to comply with such limit;
- (f) the Borrower agrees to execute and deliver to the Bank all such Loan Documents as the Bank may reasonably require (for greater certainty, specifically including an ISDA master agreement); and
- (g) the Security shall secure all obligations owing under or in respect of each Hedging Agreement; and the priority of such obligations shall rank on a *pari passu* basis with all other Obligations as provided in Section 10.01.

## **ARTICLE VII- GENERAL CONDITIONS**

### **7.01 Matters relating to Interest**

- (a) Unless otherwise indicated, interest on any outstanding principal amount shall be calculated daily and shall be payable monthly in arrears on the last day of each and every month. If the last day of a month is not a Business Day, the interest payment due on such day shall be made on the next Business Day, and interest shall continue to accrue on the said principal amount and shall also be paid on such next Business Day. Interest shall accrue from and including the day upon which an Advance is made or is

deemed to have been made, and ending on but excluding the day on which such Advance is repaid or satisfied. Any change in the Prime Rate shall cause an immediate adjustment of the interest rate applicable to Canadian Dollar Loans and any change in the U.S. Base Rate shall cause an immediate adjustment of the interest rate applicable to U.S. Dollar Loans, in each case without the necessity of any notice to the Borrower.

- (b) Unless otherwise stated, in this Agreement if reference is made to a rate of interest, fee or other amount "per annum" or a similar expression is used, such interest, fee or other amount shall be calculated on the basis of a year of three hundred and sixty-five (365) or three hundred and sixty-six (366) days, as the case may be. If the amount of any interest, fee or other amount is determined or expressed on the basis of a period of less than one year of three hundred and sixty-five (365) or three hundred and sixty-six (366) days, as the case may be, the equivalent yearly rate is equal to the rate so determined or expressed, divided by the number of days in the said period, and multiplied by the actual number of days in that calendar year.
- (c) Notwithstanding any other provisions of this Agreement, if the amount of any interest, premium, fees or other monies or any rate of interest stipulated for, taken, reserved or extracted under the Loan Documents would otherwise contravene the provisions of section 347 of the *Criminal Code* (Canada), section 8 of the *Interest Act* (Canada) or any successor or similar legislation, or would exceed the amounts which the Bank is legally entitled to charge and receive under any law to which such compensation is subject, then such amount or rate of interest shall be reduced to such maximum amount as would not contravene such provision; and to the extent that any excess has been charged or received the Bank shall apply such excess against the Outstanding Advances and refund any further excess amount.
- (d) Any change in an Applicable Margin in such table shall be determined by the Bank based upon the information contained in the most recent Compliance Certificate received by the Bank and shall take effect commencing on the fifth (5<sup>th</sup>) Business Day following receipt of such Compliance Certificate by the Bank (in this paragraph called the "effective date"); but for greater certainty no changes will be made in respect of any Bankers' Acceptances, LIBOR Loans or Letters of Credit which are outstanding on the effective date. If the Bank does not receive a Compliance Certificate on the date required pursuant to Section 9.04(b), then from and after the date such Compliance Certificate was required to have been delivered the Applicable Margin in respect of each Availment Option under each Facility shall be the highest Applicable Margin set out in the said table, until the fifth (5<sup>th</sup>) Business Day following receipt by the Bank of the required Compliance Certificate.
- (e) Notwithstanding anything herein to the contrary, in the event that any reference rate of interest referred to herein is less than 0.00%, then such reference rate of interest shall be deemed to be 0.00% for the purposes of this Agreement.



## **7.02 Notice Periods**

- (a) The Borrower shall provide written notice to the Bank in respect of Advances, Rollovers, Conversions and Repayments as follows:
  - (i) three (3) Business Days' notice is required before 11:00 a.m. Toronto time in respect of an Advance relating to a Letter of Credit or a LIBOR Loan;
  - (ii) two (2) Business Days' notice is required before 11:00 a.m. Toronto time in respect of any other Advance, Rollover, Conversion or Repayment if the amount in question is equal to or greater than Ten Million Dollars (\$10,000,000); and
  - (iii) one (1) Business Days' notice is required before 11:00 a.m. Toronto time in respect of any other Advance, Rollover, Conversion or Repayment.
- (b) Notice of any Advance, Rollover, Conversion or Repayment referred to in paragraph (a) above shall be given in the form of a Draw Request, Rollover Notice, Conversion Notice or Repayment Notice, as the case may be, attached hereto as Exhibits. All such notices shall be given to the Bank at its address set out in Section 13.08.
- (c) If notice is not provided as contemplated herein with respect to the maturity of a Bankers' Acceptance or LIBOR Loan, the Bank may convert the Bankers' Acceptance upon its maturity into a Canadian Dollar Loan.
- (d) Any Conversion shall be subject to satisfaction of all of the terms and conditions applicable to the form of the new Availment Option as herein provided.

## **7.03 Minimum Amounts and procedures re Drawdowns, Rollovers, Conversions and Repayments**

Subject to the minimum amount provided for in respect of Capital Expenditures under Facility C:

- (a) Each request by the Borrower for an Advance, Conversion or Rollover in the form of a Canadian Dollar Loan shall be in a principal amount which is not less than Two Hundred Fifty Thousand Dollars (\$250,000).
- (b) Each request by the Borrower for an Advance, Conversion or Rollover in the form of a U.S. Base Rate Loan shall be in a principal amount which is not less than Two Hundred Fifty Thousand United States Dollars (US\$250,000).

## **7.04 Place of Advances, Repayments**

- (a) All payments received by the Bank on a Business Day before 12:00 noon Toronto time shall be treated as having been received by the Bank on that day. Payments made after such time on a Business Day shall be treated as having been received by the Bank on the next Business Day.

- (b) Whenever any payment shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Interest shall continue to accrue and be payable thereon as provided herein, until the date on which such payment is received by the Bank.
- (c) The Borrower hereby irrevocably authorizes the Bank to debit any account maintained by the Borrower with the Bank from time to time in order to pay any amount of principal, interest, fees, expenses or other amounts due and payable by the Borrower pursuant to this Agreement.

#### **7.05 Evidence of Obligations (Noteless Advances)**

The Bank shall open and maintain, in accordance with its usual practice, accounts evidencing the Obligations; and the information entered in such accounts shall constitute conclusive evidence of the Obligations absent manifest error. The Bank may, but shall not be obliged to, request the Borrower to execute and deliver from time to time such promissory notes as may be required as additional evidence of the Obligations.

#### **7.06 Determination of Equivalent Amounts**

Whenever it is necessary or desirable at any time to determine the Equivalent Amount in Canadian Dollars of an amount expressed in U.S. Dollars, or *vice-versa* (specifically including for greater certainty the determination of whether the Outstanding Advances under any Facility exceed the limit applicable to such Facility), the Equivalent Amount shall be determined by reference to the Exchange Rate on the date of such determination.

#### **7.07 Bankers' Acceptances**

The following provisions are applicable to Bankers' Acceptances issued by the Borrower and accepted by the Bank:

##### Payment of Bankers' Acceptances

- (a) The Borrower agrees to provide for each Bankers' Acceptance by payment of the full principal amount thereof to the Bank on the maturity of the Bankers' Acceptance or, prior to the maturity of the Bankers' Acceptance, upon the Acceleration Date. If the Borrower fails to provide for the payment of a Bankers' Acceptance accordingly, the Bank is authorized to debit the account of the Borrower in an amount required to pay the Bankers' Acceptance, notwithstanding that the Bankers' Acceptance may have been purchased by the Bank for its own account. Any amount so debited by the Bank and not recovered from the Borrower before 11:00 a.m. Toronto time on the same Business Day shall be immediately payable by the Borrower to the Bank together with interest on such amount calculated daily and payable monthly at the highest rate applicable to Advances under the Facility under which the Bankers' Acceptance was issued, from the

date the Bank debits the said amount until the Bank receives payment in full. The Borrower agrees not to claim any days of grace for the payment at maturity of Bankers' Acceptances and agrees to indemnify and save harmless the Bank in connection with all payments made by the Bank pursuant to Bankers' Acceptances accepted by the Bank, together with all reasonable costs and expenses incurred by the Bank in respect thereof. The Borrower hereby waives any defences to payment which might otherwise exist if for any reason a Bankers' Acceptance is held by the Bank for its own account at maturity.

#### Availability of Bankers' Acceptances

- (b) If at any time and from time to time the Bank determines, acting reasonably, that there no longer exists a market for Bankers' Acceptances for the term requested by the Borrower, or at all, the Bank shall so advise the Borrower, and in such event the Bank shall not be obliged to accept and the Borrower shall not be entitled to issue Bankers' Acceptances.

#### Power of Attorney

- (c) The Borrower hereby appoints the Bank as its true and lawful attorney to complete and issue Bankers' Acceptances on behalf of the Borrower in accordance with written, verbal or facsimile transmitted instructions provided by any of the Borrower's officers or by any other Person authorized to provide such instructions in accordance with the most recent banking resolution or certificate provided by the Borrower to the Bank. The Borrower hereby ratifies such completion and issuance of Bankers' Acceptances that its said attorney may do by virtue hereof. The Borrower agrees to indemnify and hold harmless the Indemnitees from and against any charges, complaints, costs, damages, expenses, losses or liabilities of any kind or nature which the Indemnitees may incur, sustain or suffer, arising from or by reason of the Indemnitees acting, or failing to act, as the case may be, on any verbal or facsimile transmitted instructions or on this power of attorney save and except for charges, complaints, costs, damages, expenses, losses or liabilities of any kind or nature arising from or by reason of the negligence or wilful misconduct of any such Indemnatee. The Borrower hereby agrees that each Bankers' Acceptance completed and issued and accepted by any employee of the Bank on behalf of the Borrower is a valid, binding and negotiable instrument of the Borrower as drawer and endorser. The Borrower agrees that the Bank's accounts and records will constitute *prima facie* evidence of the execution and delivery by the Borrower of Bankers' Acceptances absent manifest error. This power of attorney shall continue in force until written notice of revocation has been served upon the Bank by the Borrower at the Bank's address provided in this Agreement.

#### Commitments to Purchase and Sell Bankers' Acceptances

- (d) The Bank agrees to purchase each Bankers' Acceptance upon the issuance thereof at a discount from the face amount thereof calculated at the CDOR Rate for the period of

such Bankers' Acceptance in effect on the issuance date thereof. The Borrower agrees to sell all Bankers' Acceptances through the facilities of the Bank, and shall permit the Bank the first opportunity to purchase Bankers' Acceptances.

#### **7.08 Letters of Credit**

The following provisions are applicable to Letters of Credit issued by the Bank at the request of the Borrower:

- (a) Letters of Credit will not be issued for the purpose of guaranteeing obligations of any Person (except a Company). Each Letter of Credit shall have a term not in excess of one (1) year.
- (b) Each request for the issuance of a Letter of Credit shall be delivered by the Borrower to the Bank in accordance with the notice requirements set out in Section 7.02(a) herein, together with the Bank's customary form of application and indemnity agreement completed to its satisfaction and the proposed form of the Letter of Credit (which shall be satisfactory to the Bank) and such other certificates, documents and other papers and information as the Bank may reasonably request.
- (c) The obligation of the Borrower under this Section to reimburse the Bank for all drawings under each Letter of Credit shall be absolute, unconditional and irrevocable and shall be satisfied strictly in accordance with their terms, irrespective of:
  - (i) any lack of validity or enforceability of such Letter of Credit;
  - (ii) the existence of any claim, setoff, defence or other right which the Borrower or any other Person may at any time have against the beneficiary under such Letter of Credit, the Bank (other than the defence of payment in accordance with the terms of this Agreement or a defence based on the negligence or wilful misconduct of the Bank) or any other Person in accordance with this Agreement or other transaction;
  - (iii) any draft or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and
  - (iv) any other circumstance or event whatsoever, whether or not similar to any of the foregoing (other than circumstances or events which arise from or are caused by the negligent or wilful misconduct of the Bank).
- (d) In making any payment under any Letter of Credit (i) the Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of

Credit, whether or not the amount due to the beneficiary equals the amount of such draft, and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any non-compliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, not be deemed wilful misconduct or negligence of the Bank. The Bank shall notify the Borrower promptly after payment under any Letter of Credit is requested, whether such payment is accepted or denied.

- (e) The Bank and its correspondents may accept and act upon the name, signature, or act of any party purporting to be the executor, administrator, receiver, trustee in bankruptcy or other legal representative of any party designated in any Letter of Credit in the place of the name, signature, or act of such party.

## **7.09 LIBOR Loans**

The following provisions are applicable to LIBOR Loans made by the Bank to the Borrower:

### Drawdown Procedures

- (a) Upon receipt by the Bank from the Borrower of a Drawdown Notice, Conversion Notice or Rollover Notice in respect of a LIBOR Loan in accordance with Section 7.02(a), the Bank will forthwith advise the Borrower of the LIBO Rate, such rate to be determined as at approximately 11:00 a.m. London, England time, two (2) Business Days before the commencement of the LIBOR Period for such LIBOR Loan. If the Bank determines that Eurodollar deposits for the relevant amount and LIBOR Period requested by the Borrower are not being or will not be offered to the Bank in the LIBOR Market or if for any other reason the Bank is unable to determine the applicable LIBO Rate or if for any reason the LIBOR Period requested by the Borrower is not reasonably available to the Bank, then the Bank shall notify the Borrower of the foregoing and the Bank shall not be obliged to make the requested LIBOR Loan; and if such determination takes place after the Bank has already made an Advance in the expectation that such Advance will constitute a LIBOR Loan for the LIBOR Period requested, the Bank may by written notice to the Borrower require the Borrower to select another LIBOR Period or convert the said LIBOR Loan into a U.S. Dollar Loan.

### Interest Payment Dates

- (b) Interest in respect of any LIBOR Loan shall be calculated on the basis of a year of three hundred and sixty (360) days. Interest in respect of any LIBOR Loan with a LIBOR Period of between thirty (30) and ninety (90) days (inclusive) shall be payable at the time the principal amount of such LIBOR Loan is payable. Interest in respect of any LIBOR Loan

with a LIBOR Period longer than ninety (90) days shall be payable in arrears every ninety (90) days commencing on the 90th day following the commencement of such LIBOR Period, and also at the time the principal amount of such LIBOR Loan is payable.

Laws Applicable to LIBOR Loans

- (c) The Borrower acknowledges that the ability of the Bank to maintain or provide any LIBOR Loan and/or to charge interest on any LIBOR Loan at a LIBO Rate is and will be subject to any statute, law, regulation, rule or direction by any Governmental Authority having jurisdiction which may prohibit or restrict or limit such loans and/or such interest. The Borrower agrees that the Bank shall have the right to comply with any such requirement and, if the Bank acting reasonably determines it to be necessary, convert any LIBOR Loan to a U.S. Dollar Loan or require immediate repayment of all LIBOR Loans and accrued interest thereon.

**7.10 No Repayment of Bankers' Acceptances or LIBOR Loans Prior to Maturity.**

- (a) The Borrower acknowledges that Advances made by way of Bankers' Acceptances and LIBOR Loans may not be repaid prior to the maturity thereof. If any amount is paid by the Borrower or any other Person to the Bank in respect of a Bankers' Acceptance which has not yet matured, the Bank shall have no obligation to hold such amount in an interest bearing account, but any interest earned thereon shall be applied by the Bank against such portion of the Obligations as the Bank may determine in its discretion.
- (b) If there are any Bankers' Acceptances or LIBOR Loans outstanding at the time a Facility is terminated (either by the Borrower or by the Bank), the Borrower shall immediately deposit funds with the Bank in an amount equal to the aggregate of the face amount of all Bankers' Acceptances outstanding under such Facility plus the principal amount of all LIBOR Loans outstanding under such Facility plus all interest which will accrue on LIBOR Loans to the maturity thereof.
- (c) The Borrower may in its discretion from time to time deposit funds with the Bank and instruct the Bank to apply such funds on account of any outstanding Bankers' Acceptance or LIBOR Loan upon the maturity thereof, provided that the maturity date of such Bankers' Acceptance or LIBOR Loan is not later than ninety (90) days after the date such funds are deposited.
- (d) If the Facilities are terminated by the Borrower, the Bank agrees that it shall release the Security promptly after receipt of: (i) funds deposited by the Borrower pursuant to paragraph (b) above in an amount equal to the aggregate of the face amount of all outstanding Bankers' Acceptances plus the principal amount of all outstanding LIBOR Loans plus all interest which will accrue on LIBOR Loans to the maturity thereof; (ii) an amount determined by the Bank in its discretion, acting reasonably, to be sufficient to cover the Borrower's potential liability under all outstanding Hedging Obligations and

Service Agreements; and (iii) the full and final repayment and satisfaction of all other Obligations.

- (e) The Borrower acknowledges and agrees that all funds deposited by the Borrower with the Bank pursuant to this Section 7.10 shall be subject to (i) a First-Ranking Security Interest in favour of the Bank; and (ii) a right of set-off pursuant to Section 12.04.
- (f) The Bank shall have no obligation to invest or pay interest on any funds deposited by the Borrower referred to in this Section 7.10.

#### **7.11 Withholding Tax Gross-Up**

Except as otherwise required by law, all payments made by the Borrower to the Bank hereunder shall be made without withholding for or on account of any present or future taxes imposed by or within the jurisdiction in which the Borrower is domiciled, any jurisdiction from which the Borrower makes any payment or any other jurisdiction, or (in each case) any political subdivision or taxing authority thereof or therein (other than taxes in respect of the net income, assets, capital of the Bank, or franchise taxes imposed upon the Bank). If any such withholding is required by law, the Borrower shall make the withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay to the Bank such additional amount as may be necessary to ensure that the net amount actually received by the Bank (after payment of such taxes including any taxes on such additional amount paid) is equal to the amount which it would have received if no amounts had been withheld. The Borrower's obligations under this Section shall survive the termination of this Agreement. Notwithstanding the foregoing, however, the Borrower shall have no obligation to pay any additional amount under this Section to any assignee of the Bank if the assignment to such assignee was made by the Bank in contravention of its obligations under Section 13.11. The provisions of this Section shall survive the termination of this Agreement and the repayment of all Obligations.

#### **7.12 Increased Costs**

If in respect of any change in or introduction of any law, regulation, order, rule, request or directive (whether or not having the force of law but of a kind which is intended to be generally complied with by all Schedule I Canadian Banks and not specifically the Bank) or in the interpretation thereof by any authority charged with the administration thereof or by any court of competent jurisdiction:

- (a) the Bank incurs a cost (which it would not otherwise have incurred but excluding any costs arising from or resulting from the negligent or wilful misconduct of the Bank), becomes subject to a tax, or becomes liable to make a payment (calculated with reference to the amount outstanding or available under a Facility) with respect to continuing to provide or maintain such Facility (other than a tax imposed on the income of the Bank);

- (b) any reserve, special deposit or similar requirement is imposed or increased with respect to a Facility increasing the cost thereof to the Bank; or
- (c) the Bank suffers or will suffer a reduction in the rate of return on its overall capital (other than a reduction by reason of an income tax referred to in (a) above) as a result of the amount of the capital that the Bank is required to maintain being increased or of any change in the manner in which the Bank is required to allocate its resources;

then the Borrower shall, upon receipt of written notice from the Bank, pay to the Bank such amount as will compensate the Bank for and will indemnify the Bank against such increases in cost or reductions of rate of return (the “**Additional Compensation**”) accruing from and after the day that is three (3) months after the date of receipt of such notice. The Bank shall provide the Borrower with a photocopy of the relevant law, regulation, order, rule or directive and provide the Borrower with a certificate of a duly authorized representative of the Bank setting out the amount and basis for the amount of such Additional Compensation and basis of calculation thereof, which shall be conclusive and binding absent manifest error.

#### **7.13 Illegality**

The obligation of the Bank to make Advances hereunder shall be suspended if and for so long as it is unlawful or impossible for the Bank to maintain the Facilities or make Advances hereunder as a result of the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation that applies to all Schedule I Canadian Banks and not specifically the Bank, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency that applies to all Schedule I Canadian Banks and not specifically the Bank.

#### **7.14 Anti-Money Laundering**

The Borrower acknowledges that pursuant to AML Legislation the Bank may be required to obtain, verify and record information regarding the Companies and their respective directors, authorized signing officers, direct or indirect shareholders, partners or other persons in Control of the Companies and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including any supporting documentation and other evidence, as may be reasonably requested by the Bank, or any prospective assignee or participant of the Bank, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

#### **7.15 Terrorist Lists**

Each Company is and will remain in compliance in all material respects with all Canadian economic sanctions laws and implementing regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Criminal Code* (Canada), the *United Nations Act*



(Canada) and all similar applicable anti-money laundering and counter-terrorism financing provisions and regulations issued pursuant to any of the foregoing. No Company (i) is a Person designated by the Canadian government on any list set out in the United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism or the *Criminal Code* (collectively, the “**Terrorist Lists**”) with which a Canadian Person cannot deal with or otherwise engage in business transactions, (iii) is a Person who is otherwise the target of Canadian economic sanctions laws or (iv) is Controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person or entity on a Terrorist List or a foreign government that is the target of Canadian economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under Canadian Law.

#### **ARTICLE VIII - REPRESENTATIONS AND WARRANTIES**

##### **8.01 Representations and Warranties**

The Borrower hereby represents and warrants to the Bank as follows:

- (a) Corporate Status – Each Company has been duly incorporated (or amalgamated) and organized and is validly subsisting under the laws of its jurisdiction of incorporation and is up-to-date in respect of all material corporate filings.
- (b) Corporate Information – Schedule 8.01(b) attached hereto contains a true and complete list of all Companies and the following information in respect of each Company: all prior names and predecessor corporations, jurisdiction of incorporation, registered office and chief executive office, principal place of business, all locations at which it has places of business or owns assets, the number and classes of its issued and outstanding shares, and a list of all shareholders including the number and class of shares held by each.
- (c) Solvency – Each Company is Solvent.
- (d) No Pending Corporate Changes – Except as set out in Schedule 8.01(d), no Person has any agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, including convertible securities, warrants or convertible obligations of any nature, for the purchase of any properties or assets of any Company out of the ordinary course of business or for the purchase, subscription, allotment or issuance of any debt or equity securities of any Company.
- (e) No Conflicts under Material Agreements or Material Permits - The execution and delivery by each Company of those Loan Documents to which it is a party, and the performance of its obligations thereunder, will not conflict with, result in a breach of or require any approval or consent under any Material Agreement or Material Permit, other than consents or approvals which have been obtained without imposition of any material conditions.

- (f) No Conflict with Charter Documents – There are no provisions in the charter documents or by-laws of any Company or in any unanimous shareholder agreement affecting any of them which restrict or limit its powers to borrow money, issue debt obligations, guarantee the payment or performance of the obligations of others, or otherwise encumber all or any of its property, now owned or subsequently acquired.
- (g) Purchase Documents and Loan Documents – The Borrower has the corporate capacity, power, legal right and authority to purchase the Purchased Shares and to enter into and perform its obligations under the Purchase Documents. The execution and delivery of the Purchase Documents by the Borrower and the performance of its obligations therein have been duly authorized by all necessary corporate action and constitute legal, valid and binding obligations of the Borrower, enforceable against it in accordance with the terms and provisions thereof, subject to laws of general application affecting creditors' rights and the discretion of the court in awarding equitable remedies. The Borrower has the corporate capacity, power, legal right and authority to borrow from the Bank, perform its obligations under this Agreement and provide the Security required to be provided by it hereunder. The execution and delivery of the Loan Documents by the Companies and the performance of their respective obligations therein have been duly authorized by all necessary corporate action. This Agreement and the other Loan Documents constitute legal, valid and binding obligations of the Companies, enforceable against them in accordance with the terms and provisions thereof, subject to laws of general application affecting creditors' rights and the discretion of the court in awarding equitable remedies.
- (h) Conduct of Business; Material Permits - Except as disclosed in Schedule 8.01(h) attached hereto, each Company is in compliance in all material respects with all applicable Laws of each jurisdiction in which it carries on business and is duly licensed, registered and qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the property owned or leased by it make such qualification necessary (except to the extent that the absence of any such qualification has no Material Adverse Change on the Companies or their respective businesses); and all such licences, registrations and qualifications are valid and subsisting and in good standing. Attached hereto, as Schedule 8.01(h), is a true and complete list of all Material Permits as at the date of this Agreement, including a description of the nature of each Material Permit.
- (i) Ownership of Assets; Specific Permitted Liens - Each Company owns, possesses and has a good and marketable title to its undertaking, property and assets, free and clear of any and all Liens except for Permitted Liens. No Company has any commitment or obligation (contingent or otherwise) to grant any Liens except for Permitted Liens. No event has occurred which constitutes, or which with the giving of notice, lapse of time or both would constitute, a material default under any Permitted Lien. Schedule 8.01(i) attached hereto contains a true and complete list of the Specific Permitted Liens.

- (j) Owned Real Properties - Schedule 8.01(j) attached hereto contains a true and complete list of the Owned Real Properties.
- (k) Leased Real Properties - Schedule 8.01(k) attached hereto contains a true and complete list of the Leased Real Properties and the leases relating thereto, including in respect of each lease: the names of the parties; the description of the Leased Real Property; the rent and other amounts payable under the lease; and the term and all renewal options available.
- (l) Intellectual Property - Each Company owns, licences or otherwise has the right to use all licenses, franchises, permits, registrations, patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights and other forms of intellectual property material to the conduct of its business (in the manner in which it is currently used in the conduct of its business), each of which, to its knowledge, is in good standing in all material respects; and to its knowledge has the right to use such intellectual property without violation of any rights of others with respect thereto. Attached hereto as Schedule 8.01(l) is a list of all such material intellectual property, including a description of the nature of such rights, but excludes any 'shrink wrap', "click wrap" or "off the shelf" software not specially developed by or for a Company and to which a Company has a right to use pursuant to standard license agreements.
- (m) Insurance - The Companies have placed insurance, including property, boiler and machinery, business interruption and liability insurance, in appropriate amounts and for appropriate risks as would be considered commercially reasonable for similar businesses. Attached hereto as Schedule 8.01(m) is a true and complete list of all insurance policies held by the Companies.
- (n) Material Agreements - Schedule 8.01(n) attached hereto contains a true and complete list of all Material Agreements to which the Companies are party, including a description of the nature of each Material Agreement. Each said Material Agreement is in good standing and in full force and effect; and the Companies and to its knowledge the other parties thereto are not in material breach of any of the terms or conditions contained therein.
- (o) Labour Agreements - Schedule 8.01(o) attached hereto contains a true and complete list of all collective agreements presently in effect between the Companies and any labour union or employee association. Except as listed in Schedule 8.01(o), the Companies are not under any obligation to assume any such contracts to or conduct negotiations with any labour union or employee association with respect to any future agreements, and it is not aware of any current attempts to organize or establish any such labour union or employee association.

- (p) Environmental Laws – Except to the extent disclosed in Schedule 8.01(p) attached hereto:
- (i) each Company and its business, operations, assets, equipment, property, leaseholds and other facilities is in compliance in all material respects with all Requirements of Environmental Law, specifically including all Requirements of Environmental Law concerning the storage and handling of Hazardous Materials;
  - (ii) each Company holds all material permits, licenses, certificates and approvals from Governmental Authorities which are required in connection with air emissions, discharges to surface or groundwater, noise emissions, solid or liquid waste disposal, the use, generation, storage, transportation or disposal of Hazardous Materials and all other Requirements of Environmental Law;
  - (iii) there has been no material emission, spill, release, or discharge into or upon the air, soils (or any improvements located thereon), surface water or groundwater or the sewer, septic system or waste treatment, storage or disposal system servicing the premises, of any Hazardous Materials at or from any of the Owned Real Properties or Leased Real Properties in violation of Environmental Laws; provided however that to the extent the representation in this clause (iii) relates to the period preceding the Closing Date, in connection with a Leased Real Property concerning Thinkwrap, and the period preceding the Spark Red Closing Date, in connection with a Leased Real property concerning Spark Red, such representation is made to the best of the Borrower's knowledge only;
  - (iv) no complaint, order, directive, claim, citation, or notice from any Governmental Authority or any other Person has been received by any Company with respect to any of the Properties in respect of air emissions, spills, releases, or discharges to soils or improvements located thereon, surface water, groundwater or the sewer, septic system or waste treatment, storage or disposal systems servicing any of the Owned Real Properties or Leased Real Properties, noise emissions, solid or liquid waste disposal, the use, generation, storage, transportation, or disposal of Hazardous Materials or other Requirements of Environmental Law affecting the Properties;
  - (v) there are no legal or administrative proceedings, investigations or claims now pending, or to the Borrower's knowledge, threatened, with respect to the presence on or under, or the discharge, emission, spill, radiation or disposal into or upon any of the Owned Real Properties or Leased Real Properties, the atmosphere, or any watercourse or body of water, of any Hazardous Material; nor are there any material matters under discussion between any Company and

any Governmental Authority relating thereto; and to the Borrower's knowledge, there is no factual basis for any such proceedings, investigations or claims; and

- (vi) the Companies have no material indebtedness, obligation or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup or disposal of any Hazardous Materials (for greater certainty, including any such Hazardous Materials which were located on or affected the Owned Real Properties or Leased Real Properties before the Closing Date), including without limitation any such indebtedness, obligation, or liability under any Requirements of Environmental Law regarding such storage, treatment, cleanup or disposal.
- (q) No Litigation - Except as disclosed in Schedule 8.01(q) attached hereto, there are no actions, suits or proceedings now pending, or to the Borrower's knowledge, threatened, against any Company in any court or before or by any federal, provincial, municipal or other Governmental Authority which if determined against any Company could reasonably be expected to result in a judgment in excess of One Hundred Thousand Dollars (\$100,000).
- (r) Pension Plans – The Companies have not established any Pension Plans except as disclosed in Schedule 8.01(r) attached hereto, and no Pension Plan listed therein is a defined benefit plan. No steps have been taken to terminate any such Pension Plan (in whole or in part), no contribution failure has occurred with respect to any such Pension Plan sufficient to give rise to a Lien under any applicable Laws of any jurisdiction, and no condition exists and no event or transaction has occurred with respect to any such Pension Plan which might result in the incurrence by any Company of any material liability, fine or penalty. Each such Pension Plan is in compliance in all material respects with all applicable pension benefits and tax laws, (i) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Laws and the terms of such Pension Plan have been made in accordance with all applicable Laws and the terms of such Pension Plan, (ii) all liabilities under such Pension Plan are funded, on a going concern and solvency basis, in accordance with the terms of the respective Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities and the most recent actuarial report filed with respect to the Pension Plan, and (iii) no event has occurred and no conditions exist with respect to any such Pension Plan that has resulted or could reasonably be expected to result in such Pension Plan having its registration revoked or refused for the purposes of any applicable pension benefits or tax laws or being placed under the administration of any relevant pension benefits regulatory authority or being required to pay any taxes or penalties under any applicable pension benefits or tax laws.

- (s) Financial Statements - The most recent Year-end Financial Statements and Interim Financial Statements delivered to the Bank have been prepared in accordance with GAAP on a basis which is consistent with the previous fiscal period, and present fairly:
- (i) the assets and liabilities of the Borrower and its financial condition as at the dates therein specified;
  - (ii) the sales, earnings and results of the Borrower's operations during the periods covered thereby; and
  - (iii) in the case of the Year-end Financial Statements, the Borrower's changes in financial position;
- and no Material Adverse Change has occurred since the dates of the said Year-end Financial Statements and Interim Financial Statements, as the case may be.
- (t) No Guarantees – No Guarantees have been granted by any Company except Permitted Guarantees.
- (u) Tax Returns – For the period up to and including the Closing Date, to the Borrower's knowledge, and at all times thereafter, (A) each Company has (i) duly and timely filed all tax returns required to be filed by it, and has paid all taxes which are due and payable by it, (ii) paid all other taxes, charges, penalties and interest due and payable under or in respect of all assessments and re-assessments of which it has received written notice, and (B) there are no actions, suits, proceedings, investigations or claims pending (or to the knowledge of any Company, threatened) against any Company in respect of taxes, governmental charges or assessments or any material matters under discussion with any Governmental Authority relating to taxes, governmental charges or assessments asserted by any such Governmental Authority.
- (v) Statutory Liens - For the period up to and including the Closing Date, to the Borrower's knowledge, and at all times thereafter, each Company has remitted on a timely basis all amounts required to have been withheld and remitted (including withholdings from employee wages and salaries relating to income tax, employment insurance and Canada Pension Plan contributions), goods and services tax and all other amounts which if not paid when due could result in the creation of a Statutory Lien against any of its property, except for Permitted Liens.
- (w) No Default, etc. - No Default, Event of Default or Material Adverse Change has occurred and is continuing.
- (x) Financing of Purchase Transactions - Attached hereto as Schedule 8.01(x) is a true and correct summary of the Purchase Transactions and the sources and application of funds

relating thereto. After the completion of the Purchase Transactions, each Company will remain Solvent.

- (y) Full Disclosure – All factual information furnished by or in respect of the Companies to the Bank by the Borrower for the purposes of or in connection with this Agreement was true and correct in all material respects as at the date such information is stated to have been given, and is not incomplete by omitting to state any material fact necessary to make the statements contained in such information not misleading in any material respect in light of the circumstances under which the statements contained in such information were made. The financial projections, forecasts and pro forma financial information furnished by the Borrower to the Bank have been prepared on the basis of assumptions believed by the Companies in good faith to be reasonable as at the date such financial information was given. There are no facts known to the Borrower which could materially adversely affect the Companies' ability to observe and perform their obligations under the Loan Documents.
- (z) Representations and Warranties in Purchase Agreements – The Borrower is not aware that any representation and warranty made by the Vendors in the Purchase Agreements is incorrect or incomplete in any material respect.
- (aa) Bank Accounts – Schedule 8.01(aa) attached hereto contains a true and complete list of all bank accounts maintained by or for the benefit of the Companies and the following information in respect of each such account: the financial institution which maintains such account, the account and transit number for each such account and a description of the purpose of each such account.

## **8.02 Survival of Representations and Warranties**

The Borrower acknowledges that the Bank is relying upon the foregoing representations and warranties in connection with the establishment and continuation of the Facilities and the entering into of any Hedging Agreements with the Borrower, notwithstanding any investigations which may be made by the Bank.

## **ARTICLE IX - COVENANTS**

### **9.01 Positive Covenants**

The Borrower hereby covenants and agrees with the Bank that it will, and will cause each of the other Companies to:

- (a) Prompt Payment - pay all principal, interest and other amounts due hereunder at the times and in the manner specified herein;

- (b) Preservation of Corporate Existence - maintain its corporate existence in good standing, continue to carry on its business, preserve its rights, powers, licences, privileges, franchises and goodwill, exercise any rights of renewal or extensions of any leases, licences, concessions, franchises or any other rights whatsoever which are material to the conduct of its business, maintain all qualifications to carry on business in each jurisdiction in which such qualifications are required (except to the extent that the failure to obtain any such qualification would have no material adverse effect on of any Companies or their respective businesses) and carry on and conduct its business in a proper and efficient manner so as to protect its property and income; and not materially change the nature of its business;
- (c) Compliance with Laws - comply in all material respects with all applicable Laws (specifically including, for greater certainty, all applicable Requirements of Environmental Law except to the extent disclosed in Schedule 8.01(p) attached hereto), use the proceeds of all Advances hereunder for legal and proper purposes, and obtain and maintain in good standing all material leases, licences, permits and approvals from any and all Governmental Authorities required in respect of its business and operations;
- (d) Payment of Taxes, etc. - pay when due all material rents, taxes, rates, levies, assessments and governmental charges, fees and dues lawfully levied, assessed or imposed in respect of its property and deliver to the Bank upon request receipts evidencing such payments; except for any such amounts being contested in good faith and in respect of which reserves have been established as reasonably required by the Bank;
- (e) Maintain Records - maintain adequate books, accounts and records in accordance with GAAP;
- (f) Maintenance of Property - keep its property and assets in good repair and working condition, reasonable wear and tear excepted; provided however that surplus or obsolete assets may be disposed of as permitted pursuant to Section 9.02(c);
- (g) Inspection - permit the Bank and its employees and agents (during normal business hours and in a manner which does not materially interfere with its business) to enter upon (subject to any restrictions contained in any lease or sublease of any Leased Real Property) and inspect its properties, assets, books and records from time to time and make copies of and abstracts from such books and records, and discuss its affairs, finances and accounts with its officers, directors, accountants and auditors, for the purpose of determining if the Companies are complying with the terms of this Agreement;
- (h) Insurance Coverage - obtain from financially responsible insurance companies and maintain liability insurance, all-risks property insurance on a replacement cost basis (less a reasonable deductible not to exceed amounts customary in the industry for similar



businesses and properties), business interruption insurance, errors and omissions insurance, professional liability insurance and insurance in respect of such other risks as the Bank may reasonably require from time to time; all of which policies of insurance shall be in such amounts as may be reasonably required by the Bank and shall include a standard mortgage clause approved by the Insurance Bureau of Canada (or equivalent clause applicable in the United States in connection with any United States insurance) in respect of property insurance; and the Bank's interest shall be noted as an additional insured on all liability insurance policies and as first mortgagee and loss payee on all other insurance policies (specifically including business interruption insurance); and the Bank shall be provided with certificates of insurance and certified copies of such policies from time to time upon request;

- (i) Perform Obligations - fulfil all covenants and obligations required to be performed by it under those Loan Documents to which it is a party and any other agreement or undertaking now or hereafter made between it and the Bank;
- (j) Notice of Certain Events - provide prompt notice to the Bank of each of the following: (i) the occurrence of any Default or Event of Default; (ii) the incorrectness of any representation or warranty contained herein in any material respect; (iii) any material contravention of or material non-compliance by any Company with any terms and conditions of any Loan Document; (iv) any Material Adverse Change; (v) litigation affecting the Companies; (vi) any material labour dispute affecting any Company, and any discussions or other activity of which it is aware relating to the possible establishment of a labour union or employee association by the employees of any Company; (vii) any notice of a payment default or other material default in respect of any Funded Debt of any Company having a principal amount equal to or greater than Fifty Thousand Dollars (\$50,000); (viii) any notice in respect of the termination or suspension of, or a material default under, any Material Agreement or Material Permit; and (ix) any material notices or other communications received from the Vendor under or relating to any of the Purchase Documents;
- (k) Bank Accounts and Service Agreements – by no later than 120 days from the date of the first Advance, maintain all of its bank accounts and Service Agreements with the Bank or its Affiliates; except that any Company may maintain bank accounts and enter into Service Agreements with other banks in jurisdictions where the Bank does not offer banking services, upon prior written notice to the Bank;
- (l) Equity Issuance Notice – provide the Bank with prior written notice of any Equity Issuance, provided that the net proceeds of such contemplated Equity Issuance is projected to be equal to or greater than Two Hundred and Fifty Thousand Dollars (\$250,000);

- (m) Eventi Proceeds – the Borrower shall: (i) as of the Effective Date, make a Repayment to the Bank in an amount equal to or greater than \$400,000 from the Eventi Proceeds; and (ii) on or after the Effective Date, apply \$350,000 from the Eventi Proceeds toward the funding of Capital Expenditures or the Deferred Development Costs; and
- (n) Further Assurances - provide the Bank with such further information, financial data, documentation and other assurances as the Bank may reasonably require from time to time in order to ensure ongoing compliance with the terms of this Agreement.

## **9.02 Negative Covenants**

The Borrower hereby covenants and agrees with the Bank that it will not, and will ensure that each of the other Companies does not, without the prior written consent of the Bank (which consent may be withheld in the sole discretion of the Bank):

- (a) Funded Debt - create, incur or assume any Funded Debt, except Permitted Funded Debt;
- (b) Liens - grant or suffer to exist any Liens in respect of any of its property, except Permitted Liens;
- (c) Disposition of Assets - directly or indirectly sell or otherwise dispose of any of its assets, except as follows:
  - (i) inventory may be sold in the ordinary course of its business;
  - (ii) assets may be sold or transferred by one Company to another (but for greater certainty, only if the transferee has provided all Security required to be provided by it hereunder); and
  - (iii) assets which are worn or obsolete or immaterial to its business may be sold, provided that the value of such assets shall not exceed the aggregate of Five Hundred Thousand Dollars (\$500,000) in any Fiscal Year; and provided further that Section 4.04(c) shall apply to each such sale;
- (d) Guarantees - become obligated under Guarantees, except Permitted Guarantees;
- (e) Investments - make or acquire any Investments, except as follows:
  - (i) Investments by any Company in any Person which was already a Company immediately prior to such Investment, provided that the Company in which the Investment is made has provided all Security required to be provided by it hereunder; and

- (ii) Investments in Cash Equivalents, provided that if required by the Bank, the Borrower shall provide such additional items of Security as the Bank may require in order that such Investments shall be specifically pledged to the Bank;
- (f) Capital Expenditures – incur Capital Expenditures, except with the prior written consent of the Bank, acting reasonably, or as follows:
  - (i) for the Fiscal Year ending December 31, 2018, the Companies may collectively incur Capital Expenditures in the maximum aggregate amount of Three Million One Hundred Thousand Fifty Dollars (\$3,150,000); and
  - (ii) for each Fiscal Year thereafter, the Companies may collectively incur Capital Expenditures in the maximum aggregate amount of one hundred and fifteen percent (115%) of the forecasted Capital Expenditures set out in the Annual Business Plan submitted by the Borrower and approved by the Bank in respect of such Fiscal Year,

if both immediately before and immediately after incurring any such Capital Expenditure in any such Fiscal Year, no Default or Event of Default has occurred and is continuing;
- (g) Distributions - make any Distributions, except that:
  - (i) Distributions by the Companies to each other may be made if both immediately before and immediately after each such Distribution no Default or Event of Default has occurred and is continuing;
  - (ii) whether or not a Default or an Event of Default has occurred and is continuing, Distributions by the Companies in respect of Earn-outs may be made, provided that such Earn-outs are paid from sources other than from the proceeds from any Advance; and
  - (iii) Distributions by the Companies in respect of Earn-outs may be paid from the proceeds from an Advance under Facility C, subject to compliance with Section 11.03;
- (h) Subordinated Debt – make any payment in respect of principal, interest, fees or any other amounts in respect of any Subordinated Debt except to the extent expressly permitted under the subordination and postponement agreement relating thereto, and not agree or consent to any material amendment in respect of the terms and conditions of any Subordinated Debt;
- (i) Corporate Changes - not materially change the nature of its business, maintain a place of business or any material assets in any jurisdiction other than the provinces of Canada or the states of the United States of America where such assets are located at the

Closing Date, or enter into any transaction whereby all or a substantial portion of its undertaking, property and assets would become the property of any other Person, whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise, in each case without the prior written consent of the Bank in its sole discretion; except that prior to the occurrence of a Default or an Event of Default any Company may from time to time do any one or more of the following: change its name; amend its articles of incorporation (provided that such amendment does not directly or indirectly affect its ability to borrow, give security or give Guarantees and does not interfere with or restrict its ability to observe and perform all of its obligations hereunder); amalgamate with any other Company; issue shares to another Company; transfer all or any shares it holds in the capital of any other Company to another Company; transfer all or any portion of its assets to any other Company; or voluntarily dissolve after having transferred all of its assets to another Company; provided that the Borrower shall give not less than twenty (20) days' prior written notice of any such action to the Bank and shall concurrently with any such action provide or cause to be provided to the Bank all additional or replacement items of Security (including legal opinions) as the Bank may reasonably require in connection therewith;

- (j) Fiscal Year - change its Fiscal Year (which for greater certainty presently ends on the last day of December in each year);
- (k) Auditors – change its auditors to a firm that is not a nationally recognized auditing firm, except with the prior written consent of the Bank which shall not be unreasonably withheld;
- (l) Use of Advances - use the proceeds of any Advance for any purposes other than those expressly contemplated in this Agreement;
- (m) Dealing with Related Persons - enter into any contract with any Related Person unless all terms and conditions thereof (specifically including the price) are commercially reasonable, or make a loan to any Related Person other than a loan to another Company which is permitted pursuant to paragraph 9.02(e);
- (n) Hedging Agreements - enter into or be a party to any Hedging Agreement with any Person other than the Bank; or
- (o) Eventi Loan Documents – amend, cause to amend or permit to be amended any of the Eventi Loan Documents, if any such amendment would have the effect of (i) increasing the indebtedness of the Borrower thereunder or the interest or fees payable thereunder, (ii) accelerating the maturity date, or (iii) modifying the scheduled principal repayment dates thereunder.

### 9.03 Financial Covenants

The Borrower agrees to maintain, on a consolidated basis, the financial ratios and amounts set out below, on the Closing Date and at the end of each subsequent Fiscal Quarter:

- (a) from January 1, 2019 to September 30, 2019, the Senior Funded Debt to EBITDA Ratio shall not be greater than 3.25 to 1.0;
- (b) from September 30, 2019 and onward, the Senior Funded Debt to EBITDA Ratio shall not be greater than 3.00 to 1.0;
- (c) the Fixed Charge Coverage Ratio shall not be less than 1.25 to 1 (provided that for greater certainty, prior to March 31, 2019, Deferred Development Costs shall be zero (\$0)); and
- (d) the Working Capital Ratio shall not be less than 1.25 to 1.

### 9.04 Reporting Requirements

The Borrower shall deliver (in accordance with Section 13.08) to the Bank the following financial and other information at the times indicated below:

- (a) a Borrowing Base Certificate certified by the Senior Financial Officer of the Borrower or other senior officer of the Borrower acceptable to the Bank in the form of Exhibit "F" attached hereto as at the end of each month, by no later than the thirtieth (30<sup>th</sup>) day after the end of such month, containing (i) an aged summary of Accounts including domicile of account debtors, intercompany accounts, doubtful accounts, accounts in dispute, contra accounts, holdbacks and any deposits received from account debtors which remain outstanding at the report date; and (ii) an aged summary of accounts payable of the Companies;
- (b) the Interim Financial Statements on a consolidated basis by:
  - (i) the forty-fifth (45<sup>th</sup>) day after the end of each Fiscal Quarter in each Fiscal Year, other than the fourth Fiscal Quarter; and
  - (ii) the sixtieth (60<sup>th</sup>) day after the end of the fourth Fiscal Quarter in each Fiscal Year,

accompanied by, in each case, a Compliance Certificate certified by the Senior Financial Officer or other senior officer of the Borrower acceptable to the Bank in the form of Exhibit "E" attached hereto which shall evidence compliance with all financial ratios and amounts set out in Section 9.03 herein in respect of such Fiscal Quarter (including all supporting calculations);

- (c) the annual Year-end Financial Statements, accompanied by an unqualified opinion of the Borrower's auditor with respect thereto, a copy of such auditor's letter to management and related management discussion and analysis, by the one hundred and twentieth (120<sup>th</sup>) day after the end of each Fiscal Year accompanied by a Compliance Certificate certified by the Senior Financial Officer or other senior officer of the Borrower acceptable to the Bank in the form of Exhibit "E" attached hereto which shall evidence compliance with all financial ratios and amounts set out in Section 9.03 (including supporting calculations) herein in respect of such Fiscal Year and shall include an analysis of any material variances in the Borrower's financial results in such Fiscal Year from the projections contained in the Borrower's most recent Annual Business Plan presented to the Bank and the calculation of Excess Cash Flow of the Borrower;
- (d) by the sixtieth (60<sup>th</sup>) day after the start of each Fiscal Year business plan for the Companies on a consolidated basis in respect of such Fiscal Year prepared in accordance with GAAP, which shall disclose all material assumptions utilized and shall include the following items: balance sheet, income statement, cashflow statement, Capital Expenditures, operating leases and tax liabilities (an "**Annual Business Plan**");
- (e) by the one hundred and twentieth (120<sup>th</sup>) day from the Closing Date, for the Fiscal Year ended December 31, 2017: (i) the Year-end Financial Statements; (ii) financial statements with respect to Thinkwrap on a review engagement basis; (iii) management prepared financial statements with respect to Spark Red; and (iv) a consolidated income statement and balance sheet in respect of the Borrower, Thinkwrap and Spark Red;
- (f) not less than thirty (30) days prior to the payment of any Earn-out (for greater certainty, regardless of whether or not such Earn-out is to be paid from the proceeds from an Advance under Facility C), the Borrower shall deliver to the Bank a Compliance Certificate which shall evidence compliance with all financial covenants contained in Section 9.03 both immediately before and for the Fiscal Year immediately after such payment (for greater certainty, such *pro forma* compliance with such financial covenants shall be calculated after giving effect to the changes to Funded Debt resulting from any Advance under Facility C);
- (g) not less than bi-weekly, provide the Bank with an update (whether orally or in writing) as to the most recent status of any Equity Issuance, together with such supporting information or documentation reasonably required by the Bank; and
- (h) such additional information and documents as the Bank may reasonably require from time to time (including, without limitation, the amount of Accrued Funding not applied during any prior fiscal period).

## **ARTICLE X - SECURITY**

### **10.01 Security**

The Borrower agrees to provide (or cause to be provided) the security listed below as continuing security for the payment of the Obligations (for greater certainty, specifically including the Hedging Obligations) and the payment and performance of all other present and future, direct and indirect, indebtedness and obligations of the Borrower to the Bank, specifically including the obligations of the Borrower arising under or in respect of this Agreement and the other Loan Documents:

- (a) unlimited Guarantees from all Subsidiaries of the Borrower from time to time in respect of all present and future, direct and indirect, indebtedness and obligations of the Borrower to the Bank;
- (b) a general security agreement from each Company creating a First-Ranking Security Interest in respect of all of its present and future property, assets and undertaking;
- (c) debentures, collateral mortgages or other forms of security required by the Bank in order to create a First-Ranking Security Interest in respect of all Owned Real Properties and (if requested by the Bank) any or all Leased Properties considered by the Bank to be material;
- (d) a security agreement creating a First-Ranking Security Interest in respect of each Company's equity investment held in each of its Subsidiaries, together with any ancillary documentation from other Persons as may be required to consent to such security interest and to ensure that any subsequent disposition of such equity investment by the Bank pursuant to such security agreement shall be permitted without the requirement of any further notice or consent by any Person;
- (e) a specific assignment of all rights and benefits (but not obligations) of the Borrower under the Purchase Agreements, including an acknowledgement and consent to such assignment from each other contracting party thereto in form and substance satisfactory to the Bank;
- (f) if requested by the Bank from time to time, specific assignments by the Companies of all rights and benefits (but not obligations) arising under any or all Material Agreements (other than those referred to in paragraphs (e) and (g)); and the Borrower shall use commercially reasonable efforts to obtain an acknowledgement and consent from each other contracting party thereto in form and substance satisfactory to the Bank;
- (g) if requested by the Bank from time to time, security agreements creating an assignment and First-Ranking Security Interest in respect of its rights to and interest in intellectual property; and the Borrower agrees to use commercially reasonable efforts to obtain any necessary consents from other Persons which may be required in connection with the

granting of such assignment and security interest in form and substance satisfactory to the Bank; and

- (h) assignments of the interest of all Companies in all policies of insurance (including business interruption insurance), which said requirement shall be satisfied in respect of any insurance policy if the Bank's interest is noted on such policy (or a certificate of insurance in respect thereof which contains no disclaimers which would prevent the Bank from relying thereon) in compliance with the requirements of Section 9.01(h).

#### **10.02 Security to be Provided by Others**

The Borrower agrees to provide or cause to be provided from time to time the following to the Bank, each in form and substance satisfactory to the Bank:

- (a) a subordination and postponement agreement from each holder of Subordinated Debt;
- (b) if requested by the Bank from time to time, Landlord Agreements in respect of any Leased Real Property which the Bank acting reasonably considers to be material.

It is a condition precedent to each Advance hereunder that the Bank shall have received all documents and security listed above. The failure of the Borrower to obtain and deliver any item of Security listed in paragraph (a) or (b) above shall constitute an Event of Default under this Agreement (with no cure period applicable thereto).

#### **10.03 Security to be Provided by Subsidiaries**

The Borrower agrees to cause each corporation which becomes a Subsidiary of the Borrower after the date of this Agreement to provide to the Bank an unlimited Guarantee in respect of all of present and future, direct and indirect obligations of the Borrower to the Bank and security of the same nature as provided by the Borrower, as continuing security for all of its present and future indebtedness and obligations to the Bank, specifically including its obligations under the said Guarantee.

#### **10.04 General Provisions re: Security; Registration**

The Security shall be in form and substance satisfactory to the Bank in its sole discretion. The Bank may require that any item of Security be governed by the laws of the jurisdiction where the property subject to such item of Security is located. The Security shall be registered by the Borrower where necessary or desirable to record and perfect the charges contained therein, as determined by the Bank in its sole discretion, specifically including registrations in the Canadian Intellectual Property Office and the United States Patent and Trademark Office.

#### **10.05 Opinions re: Security**

The Borrower shall cause to be delivered to the Bank the opinions of the solicitors for the Companies and all other Persons providing Security regarding their corporate, partnership or trust status



(as applicable), the due authorization, execution and delivery of the Security provided by them, all registrations in respect of the Security, the results of all applicable searches, and the enforceability of such Security; all such opinions to be in form and substance satisfactory to the Bank.

#### **10.06 After-Acquired Property, Further Assurances**

Excluding the exceptions set forth in this Article X, the Borrower shall execute and deliver from time to time, and cause each of its Subsidiaries to execute and deliver from time to time, all such further documents and assurances as may be reasonably required by the Bank from time to time in order to provide the Security contemplated hereunder (subject to Section 10.04), specifically including: supplemental or additional security agreements, intellectual property security agreements, and assignments and pledge agreements which shall include lists of specific assets to be subject to the security interests required hereunder. The Borrower also agrees to provide to the Bank from time to time, promptly upon receipt of a written request from the Bank, copies of any documents delivered in connection with the completion of the Purchase Transactions.

#### **10.07 Insurance Proceeds**

If insurance proceeds become payable under any policy of insurance relating to property or business interruption insurance owned by a Company:

- (a) if a Default (but not an Event of Default) has occurred and is continuing at such time, the Bank shall hold such proceeds until such Default no longer exists or has become an Event of Default; after which the remaining paragraphs in this Section shall apply;
- (b) if an Event of Default has occurred and is continuing at such time, the Bank shall apply such proceeds against the Obligations;
- (c) with respect to the proceeds payable under a policy of business interruption insurance, if no Event of Default has occurred and is continuing at such time the Bank agrees to consent to the payment of such proceeds to such Company; and
- (d) with respect to the proceeds payable under a policy of property insurance, if no Event of Default has occurred and is continuing at such time, the Bank agrees to consent to the payment of such proceeds to such Company (and upon request by the Borrower shall promptly execute any documents reasonably required to give effect thereto) if:
  - (i) such property has been repaired or replaced and the proceeds will reimburse the Company for payments it has made for such purpose; or
  - (ii) the Company confirms in writing to the Bank that it will forthwith use such proceeds to repair or replace such property.

## **ARTICLE XI- CONDITIONS PRECEDENT FOR EFFECTIVENESS**

### **11.01 Conditions Precedent to the Effectiveness of this Agreement**

This Agreement shall become effective on the date that the following conditions have been satisfied in the discretion of the Bank (the “**Effective Date**”):

- (a) the Bank shall have received an executed copy of this Agreement, the Eventi Loan Documents reasonably requested by it and a subordination and postponement agreement from Eventi Credit Inc. and the Bank;
- (b) the payments contemplated by Section 9.01(m)(i) shall have been made or the Bank shall have been satisfied with the arrangements made with respect to the payment thereof;
- (c) the Bank shall have received: (i) an officer’s certificate from an officer of the Borrower; (ii) a certificate of status or a certificate of compliance, or other equivalent certificate, as the case may be, from the applicable Governmental Authority of each Company’s jurisdiction of incorporation, organization or formation and, with respect to the Borrower, in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated as of the Effective Date (or such earlier date reasonably acceptable to the Bank); and (iii) such other documents as the Bank may reasonably request;
- (d) the Bank and its counsel shall have received a favourable written opinion from the Borrower’s counsel, as to such matters as the Bank may reasonably request;
- (e) the Borrower shall have paid all fees payable by it, including the legal fees and expenses incurred by the Bank’s counsel;
- (f) no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a material adverse effect;
- (g) the representations and warranties in Section 8.01 shall be true and correct in all material respects as if made on the Effective Date (unless expressly stated in Section 8.01 to apply only as at a specific earlier date), regardless of whether such representation or warranty is qualified by the phrase “to the Borrower’s knowledge” or a similar phrase; and
- (h) no Default, Event of Default shall have occurred and be continuing.

### **11.02 Conditions Precedent to Advances under Facility C**

The Bank shall have no obligation to make an Advance under Facility C unless at the time of making such Advance the following terms and conditions shall have been satisfied:

- (a) the Borrower shall have delivered to the Bank details of the Capital Expenditures intended to be incurred or the proposed Earn-outs to be paid, as the case may be, using the proceeds of such Advance and, in the case of any proposed Earn-outs, the Bank shall be satisfied with the calculation thereof;
- (b) the Borrower shall have delivered to the Bank a Compliance Certificate in accordance with Section 9.04(f);
- (c) the Bank shall have consented to the Advance; and
- (d) the Borrower shall have paid to the Bank a drawdown fee of Two Thousand Five Hundred Dollars (\$2,500).

#### **11.03 Conditions Precedent to Advances under Facility D**

- (a) The Borrower shall have provided the Bank with a Borrowing Base Certificate in compliance with Section 9.04(a);
- (b) The Bank shall have received such assignments, acknowledgements and consents reasonably required by it in order for the Bank to obtain a First-Ranking Security Interest in the scientific research and experimental development activities to be funded from such Advance; and
- (c) The Bank shall have received any other documents, instruments necessary in its discretion.

#### **11.04 Conditions Precedent to all Advances**

The Bank shall have no obligation to make the first Advance or any subsequent Advance unless at the time of making each such Advance the following terms and conditions shall have been satisfied:

- (a) the representations and warranties in Section 8.01 shall be true and correct in all material respects as if made on the date of such Advance (unless expressly stated in Section 8.01 to apply only as at a specific earlier date), regardless of whether such representation or warranty is qualified by the phrase "to the Borrower's knowledge" or a similar phrase;
- (b) any additional Security which the Companies are required to have provided pursuant to this Agreement at the time of such Advance shall have been executed and delivered, all registrations required by this Agreement in connection therewith shall have been made, and all legal opinions and other documentation required by the Bank, acting reasonably, in connection therewith shall have been executed and delivered, all in form and substance satisfactory to the Bank in its sole discretion;

- (c) no Default, Event of Default or Material Adverse Change shall have occurred, nor shall the making of the Advance result in the occurrence of a Default, Event of Default or Material Adverse Change;
- (d) any litigation disclosed by the Borrower pursuant to Section 8.01(q) would not reasonably be expected to result in a Material Adverse Change;
- (e) the Borrower shall have delivered a Draw Request to the Bank in accordance with the notice requirements provided herein;
- (f) in connection with any Advance under Facility A, the Borrower shall have provided the Bank with a Borrowing Base Certificate in compliance with Section 9.04(a); and
- (g) no third party demand or garnishment order for payment to any Governmental Authority shall have been received by the Bank in respect of any Company unless the amount of such demand or order is not material and arrangements satisfactory to the Bank have been established to avoid any loss of priority with respect to the Security.

## **ARTICLE XII – DEFAULT AND REMEDIES**

### **12.01 Events of Default**

The occurrence of any one or more of the following events, after the expiry of any applicable cure period set out below, shall constitute an event of default under this Agreement (an “**Event of Default**”):

- (a) the Borrower fails to pay any principal or Interest within three (3) Business Days of the date on which the Borrower receives written notice from the Bank of non-payment of any principal or Interest under the terms of this Agreement, the Security, any Hedging Agreement or any other agreement made between it and the Bank;
- (b) the Borrower fails to pay any amount, other than an amount referred to in paragraph (a) above, payable by it under this Agreement, the Security or any other agreement made between it and the Bank, within three (3) Business Days after such amount is due;
- (c) any representation, warranty or statement made to the Bank herein or in any Loan Document is incorrect in any material respect on the date on which such representation, warranty or statement was made, regardless of whether such representation, warranty or statement is qualified by the phrase “to the Borrower’s knowledge” or a similar phrase;
- (d) the Borrower fails to perform or comply with any of the covenants set out in Section 9.02 or 9.03;

- (e) the Borrower fails to perform or comply with any of its covenants or obligations contained in this Agreement (other than those set out in paragraphs (a), (b) and (c) above) or any Company fails to perform or comply with any of its covenants or obligations in any other agreement or undertaking made between it and the Bank (including the Security), in each case, following receipt of notice of such non-compliance from the Bank; provided that if such non-compliance is capable of remedy within thirty (30) days, the Borrower diligently attempts to remedy such non-compliance and diligently keeps the Bank informed of its efforts in this regard, and if such non-compliance is remedied within such thirty (30) day period, then such non-compliance shall not constitute an Event of Default;
- (f) any Company is in default in the payment or performance of any of its indebtedness or obligations in an amount in excess of One Hundred Thousand Dollars (\$100,000) under any agreement relating to Funded Debt (after the expiry of any grace or cure periods relating thereto), other than the Outstanding Advances;
- (g) an Insolvency Event occurs in respect of any Company;
- (h) any document constituting a material part of the Security shall for any reason cease to be in full force and effect or shall be declared in a final judgment of a court of competent jurisdiction to be null and void; or any Company contests the validity or enforceability thereof or denies it has any further liability or obligation thereunder (except as a result of the Company's satisfaction of such liability or obligation); or any document (other than a Guarantee) constituting part of the Security shall for any reason fail to create a valid and perfected First-Ranking Security Interest, subject to Permitted Liens, in and to the property purported to be subject thereto, except that if such failure is capable of remedy within thirty (30) days, the Borrower or such Company diligently attempts to remedy such failure and diligently informs the Bank of its efforts in this regard, and if the failure is remedied within such thirty (30) day period, then the failure shall not constitute an Event of Default;
- (i) any Person which has provided a Guarantee in respect of the Obligations terminates or purports to terminate its liability under such Guarantee or its liability thereunder in respect of any future Advances, or disputes the validity or enforceability of such Guarantee or any Security provided by it;
- (j) any Person takes possession of all or substantially all of the property of a Company by way of or in contemplation of enforcement of security, or a distress or execution or similar process is levied or enforced against any such property; provided that if such matter is capable of remedy within thirty (30) days, such Company diligently attempts to remedy such matter and diligently informs the Bank of its efforts in this regard, and if the matter is remedied within such thirty (30) day period, then such matter shall not constitute an Event of Default;

- (k) one or more final judgments or decrees for the payment of money shall have been obtained or entered against any one or more of the Companies in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate and shall remain undischarged, unvacated, unbonded or unstayed for more than ten (10) days;
- (l) any Governmental Authority shall take any action or proceeding to condemn, seize or appropriate any property of any Company, the loss of which would result in a Material Adverse Change;
- (m) any Person or group of Persons other than Eventi Capital Partners Inc. or an Affiliate thereof has Control of any Company at any time;
- (n) the Borrower's auditors include any "going concern" qualification or qualification as to the scope of the audit in their audit letter relating to the Year-end Financial Statements of the Borrower;
- (o) any Material Agreement or Material Permit is terminated and not promptly replaced, or any Company is in breach of its material obligations under any Material Agreement or Material Permit, and such termination or breach would reasonably be expected to result in a Material Adverse Change; or
- (p) a Material Adverse Change has occurred.

#### **12.02 Acceleration; Additional Interest**

Upon the occurrence of an Insolvency Event, the Obligations shall become immediately due and payable, without the necessity of any demand upon or notice to the Borrower by the Bank. Upon the occurrence and during the continuation of any Event of Default other than an Insolvency Event, the Bank may by written notice to the Borrower declare the Obligations to be immediately due and payable. Upon the occurrence and during the continuation of an Event of Default, both before and after the Acceleration Date, all Outstanding Advances shall bear interest or fees at the rates otherwise applicable plus two percent (2%) per annum in order to compensate the Bank for the additional risk.

#### **12.03 Acceleration of Certain Contingent Obligations**

On the Acceleration Date and from time to time thereafter, the Bank may make a Canadian Dollar Loan or U.S. Dollar Loan to the Borrower in an amount equal to the face amount of any Bankers' Acceptance, Letter of Credit or LIBOR Loan, or the amount required to unwind any Hedging Agreement (such amount to be determined at such time in accordance with the provisions thereof). The proceeds of any such Loan shall be held by the Bank and used to satisfy the Bank's obligations under any such Bankers' Acceptance, Letter of Credit or LIBOR Loan when due, or to unwind any such Hedging Agreement. If the Bank, in its discretion, invests such funds held by it (the Bank having no obligation to do so), any interest earned thereon shall be credited to the Borrower. Any such Loan made in respect of a Bankers' Acceptance or Letter of Credit shall bear interest at the rate and in the manner applicable to

Canadian Dollar Loans under the Facility under which such Bankers' Acceptance or Letter of Credit was issued. Any such Loan made in respect of a Hedging Agreement shall bear interest at the rate and in the manner applicable to Canadian Dollar Loans under the Facility which provides for the highest interest rate at such time.

#### **12.04 Combining Accounts, Set-Off**

Upon the occurrence and during the continuation of an Event of Default, in addition to and not in limitation of any rights now or hereafter granted under applicable Law, the Bank may without notice to any Company at any time and from time to time:

- (a) combine, consolidate or merge any or all of the deposits or other accounts maintained with the Bank by such Company (whether term, notice, demand or otherwise and whether matured or unmatured) and such Company's obligations to the Bank; and
- (b) set off, apply or transfer any or all sums standing to the credit of any such deposits or accounts in or towards the satisfaction of the said obligations.

#### **12.05 Application of Monies**

Upon the occurrence and during the continuation of an Event of Default, the Bank may apply any proceeds of realization of the Security against any portion or portions of the Obligations; and the Borrower may not require any different application. The taking of a judgment or any other action or dealing whatsoever by the Bank in respect of the Security shall not operate as a merger of any of the Obligations hereunder or in any way affect or prejudice the rights, remedies and powers which the Bank may have, and the foreclosure, surrender, cancellation or any other dealing with any Security or the said obligations shall not release or affect the liability of the Borrower or any other Person in respect of the remaining portion of the Obligations.

#### **12.06 No Further Advances**

The Bank shall not be obliged to make any further Advances (including honouring any cheques drawn by the Borrower which are presented for payment) from and after the earliest to occur of the following: (i) delivery by the Bank to the Borrower of a written notice that a Default or Event of Default has occurred and is continuing and that as a result thereof no further Advances will be made (whether or not such notice also requires immediate repayment of the Obligations); (ii) the occurrence of an Insolvency Event; or (iii) receipt by the Bank of any garnishment notice, notice of a Statutory Lien or other notice of similar effect in respect of any Company pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) or any similar notice under any other statute unless the amount of such demand or order is not material and arrangements satisfactory to the Bank have been established to avoid any loss of priority with respect to the Security.

### **12.07 Judgment Currency**

If for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement it becomes necessary for the Bank to convert into the currency of such jurisdiction (in this Section called the “**Judgment Currency**”) any amount due to the Bank by the Borrower hereunder in any currency other than the Judgment Currency, then conversion shall be made at the Exchange Rate prevailing on the Business Day before the day on which judgment is given. In the event that there is a change in the Exchange Rate prevailing between the Business Day before the day on which the judgment is given and the date of payment of the amount due, the Borrower will, on the date of payment, pay such additional amounts (if any) or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount paid on such date is the amount in the Judgment Currency which when converted at the Exchange Rate prevailing on the date of payment is the amount then due under this Agreement in such other currency. Any additional amount due by the Borrower under this Section will be due as a separate debt and shall not be affected by judgment being obtained for any other sums due under or in respect of this Agreement.

### **12.08 Remedies Cumulative**

All of the rights and remedies granted to the Bank in this Agreement, and any other documents or instruments in existence between the parties or contemplated hereby, and any other rights and remedies available to the Bank at law or in equity, shall be cumulative. The exercise or failure to exercise any of the said remedies shall not constitute a waiver or release thereof or of any other right or remedy, and shall be non-exclusive.

### **12.09 Performance of Covenants by Bank**

If the Borrower fails to perform any covenant or obligation to be performed by it pursuant to this Agreement, the Bank may in its sole discretion, after written notice to the Borrower, perform any of the said obligations but shall be under no obligation to do so; and any amounts expended or advanced by the Bank for such purpose shall be payable by the Borrower upon demand together with interest at the highest rate then applicable to the Facilities.

## **ARTICLE XIII - GENERAL**

### **13.01 Waivers**

The failure or delay by the Bank in exercising any right or privilege with respect to the non-compliance with any provisions of this Agreement by the Borrower, and any course of action on the part of the Bank, shall not operate as a waiver of any rights of the Bank unless made in writing by the Bank. Any such waiver shall be effective only in the specific instance and for the purpose for which it is given and shall not constitute a waiver of any other rights and remedies of the Bank with respect to any other or future non-compliance.



### **13.02 Closing Fee and Annual Fee**

The Borrower hereby agrees to pay a closing fee to the Bank in the amount of 25 basis points of the aggregate of the maximum commitments made by the Bank pursuant to the Facilities, being Forty-Two Thousand Seven Hundred and Fifty Dollars (\$42,750) (the “**Closing Fee**”) in respect of the establishment of the Facilities payable in the following manner: (i) Ten Thousand Six Hundred and Eighty Seventy Dollars and Fifty Cents (\$10,687.50) of the Closing Fee having been already paid to the Bank upon acceptance of the indicative term sheet dated December 8, 2017; (ii) Twenty-Two Thousand Sixty Two Dollars and Fifty Cents (\$22,062.50) of the Closing Fee payable to the Bank on the Closing Date; and (iii) Ten Thousand Dollars (\$10,000) of the Closing Fee payable to the Bank on the Spark Red Closing Date. In addition, the Borrower shall pay to the Bank: (i) Two Thousand Five Hundred Dollars (\$2,500) on the day the Borrower satisfies its delivery obligations under Section 9.04(e); and (ii) Five Thousand Dollars (\$5,000) annually, commencing during the Fiscal Year beginning January 1, 2019, payable on the day of the Fiscal Year that Bank completes its annual review of the Companies. The Borrower hereby authorizes and directs the Bank to debit from time to time any account maintained by the Borrower with the Bank in order to pay any portion of any fee due and payable to the Bank by the Borrower which has not previously been paid.

### **13.03 Bank’s Expenses**

Whether or not the transactions contemplated by this Agreement are completed or any Advance has been made, the Borrower agrees to pay on demand by the Bank all reasonable out-of-pocket expenses incurred by it, including reasonable legal expenses and other direct out-of-pocket expenses, in connection with this Agreement, the Security and all documents contemplated hereby, specifically including: reasonable expenses incurred by the Bank in respect of due diligence, appraisals, insurance consultations, credit reporting and responding to enquiries made by any Governmental Authority; reasonable legal expenses in connection with the preparation and interpretation of this Agreement and the Security and the administration of the Facilities generally, including the preparation of waivers and partial discharges of Security; and all reasonable legal expenses in connection with the protection and enforcement of the Security. If the Borrower has not paid any such expenses within ten (10) days after the sending of a written request from the Bank, the Borrower hereby authorizes the Bank to debit any account maintained by it with the Bank in order to pay any such expenses.

### **13.04 General Indemnity**

In addition to any other liability of the Borrower hereunder, the Borrower hereby agrees to indemnify and save harmless the Indemnitees from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable legal fees on a solicitor and his own client basis) of any kind or nature whatsoever (but excluding any indirect, special, consequential damages and damages for loss of profit, loss of opportunity, and loss of reputation) which may be imposed on, incurred by or asserted against the Indemnitees (except to the extent arising from the negligence or wilful misconduct of such Indemnitees) which relate or arise out of or result from:

- (a) any failure by the Borrower to pay and satisfy its obligations hereunder including, without limitation, any costs or expenses incurred by reason of the liquidation or re-employment in whole or in part of deposits or other funds required by the Bank to fund or maintain the Facilities or as a result of the Borrower's failure to take any action on the date required hereunder or specified by it in any notice given hereunder;
- (b) any investigation by Governmental Authorities or any litigation or other similar proceeding related to any use made or proposed to be made by the Borrower of the proceeds of any Advance; and
- (c) any instructions given to the Bank to stop payment on any cheque issued by the Borrower or to reverse any wire transfer or other transaction initiated by the Bank at the request of the Borrower.

### **13.05 Environmental Indemnity**

In addition to any other liability of the Borrower hereunder, the Borrower hereby agrees to indemnify and save harmless the Indemnitees from and against:

- (a) any losses suffered by the Indemnitees for, in connection with, or as a direct or indirect result of, the failure of any Company to comply with all Requirements of Environmental Law;
- (b) any losses suffered by the Indemnitees for, in connection with, or as a direct or indirect result of, the presence of any Hazardous Material situated in, on or under any property owned by any Company or upon which it carries on business; and
- (c) any and all liabilities, losses, damages, penalties, expenses (including reasonable legal fees) and claims which may be paid, incurred or asserted against the Indemnitees for, in connection with, or as a direct or indirect result of, any legal or administrative proceedings with respect to the presence of any Hazardous Material on or under any property owned by any Company or upon which it carries on business, or the discharge, emission, spill, radiation or disposal by any Company of any Hazardous Material into or upon any Land, the atmosphere, or any watercourse or body of water; including the costs of defending and/or counterclaiming or claiming against third parties in respect of any action or matter and any cost, liability or damage arising out of a settlement entered into by the Indemnitees of any such action or matter;

except, in each case, to the extent arising from the negligence or wilful misconduct of such Indemnitees. Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify or save harmless any Indemnitee hereunder against any indirect, special, consequential damages or damages for loss of profit, loss of opportunity, or loss of reputation suffered by any Indemnitee.

### **13.06 Survival of Certain Obligations despite Termination of Agreement**

The termination of this Agreement shall not relieve the Borrower from its obligations to the Bank arising prior to such termination, such as but not limited to obligations arising as a result of or in connection with any breach of this Agreement, any failure to comply with this Agreement or the inaccuracy of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein. Without limiting the generality of the foregoing, the obligations of the Borrower to the Bank arising under or in connection with Sections 13.04 and 13.05 of this Agreement shall continue in full force and effect despite any termination of this Agreement for a period of two (2) years following such termination.

### **13.07 Interest on Unpaid Costs and Expenses**

If the Borrower, following written notice and demand received from the Bank, fails to pay when due any expenses or other amounts paid by the Bank hereunder (other than principal or interest on any Advance), the Borrower agrees to pay interest on such unpaid amount from the time such amount is due until paid at the rate equal to the rate of interest then applicable under the Facilities for Canadian Dollar Loans under Facility A.

### **13.08 Notice**

Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier or sent by facsimile to the applicable address and to the attention of the officer of the addressee as follows:

- (a) to the Borrower:

*[Redacted - personal information.]*

(b) to the Bank:

*[Redacted - personal information.]*

Any communication transmitted by prepaid private courier shall be deemed to have been validly and effectively given or delivered on the Business Day after which it is submitted for delivery. Any communication transmitted by facsimile shall be deemed to have been validly and effectively given or delivered on the day on which it is transmitted, if transmitted on a Business Day on or before 5:00 p.m. (local time of the intended recipient), and otherwise on the next following Business Day. Any party may change its address for service by notice given in the foregoing manner.

#### **13.09 Severability**

Any provision of this Agreement which is illegal, prohibited or unenforceable in any jurisdiction, in whole or in part, shall not invalidate the remaining provisions hereof; and any such illegality, prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### **13.10 Time of the Essence**

Time shall be of the essence of this Agreement.

#### **13.11 Assignment and Participation**

- (a) The Borrower may not assign any of its rights or obligations under this Agreement without the prior written consent of the Bank.
- (b) The Bank may grant participations in all or any portion of its rights under this Agreement from time to time without notice to or obtaining the prior written consent of the Borrower; provided that the Bank shall remain responsible for the performance of its obligations hereunder, and the Borrower shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement; and the Bank shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including the right to approve any amendment, modification or waiver of any provision of this Agreement.
- (c) If an Event of Default has occurred and is continuing, the Bank may from time to time assign all or any portion of the Facilities hereunder, together with its entire rights and obligations

incidental thereto, to any other Person without notice to or obtaining the prior written consent of the Borrower.

- (d) If no Event of Default has occurred and is continuing, the Bank may from time to time assign all or any portion of the Facilities hereunder, together with all of its rights and obligations incidental thereto, in minimum amounts of Five Million Dollars (\$5,000,000) to one or more financial institutions that are not non-residents of Canada for the purposes of the *Income Tax Act* (Canada) subject to obtaining the prior written consent of the Borrower, not to be unreasonably withheld or delayed, and subject to the Bank continuing to hold at least Five Million Dollars (\$5,000,000) of the Facilities after such assignment. For greater certainty it shall be reasonable for the Borrower to withhold its consent to any such assignment or participation made prior to the occurrence of an Event of Default if the Borrower would thereby become liable for increased costs or withholding taxes.
- (e) If the Bank assigns all or any portion of its rights and obligations under this Agreement to an assignee in accordance with the provisions of this section, and if such assignee executes and delivers to the Borrower and the Bank a written agreement in form and substance satisfactory to the Borrower, acting reasonably, to assume and be bound by all or the assigned portion of the Bank's obligations hereunder, then immediately upon the said delivery of such agreement the Bank's said obligations hereunder shall automatically be released to the extent so assumed by such assignee.
- (f) The Borrower acknowledges that the Bank is entitled to charge a reasonable processing and recording fee to any assignee in connection with each assignment hereunder, such processing and recording fee not to exceed One Thousand Dollars (\$1,000) in any one instance.
- (g) The Borrower agrees to co-operate fully with the Bank in connection with any assignment or participation in accordance with this section, and agrees to execute and deliver from time to time in favour of the Bank and any such assignee or participant such documents and assurances as may be reasonably required by the Bank or the assignee or participant in connection with such assignment or participation.

### **13.12 Tombstone Marketing**

For the purpose of "tombstone marketing", the Borrower hereby authorizes and consents to the reproduction, disclosure and use by the Bank of its name, identifying logo and the amount and type of the Facilities to enable the Bank to publish promotional "tombstones", provided that such information shall exclude any reference to any other specific terms of the Facilities (unless the Borrower provide its written consent). The Borrower acknowledges and agrees that the Bank shall be entitled to determine, in its discretion, whether to use such information; that no compensation will be payable by the Bank in connection therewith; and that the Bank shall have no liability whatsoever to the Borrower or any of its employees, officers, directors, affiliates or shareholders in obtaining and using such information as contemplated in this Section 13.12. The Bank agrees to consult with the Borrower prior to the publication of any such promotional "tombstones".

### **13.13 Entire Agreement**

This Agreement and the other Loan Documents shall constitute the entire agreement and understanding between the Borrower and the Bank relating to the subject-matter hereof. For greater certainty and without limiting the generality of the foregoing, this Agreement supersedes all discussion papers and term sheets previously issued by the Bank relating to the proposed establishment of the Facilities, which have no force or effect.

### **13.14 Inconsistencies with the Loan Documents**

To the extent that there is any inconsistency between a provision of this Agreement and a provision of any document constituting part of the other Loan Documents, the provision of this Agreement shall govern. For greater certainty, a provision of this Agreement and a provision of another Loan Document shall be considered to be inconsistent if: (i) both relate to the same subject-matter and the provision in the other Loan Document imposes more onerous obligations or restrictions than the corresponding provision in this Agreement; or (ii) the provision in the other Loan Document creates a default in circumstances which do not constitute an Event of Default under this Agreement, in which case such default in such other Loan Document shall not apply.

### **13.15 Confidentiality**

The Bank agrees that all documentation and other information made available by the Borrower to it under or in connection with this Agreement shall (except to the extent such documentation or other information is publicly available or hereafter becomes publicly available other than by action of the Bank, or was theretofore known or hereinafter becomes known to the Bank independently of any disclosure by the Companies) be held in confidence by the Bank and used solely in the evaluation, administration and enforcement of the Advances and all matters related to this Agreement and the Security and the transactions contemplated hereby and thereby, and in the prosecution of defence of legal proceedings arising in connection herewith and therewith. Notwithstanding the foregoing, nothing contained herein shall be construed to prevent the Bank from:

- (a) making disclosure of any information (i) if required to do so by applicable law or regulation, (ii) to any Governmental Authority having authority to regulate or oversee any aspect of the business of the Bank or the Companies in connection with the exercise of such authority or claimed authority and that compels or requires the Bank to disclose such information, (iii) pursuant to any subpoena or if otherwise compelled in connection with any litigation or administrative proceeding, provided that the Bank immediately notifies the Borrower of such subpoena or if it is otherwise so compelled, and permits the Borrower the opportunity to oppose the same in a timely fashion for the purpose of preventing any requirement to disclose such information, (iv) to any prospective permitted participant or permitted assignee of all or any portion of the Bank's rights and obligations hereunder provided that such prospective assignee executes and delivers to the Borrower a confidentiality agreement in form and substance acceptable to the Borrower, acting reasonably, (v) to the extent that the Bank or its counsel deems

necessary or appropriate, acting reasonably, to record or preserve its Security or to enforce any remedy provided in this Agreement or the Security or otherwise available by law;

- (b) making disclosure of any information regarding the Companies to affiliates of the Bank for the purpose of assisting the Bank in supporting the Borrower with its strategic plans; or
- (c) making such disclosures as the Bank reasonably deems necessary or appropriate to its legal counsel, accountants or other advisers, agents or representatives (including outside auditors) in connection with the Borrower's obligations under this Agreement.

The Bank's obligations of confidentiality hereunder shall survive termination of this Agreement for any reason.

#### **13.16 Governing Law**

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario. Without prejudice to the right of the Bank to commence any proceedings with respect to this Agreement in any other proper jurisdiction, the parties hereby attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **13.17 Execution by Fax and Counterparts**

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement. This Agreement may be executed by facsimile or portable document format ("**pdf**"), and any signature contained hereon by facsimile or pdf shall be deemed to be equivalent to an original signature for all purposes.

#### **13.18 Binding Effect**

This Agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns; "successors" includes any corporation resulting from the amalgamation of any party with any other corporation.

*[The balance of this page is intentionally blank. Signature page follows]*

**IN WITNESS WHEREOF** this Agreement has been executed, sealed and delivered by the parties hereto.

**RELIANT WEB HOSTING INC.**

By: "William Di Nardo" (signed)  
Name: William Di Nardo  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THINKWRAP SOLUTIONS INC.**

By: "William Di Nardo" (signed)  
Name: William Di Nardo  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SPARK::RED INC.**

By: "William Di Nardo" (signed)  
Name: William Di Nardo  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**BANK OF MONTREAL**

By: [Redacted - personal information.]  
Name: [Redacted - personal information.]  
Title: [Redacted - personal information.]

By: [Redacted - personal information.]  
Name: [Redacted - personal information.]  
Title: [Redacted - personal information.]

## EXHIBIT A – DRAW REQUEST

To: Bank of Montreal

This Draw Request is delivered pursuant to the amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”). Terms used herein as defined terms shall have the respective meanings ascribed in the Credit Agreement.

(1) The Borrower hereby requests an Advance as follows:

- (a) Facility:
- (b) date of Advance:
- (c) amount of Advance:
- (d) type of Availment Option:
- (e) if Availment Option is one of the following, indicate period requested:
  - (i) Banker’s Acceptance (may have a maturity between 28 to 182 days (inclusive));
  - (ii) LIBOR Loan;
- (f) if Letter of Credit requested, attach schedule setting out requested terms
- (g) payment instructions (if any):

(2) The Borrower hereby certifies that as at the date hereof:

- (a) the representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof (unless expressly stated in section 8.01 of the Credit Agreement to apply only as at a specific earlier date);
- (b) to the best of the Borrower’s knowledge, each lease in respect of the Leased Real Properties is in good standing and any and all rents or other charges due and payable by a Company thereunder as of the date hereof have been paid;
- (c) to the best of the Borrower’s knowledge, each Material Agreement is in good standing and any and all amounts owing thereunder which are due and payable by a Company thereunder as of the date hereof have been paid; and
- (d) no Default, Event of Default or Material Adverse Change has occurred and is continuing, nor shall the making of the Advance result in the occurrence of any Default, Event of Default or Material Adverse Change.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**RELIANT WEB HOSTING INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT B – ROLLOVER NOTICE

To: Bank of Montreal

This Rollover Notice is delivered pursuant to the amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”). Terms used herein as defined terms shall have the respective meanings ascribed in the Credit Agreement.

- (1) The Borrower hereby requests a Rollover as follows:
  - (a) Facility:
  - (b) date of maturing Advance:
  - (c) amount of maturing Advance:
  - (d) type of Availment Option requested:
  - (e) if Availment Option is one of the following, indicate period requested:
    - (i) Banker’s Acceptance (may have a maturity between 28 to 182 days (inclusive));
    - (ii) LIBOR Loan;
- (2) The Borrower hereby certifies that as at the date hereof:
  - (a) the representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof (unless expressly stated in section 8.01 of the Credit Agreement to apply only as at a specific earlier date);
  - (b) to the best of the Borrower’s knowledge, each lease in respect of the Leased Real Properties is in good standing and any and all rents or other charges due and payable by a Company thereunder as of the date hereof have been paid;
  - (c) to the best of the Borrower’s knowledge, each Material Agreement is in good standing and any and all amounts owing thereunder which are due and payable by a Company thereunder as of the date hereof have been paid; and
  - (d) no Default, Event of Default or Material Adverse Change has occurred and is continuing, nor shall the making of the Rollover result in the occurrence of any Default, Event of Default or Material Adverse Change.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**RELIANT WEB HOSTING INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT C – CONVERSION NOTICE

To: Bank of Montreal

This Conversion Notice is delivered pursuant to the amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”). Terms used herein as defined terms shall have the respective meanings ascribed in the Credit Agreement.

- (1) The Borrower hereby requests a Conversion as follows:
  - (a) Facility:
  - (b) type of Advance to be converted:
  - (c) maturity date of maturing Advance:
  - (d) amount of maturing Advance to be converted:
  - (e) if Availment Option is a Banker's Acceptance, indicate period requested:
    - (i) Banker's Acceptance (may have a maturity between 28 to 182 days (inclusive));
    - (ii) LIBOR Loan;
- (2) The Borrower hereby certifies that as at the date hereof:
  - (a) the representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof (unless expressly stated in section 8.01 of the Credit Agreement to apply only as at a specific earlier date);
  - (b) to the best of the Borrower's knowledge, each lease in respect of the Leased Real Properties is in good standing and any and all rents or other charges due and payable by a Company thereunder as of the date hereof have been paid;
  - (c) to the best of the Borrower's knowledge, each Material Agreement is in good standing and any and all amounts owing thereunder which are due and payable by a Company thereunder as of the date hereof have been paid; and
  - (d) no Default, Event of Default or Material Adverse Change has occurred and is continuing, nor shall the making of the Conversion result in the occurrence of any Default, Event of Default or Material Adverse Change.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**RELIANT WEB HOSTING INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT D – REPAYMENT NOTICE

To: Bank of Montreal

This Repayment Notice is delivered pursuant to the amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”). Terms used herein as defined terms shall have the respective meanings ascribed in the Credit Agreement.

(1) The Borrower hereby irrevocably commits to make a Repayment as follows:

- (a) Facility:
- (b) date of Repayment:
- (c) amount of Repayment:
- (d) type of Availment Option to be repaid:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### RELIANT WEB HOSTING INC.

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:



## EXHIBIT E – COMPLIANCE CERTIFICATE

To: Bank of Montreal

RE: Amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”).

Terms used herein as defined terms and not otherwise defined shall have the respective meanings ascribed thereto in the Credit Agreement.

- (1) Enclosed are the [**Interim Financial Statements / Year-end Financial Statements**] with respect to the [**Fiscal Quarter / Fiscal Year**] ended \_\_\_\_\_. The following are the financial ratios in respect of the Borrower as at the end of the said [**Fiscal Quarter / Fiscal Year**], calculated in accordance with the provisions of the Credit Agreement:
- (2) This Compliance Certificate is provided by the undersigned Chief Financial Officer on behalf of the Borrower, solely in the undersigned’s capacity as an officer of the Borrower and not in any individual capacity, and without personal liability, in respect of the twelve-month fiscal period of the Borrower commencing on \_\_\_\_\_ and ending on \_\_\_\_\_ (the “**Fiscal Period**”).
- (3) Enclosed are the [**Interim Financial Statements / Year-end Financial Statements**] in respect of the Fiscal Period required pursuant to section 9.04 of the Credit Agreement.
- (4) The Senior Funded Debt to EBITDA Ratio in respect of the Fiscal Period was \_\_\_\_\_, determined as follows:

Senior Funded Debt at end of Fiscal Period: \_\_\_\_\_; divided by

EBITDA: \_\_\_\_\_

equals: \_\_\_\_\_

- (5) The Fixed Charge Coverage Ratio in respect of the Fiscal Period was \_\_\_\_\_, determined as follows:
  - (A) EBITDA: \_\_\_\_\_; less
  - (B) Cash Taxes: \_\_\_\_\_; less
  - (C) Distributions paid in cash: \_\_\_\_\_; less
  - (D) Capital Expenditures not financed by Accrued Funding \_\_\_\_\_; less

- (E) Deferred Development Costs not financed by Accrued Funding \_\_\_\_\_;
  - (F) equals: \_\_\_\_\_; divided by
  - (G) Funded Debt Service: \_\_\_\_\_
  - (H) equals: \_\_\_\_\_
- (6) The Working Capital Ratio in respect of the Fiscal Period was \_\_\_\_\_, determined as follows:
- (A) current assets at the end of the Fiscal Period: \_\_\_\_\_; divided by
  - (B) current liabilities: \_\_\_\_\_
  - (C) equals: \_\_\_\_\_
- (7) Attached hereto is an analysis of any material variances in the financial results in the Fiscal Period from the projections contained in the most recent Annual Business Plan presented to the Bank pursuant to section 9.04(d) of the Credit Agreement.
- (8) The Excess Cash Flow in respect of the Fiscal Year was \_\_\_\_\_, determined as follows:
- (A) EBITDA: \_\_\_\_\_; less
  - (B) Cash Taxes: \_\_\_\_\_; less
  - (C) Interest on Funded Debt: \_\_\_\_\_; less
  - (D) principal payments in respect of the Facilities and other Permitted Funded Debt (other than balloon payments) and scheduled payments in respect of Capital Leases: \_\_\_\_\_; less
  - (E) voluntary Repayments under any Facility paid during such Fiscal Year: \_\_\_\_\_; less
  - (F) Capital Expenditures, but excluding any portion thereof financed by Accrued Funding: \_\_\_\_\_; less
  - (G) Deferred Development Costs, but excluding any portion thereof financed by Accrued Funding: \_\_\_\_\_; less
  - (H) extraordinary expenses: \_\_\_\_\_; less
  - (I) Earn-outs paid from sources other than the proceeds of from an Advance: \_\_\_\_\_
  - (J) equals: \_\_\_\_\_

(9) The undersigned Senior Financial Officer of the Borrower hereby certifies on behalf of the Borrower and without personal liability as follows:

- (A) the foregoing information and all information contained in the attachments hereto is true, correct and complete in all material respects;
- (B) the representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof (unless expressly stated in section 8.01 of the Credit Agreement to apply only as at a specified earlier date);
- (C) to the best of the Borrower's knowledge, each lease in respect of the Leased Real Properties is in good standing and any and all rents or other charges due and payable by a Company thereunder as of the date hereof have been paid;
- (D) to the best of the Borrower's knowledge, each Material Agreement is in good standing and any and all amounts owing thereunder which are due and payable by a Company thereunder as of the date hereof have been paid; and
- (E) no Default, Event of Default or Material Adverse Change has occurred and is continuing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Title: Senior Financial Officer

## EXHIBIT F – BORROWING BASE CERTIFICATE

To: Bank of Montreal

This Borrowing Base Certificate is delivered pursuant to the amended and restated credit agreement made among, *inter alios*, Reliant Web Hosting Inc., Thinkwrap Solutions Inc., Spark::Red Inc. and Bank of Montreal dated May 2, 2019, as amended, supplemented or replaced from time to time (the “**Credit Agreement**”). Terms used herein as defined terms shall have the respective meanings ascribed in the Credit Agreement.

### Determination of Facility A Margin Limit

As at \_\_\_\_\_ (the “**Applicable Date**”), the Facility A Margin Limit was \$\_\_\_\_\_, determined as follows:

(10)

1. Eligible Canadian Accounts: \_\_\_\_\_ x 75% = \_\_\_\_\_; plus
2. Eligible US Accounts: \_\_\_\_\_ x 75% = \_\_\_\_\_; plus
3. Eligible Insured Accounts: \_\_\_\_\_ x 90% = \_\_\_\_\_; less
4. Potential Priority Amount: \_\_\_\_\_; equals
5. Facility A Margin Limit: \_\_\_\_\_ (maximum \$3,000,000)

### Facility A Margin Limit Attachments

Attached to this certificate are:

- (i) an aged summary of Accounts including domicile of account debtors, intercompany accounts, doubtful accounts, accounts in dispute, contra accounts, holdbacks and any deposits received from account debtors which remain outstanding at the Applicable Date;
- (ii) an aged summary of accounts payable of the Companies; and
- (iii) a summary of all amounts which comprise the Potential Priority Amount as at the Applicable Date;

### Determination of Facility D Margin Limit

As at \_\_\_\_\_ (the "**Applicable Date**"), the Facility D Margin Limit was \$\_\_\_\_\_, determined as follows:

1. Accrual Stage SR&ED Refunds: \_\_\_\_\_ x 60% = \_\_\_\_\_; plus
2. Claim Stage SR&ED Refunds: \_\_\_\_\_ x 75% = \_\_\_\_\_; plus
3. Approval Stage SR&ED Refunds: \_\_\_\_\_ x 85% = \_\_\_\_\_; equals
4. Facility D Margin Limit: \_\_\_\_\_ (maximum \$500,000)

### Facility D Margin Limit Attachments

Attached to this certificate:

- (i) **[is]/[are]** comfort letter(s) delivered by an independent third party accountant of national standing, which, among other things: (1) identifies the applicable statute and the related regulatory interpretive forms required to be filed with the applicable Governmental Authority in respect of such scientific research and experimental development activities; and (2) certifies the eligibility of such scientific research and experimental development activities and the amount of income tax credits available for such activities;
- (ii) in respect of scientific research and experimental development activities which satisfy the criteria for Accrual Stage SR&ED Refunds: (1) a project plan and description of such activities consistent with the Annual Business Plan and which sets out monthly and quarterly expenditures and project milestones; (2) a summary which sets out scientific research and experimental development expenditures to date with estimated corresponding income tax credit amounts; and (3) copies of the applicable Governmental Authority filings in respect thereof; and
- (iii) is an approval in writing by a Governmental Authority with respect to the re-fundability of scientific research and experimental development activities pursuant to the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any other legislation of a similar nature in Canada or any other jurisdiction in which any Company conducts business;

### Certificate

The Borrower hereby certifies that as at the date hereof:

- (i) the foregoing information and all information contained in the attachments hereto is true, correct and complete as at the Applicable Date;

- (ii) to the best of the Borrower's knowledge, each lease in respect of the Leased Real Properties is in good standing and any and all rents or other charges due and payable by a Company thereunder as of the date hereof have been paid;
- (iii) to the best of the Borrower's knowledge, each Material Agreement is in good standing and any and all amounts owing thereunder which are due and payable by a Company thereunder as of the date hereof have been paid;
- (iv) material respects as if made on the date hereof (unless expressly stated in section 8.01 of the Credit Agreement to apply only as at a specified earlier date); and
- (v) no Default, Event of Default or Material Adverse Change has occurred and is continuing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_

Name:

Title: Senior Financial Officer

## **DISCLOSURE SCHEDULES**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(b)**  
**Corporate Information**

*[Redacted - commercially sensitive information.]*



**Schedule 8.01(d)**  
**Pending Corporate Changes**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(h)**  
**Conduct of Business; Material Permits**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(i)**  
**Ownership of Assets; Specific Permitted Liens**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(j)**  
**Owned Real Properties**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(k)**  
**Leased Real Properties**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(l)**  
**Intellectual Property**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(m)**  
**Insurance Policies**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(n)**  
**Material Agreements**

*[Redacted - commercially sensitive information.]*



**Schedule 8.01(o)**  
**Labour Agreements**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(p)**  
**Environmental Matters**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(q)**  
**Litigation**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(r)**  
**Pension Plans**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(x)**  
**Sources and Application of Funds relating to the Purchase Transactions**

*[Redacted - commercially sensitive information.]*

**Schedule 8.01(aa)**  
**Bank Accounts**

*[Redacted - commercially sensitive information.]*