



OVERDRAFT TERMS AND CONDITIONS

These Overdraft Terms and Conditions (the “**Terms**”), as amended from time to time, outline the terms and conditions governing the Borrower’s right to overdraw the Account in excess of the fully paid and collected balance in the Account. These Terms replace all prior agreements between the Borrower and DUCA in respect of the grant to the Borrower of a right to overdraw the Account.

In consideration of DUCA granting to the Borrower a right to overdraw the Account pursuant to the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, the Borrower acknowledges and agrees as follows:

1. DEFINITIONS

In these Terms, the following terms will have the following meanings:

- (a) “**Account**” means the chequing account maintained by the Borrower with DUCA, as specified on the Overdraft Line of Credit Application submitted by the Borrower to DUCA;
- (b) “**Agreement**” means these Overdraft Terms and Conditions together with the Overdraft Line of Credit Application executed by the Borrower and all letters and notices relating to same;
- (c) “**Borrower**” means the person or, if more than one, each person who has signed the Overdraft Line of Credit Application;
- (d) “**DUCA**” means DUCA Financial Services Credit Union Ltd. and its affiliates; and
- (e) “**Overdraft Line of Credit Application**” means the Overdraft Line of Credit Application completed and submitted by the Borrower to DUCA.

2. AUTHORIZED OVERDRAFT

- (a) Subject to credit approval by DUCA, the Borrower may overdraw the Account in excess of the fully paid and collected balance in the Account to the maximum amount set out on the Overdraft Line of Credit Application (the “**Overdraft Limit**”).
- (b) The Borrower will supply to DUCA such further information as DUCA may require from time to time to make current the information provided by the Borrower to DUCA in connection with the application for overdraft protection or otherwise provided to DUCA in respect of the rights granted to the Borrower under the Agreement.
- (c) If more than one person has signed the Overdraft Line of Credit Application as Borrower, then the Borrower's obligations under the Agreement are the joint and several obligations of each such Borrower.

- (d) DUCA is authorized to pay any cheques, withdrawals or other debit items drawn on the Account which overdraw the Account or increase an overdraft in the Account in accordance with the signing authority for the Account.
- (e) Notwithstanding credit approval, and whether or not the Borrower has exceeded the Overdraft Limit, DUCA may refuse to pay a cheque or payment item, or honour a withdrawal request if DUCA determines that the cheque, payment item or withdrawal request was forged, unauthorized, altered, made in error or based upon a mistake of fact, or induced through or in any way tainted by fraud or unlawful conduct.
- (f) DUCA shall not be liable to the Borrower for any loss, damage or inconvenience that the Borrower may suffer if DUCA stops allowing the Borrower to overdraw the Account for any reason.

3. **EXCESS WITHDRAWALS**

- (a) DUCA may refuse to pay any cheque, withdrawal or other debit item if the outstanding debit balance of the Account exceeds, or would after payment of such cheque, withdrawal or other debit item exceed, the Overdraft Limit on the day such cheque, withdrawal or other debit item is presented to DUCA for payment (an “**Excess Withdrawal**”).
- (b) DUCA reserves the right to allow an Excess Withdrawal in order to process transactions initiated through the Account or to apply service fees on the Account. If DUCA should choose to allow an Excess Withdrawal, it has no obligation to do so again, at any time in the future. DUCA shall not be liable to the Borrower for any loss, damage or inconvenience that the Borrower may suffer if DUCA stops allowing the Borrower to exceed the Overdraft Limit.
- (c) Whether or not DUCA permits an Excess Withdrawal, the Borrower will pay DUCA's applicable services fees for Excess Withdrawals and will indemnify and hold DUCA harmless from and against any and all liabilities, losses, claims and costs, including legal costs, incurred by DUCA in connection with the Excess Withdrawal. If DUCA does permit an Excess Withdrawal, the Excess Withdrawal will constitute a loan which is immediately due without demand and which bears interest at the overdraft interest rate established by DUCA from time to time. Service fees in respect of Excess Withdrawals are in addition to any other fees that the Borrower is required to pay under the Agreement in respect of an overdraft of the Account.

4. **INTEREST AND SERVICE FEES**

- (a) Each overdraft of the Account constitutes a loan payable upon demand and the Borrower authorizes DUCA to charge to the Account, and the Borrower shall pay, the applicable service fees established by DUCA from time to time and interest charges on all amounts which overdraw the Account, calculated on a daily basis from the date when each such amount is debited to the Account until the date of payment at the rate per annum and on terms that DUCA may from time to time establish for overdrafts.
- (b) The service fees and interest rate for overdraft protection may be obtained from any branch of DUCA or on the DUCA website.
- (c) Interest at the fixed rate set by DUCA will apply both before and after same becomes payable, before and after the Agreement is terminated, and before and after judgment is obtained against the Borrower.
- (d) The Borrower acknowledges that it is the responsibility of the Borrower to determine the amount by which the Account is overdrawn from time to time, the rate of interest on such overdrafts, and the interest payments, service fees and principal payments due thereon.

5. PAYMENT

- (a) The Borrower will pay to DUCA, on demand, the amount by which the Account is overdrawn. Until demand is made, the Borrower will make a deposit to the Account at least once each month and ensure that the Account has a positive balance for at least one full business day out of every 90 day period.
- (b) Interest will be charged to the Account on the last day of each and every month during which the Account is overdrawn. The Borrower will pay an amount equal to the amount of interest charged within one month of the date interest has been charged to the Account.
- (c) In the event the Borrower shall not pay the accrued interest as provided herein, then DUCA is hereby authorized and directed to advance such sums under the Overdraft Limit as may be required to pay the interest and such advance shall be considered an advance or loan under the terms of the Agreement and shall bear interest in accordance with the Agreement from the date of such advance.
- (d) DUCA may debit from the Account the amount of any cheque, withdrawal, service fee or other debit item drawn on the Account and interest as provided in the Agreement.
- (e) DUCA may deduct from any of the Borrower's other accounts with DUCA, including any joint accounts with DUCA, the amount of any payment that the Borrower is obliged to make to DUCA under the Agreement and credit the amount to the Account.
- (f) Deposits to the Account shall be treated as repayments of any amounts owing under the Agreement.
- (g) If any of the following events take place:
 - (i) the Borrower fails to pay the overdraft amount when due;
 - (ii) the Borrower gives untrue or incomplete information to DUCA in or in connection with the Borrower's application for overdraft protection or otherwise pursuant to the Agreement;
 - (iii) the Borrower fails to perform any obligation under the Agreement;
 - (iv) if DUCA determines that the Borrower has engaged in any fraudulent or unlawful conduct; or
 - (v) the Borrower dies or becomes subject to or takes advantage of any law relating to bankruptcy or insolvency or for the relief of debts, or on attachment, execution or levy against the Borrower or the Account or the property of the Borrower;

DUCA will have no obligation to pay any cheques, withdrawals or other debit items which would overdraw the Account or increase an overdraft in the Account and, at the option of DUCA, the overdraft amount, along with any outstanding services fees and accrued interest, will, without limiting any of the other rights of DUCA, become immediately due and payable without notice or demand.

6. CHANGES

- (a) DUCA may change the Overdraft Limit at any time and for any reason, at its sole discretion, on written notice to the Borrower.

- (b) DUCA is entitled to change the service fees, rate of interest on overdrafts or the manner of calculating such interest rate at any time and for any reason, without the Borrower's permission. Any change will apply to any amounts owing on the date the change is effective and to indebtedness arising after that date. Changes to the interest rate or how interest is calculated and changes to the service fees are effective when notice of the change is posted at DUCA branches or on the DUCA Website.
- (c) DUCA may otherwise change the Agreement on written notice to the Borrower. The effective date of such change will be set out in the notice.
- (d) The Borrower is responsible for regularly reviewing the terms and conditions of the Agreement. If the Borrower overdraws the Account after the effective date of a change it will mean that the Borrower has received notice of, has read and understands and accepts any changes which have been made to the Agreement.
- (e) The Borrower may not change, supplement, or amend the Agreement by any means.
- (f) If more than one Borrower signs the Overdraft Line of Credit Application, then the Borrowers authorize DUCA to mail or send the notice to only one Borrower.

7. **TERMINATION**

- (a) Each of DUCA and the Borrower may terminate the Agreement immediately by giving the other written notice of its decision to terminate the Agreement.
- (b) DUCA may terminate the Agreement without notice on the occurrence of the events listed under either of paragraphs 5(g)(i) or (ii), in which case the Borrower will be considered in default by the mere lapse of time that the Borrower had to perform its obligation, or under any of paragraphs 5(g)(iii), (iv) or (v) in which case the occurrence of any of such events listed therein will constitute and put the Borrower in default.
- (c) Upon termination of the Agreement, the overdraft amount and all outstanding service fees and accrued interest shall be immediately due and payable without notice or demand.
- (d) Termination of the Agreement does not relieve the Borrower of any obligations under the Agreement until the overdraft amount and all outstanding service fees and accrued interest have been paid to DUCA in full.

8. **MISCELLANEOUS**

- (a) Life and disability insurance are not available for the obligations of the Borrower under the Agreement.
- (b) If there is a conflict between the terms and conditions of another agreement the Borrower may have with DUCA and the terms and conditions of the Agreement, the Agreement will apply to the extent necessary to resolve the conflict.
- (c) The terms of the Agreement apply to the Borrower, and shall bind the Borrower and the Borrower's heirs, executors, administrators and other legal representatives, successors and permitted assigns, as applicable.
- (d) In these Terms, words importing the singular include the plural and vice versa; and words importing gender include all genders.

- (e) The Agreement will be enforced to the fullest extent permitted by applicable law. If for any reason any provision of the Agreement is held to be invalid or unenforceable to any extent, then:
 - (i) such provision will be interpreted, construed, or reformed to the extent reasonably required to render the same valid, enforceable, and consistent with the original intent underlying such provision; and
 - (ii) such invalidity or unenforceability will not affect any other provision of the Agreement.
- (f) No waiver by DUCA of any breach of, or default under, the Agreement shall be deemed to be a waiver of any preceding or subsequent breach or default. DUCA may, without notice, require strict adherence to the terms and conditions of the Agreement, despite any prior indulgence granted to or acquiesced in by DUCA.
- (g) The Agreement is governed by the laws of Ontario and the laws of Canada applicable in Ontario, excluding any principles of the conflicts of laws that would apply a different body of law. The Borrower submits and attorn to the exclusive jurisdiction and venue of the courts of the Province of Ontario with respect to any matters arising from or related to the Agreement.
- (h) It is the express wish of the parties that the Agreement and any related documents be drawn up and if execution is required, to be executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.