

## SCHEDULE A

### MINISTERIAL LOAN GUARANTEES

#### TERMS AND CONDITIONS

#### 1. Definitions:

In these Terms and Conditions,

"**applicant**" means an individual Indian or a group of Indians (such as a Council of a Band, a Tribal Council, an authorized Band Housing Authority, a Band Housing Corporation including a Band Corporation under the *Cree/Naskapi (of Quebec) Act*, a corporation without share capital and a cooperative association, where all members of said corporations and cooperative associations are Indians) who has applied for a loan for the construction, acquisition or renovation of housing located on lands as hereinafter defined.

"**application**" means:

- (a) an application for a housing loan for which Canada Mortgage and Housing Corporation (CMHC) will provide loan insurance pursuant to the *National Housing Act* (NHA), and which will be secured by the Minister through a Ministerial Loan Guarantee; or
- (b) an application, other than an application as described in (a) above, for a housing loan, which will be secured by the Minister through a Ministerial Loan Guarantee.

"**Band**" means:

- (a) a Band as defined in the *Indian Act* or the *Cree/Naskapi (of Quebec) Act*, or
- (b) a former Band or group of Bands who is/are signatory to an implemented self-government agreement with Canada, or Canada and the appropriate province/territory.

"**borrower**" means an applicant to whom a loan has been made by a lender, which loan is guaranteed by the Minister in accordance with these Terms and Conditions.

**"Council of a Band"** means:

- (a) a Council as defined in the *Indian Act*; or
- (b) a Council of a Band Corporation as defined in the *Cree/Naskapi (of Quebec) Act*; or
- (c) the governing body of a former band or group of bands who is/are signatory to an implemented self-government agreement with Canada, or Canada and the appropriate province/territory; or
- (d) groups of individuals that the Minister has authorized to be considered as an Indian Band by Order of the Governor in Council.

**"default"**, for the purpose of these Terms and Conditions, means the borrower has failed to make loan payments as stipulated in the Loan Agreement.

**"environmental site assessment"** refers to an Environmental Site Assessment as prescribed by the Canadian Standards Association (CSA) Standard Z768-94 entitled: *Environmental Site Assessment*, describing a systematic process by which an assessor determines whether a particular property is or may be subject to actual or potential contamination, and does not refer to an environmental assessment as may be required pursuant to the *Canadian Environmental Assessment Act*.

**"Guarantee Agreement"** means the agreement between the Minister and the lender containing the terms and conditions for the Ministerial Loan Guarantee.

**"Indian"** means:

- (a) a person who, pursuant to the *Indian Act*, is registered as an Indian or is entitled to be registered as an Indian; or
- (b) beneficiaries as defined under the *Cree/Naskapi (of Quebec) Act*.

**“lands”** means:

- (a) lands which constitute “lands reserved for the Indians” under class 24 of section 91 of the *Constitution Act, 1867*, including lands, the legal title to which is vested in Her Majesty, that have been set apart as reserve for the use and benefit of a Band under subsection 2(1) of the *Indian Act*, and may also include lands so defined or similarly defined under the terms specified in implemented self-government agreements or implemented land claims agreements; or
- (b) a designated Indian settlement where groups of Indians normally reside and the federal Crown holds title to this land or has acquired the right to use and occupy this land by agreement with the appropriate provincial or territorial government; or
- (c) Category 1A or Category 1A-N lands as defined in the *Cree /Naskapi (of Quebec) Act*, or
- (d) any other lands that are within the legislative authority of Parliament as contemplated by class 24 of section 91 of the *Constitution Act, 1867*;

but does not include:

- (e) lands that are held in fee simple.

**"lender"** means Canada Mortgage and Housing Corporation or other lender approved by Canada Mortgage and Housing Corporation pursuant to the *National Housing Act* for the purpose of making loans.

**"loan"** means:

- (a) a loan made pursuant to the *National Housing Act* by a lender and which the Minister has guaranteed for the construction, acquisition or renovation of housing on lands as defined; or
- (b) a loan not made pursuant to the *National Housing Act* by a lender and not insured by Canada Mortgage and Housing Corporation, which the Minister has guaranteed for the construction, acquisition or renovation of housing on lands as defined.

**“Loan Agreement”** means an agreement between a borrower and a lender containing the terms and conditions of the housing loan.

**“loan guarantee”** means a Ministerial Loan Guarantee whereby the Minister guarantees repayment of the loan to the lender in the event of default by the borrower.

**"Minister"** means the Minister of Indian Affairs and Northern Development or his/her designated representative.

## **2. Conditions for the Provision of Ministerial Loan Guarantees for Housing Loans:**

Where the Minister is assured that the applicant will obtain the loan through a lender, the Minister may agree to provide a loan guarantee where the Council of a Band has submitted to the Minister, in writing:

- (a) certification that the loan, if granted, will provide housing or housing improvements for Indians, on lands as defined;
- (b) that an environmental site assessment has been carried out on the subject property either individually or as part of a sub-division or community assessment, in accordance with the Canadian Standards Association's Standard Z768-94 for Environmental Site Assessment (or as may be revised from time to time), and that such an assessment confirms that there is no evidence of contamination that may, upon exposure, constitute an identifiable risk to human health or the natural environment;
- (c) consent, by means of a Band Council Resolution or an authorizing document from a Council of a Band under self-government legislation, to the expenditure of the Band's revenues, or the transfer of such other security deemed acceptable by the Minister, for the purposes of reimbursing the Consolidated Revenue Fund for payments made pursuant to subsection 7(c) and section 10; and, where Section 89 of the *Indian Act* is applicable, the Council of the Band shall provide Her Majesty in Right of Canada with a waiver to the application of s.89 with respect to the Band's assets other than land.

### **3. Additional Conditions for the Provision of Ministerial Loan Guarantees for Housing Loans to Individuals:**

In the case of a loan to an individual Indian, the Minister may agree to provide a loan guarantee provided that the conditions set out in Section 2 above are met and where the Council of a Band has confirmed to the Minister, in writing,

- (a) that it is satisfied with the reputation and financial responsibility of the individual for whom it takes on the risk that, should a default occur, it would have to assume responsibilities under the terms of the Loan Agreement or the loan guarantee as set out in Section 12 below; and
- (b) that it has received written consent from the individual that upon default of the loan, he/she will:
  - (i) where applicable, initiate the transfer of any certificate of possession or occupation, location ticket or other documentation held by the individual in respect of the property referred to in the loan application, to the Council of the Band; and/or
  - (ii) vacate that property, having been given reasonable notice by the Council of the Band.

### **4. Renewal/Refinancing of Loan:**

Where a borrower and an existing lender agrees to renew an existing loan for another term or to refinance an existing loan, the loan guarantee will continue to apply provided the lender forwards written notification (currently, DIAND Form 80-059 Guaranteed Loans Terms and Conditions Report) to the Minister, within 60 days after the loan has been renewed or refinanced, indicating:

- (a) the length of the new term;
- (b) the interest rate for the new term of the loan (at a rate normally not to exceed the weekly posted closed, fixed interest rates available at the time of the renewal/refinancing);
- (c) that the outstanding principal balance under the loan is not being increased; and
- (d) that the total amortization period of the loan is not being increased.

**5. Transfer of Loan/Ministerial Loan Guarantee:**

In the event that the borrower requests a transfer of the loan to a new lender during the original amortization period, the Loan Agreement and the loan guarantee will be assigned to the new lender, provided that the new lender will, within 60 days of receiving the loan, provide the Minister with written notification, indicating:

- (a) the name and address of the new lender, as herein defined;
- (b) the DIAND Guarantee Number;
- (c) the length of the new term;
- (d) the interest rate for the new term of the loan (at a rate normally not to exceed the weekly posted closed, fixed interest rates available at the time of transfer);
- (e) that the outstanding principal balance under the loan is not being increased;
- (f) that the total amortization period of the loan is not being increased; and
- (g) that the new lender assumes the obligations under the Loan Agreement and the loan guarantee.

**6. Assignment of Loan/Ministerial Loan Guarantee:**

In the event a lender wishes to assign the loan to another lender, the Loan Agreement and the loan guarantee will be assigned to the new lender, provided that the new lender will, within 60 days of receiving the loan, provide the Minister with written notification, indicating:

- (a) the name and address of the new lender, as herein defined;
- (b) the DIAND Guarantee Number;
- (c) the outstanding principal balance under the loan being assigned to the new lender; and
- (d) that the new lender assumes the obligations under the Loan Agreement and the loan guarantee.

**7. Notification of Loan Default:**

- (a) In the event a borrower fails to make loan payments as stipulated in the Loan Agreement, the lender shall inform the Minister of the default situation, by submitting a Notification of Loan Default (formerly Arrears Report) within 90 days of the borrower being in default in making payments under the loan, and every 30 days thereafter while the default continues.
- (b) Where the Minister receives notice from the lender that a borrower is in default in making payments under the terms of the Loan Agreement, the Minister, in conjunction with the lender, shall cause every reasonable effort to be made to have the borrower make the payments required under the terms of the Loan Agreement.
- (c) The Minister may, if he or she considers it desirable, make loan payments, including the arrears, to the lender, and take any other steps which may be deemed appropriate in the circumstances. Any loan payments made on behalf of the borrower will be recovered from the Band.

**8. Claim To Minister for Payment:**

- (a) Where the loan remains in default for 120 days from the date on which the lender gave the notice referred to in subsection 7(a) above, or for such other period of time as may be agreed upon by the Minister and the lender, the lender shall submit to the Minister a claim for payment of the unpaid balance of principal and accrued interest at the contract rate up to the date that the claim is paid by the Minister, due under the loan pursuant to the terms of the Guarantee Agreement. Any reasonable charges incurred by the lender in accordance with prudent lending practices to safeguard the interest of the lender, such as insurance premiums against fire and other insured risks or hazards, hydro, water/sewer, inspection or management fee, property protection, property maintenance, property repairs and expenses, heating, are recoverable.
- (b) The claim referred to in subsection 8(a) shall be in a form prescribed by the Minister (Form 20-537- Claim to DIAND for Payment of On-Reserve Housing Guarantee) and, along with supporting documentation, shall confirm that:
  - (i) in the case of an NHA-insured loan, the loan was made and administered in accordance with the Loan Agreement, the applicable provisions of the *National Housing Act*, the National Housing Loan Regulations, the terms and conditions of the insurance, the guidelines, the Guarantee Agreement, and any special conditions relating to the loan; or

- (ii) in the case of a non-NHA insured loan, the loan was made and administered in accordance with the Loan Agreement, the Guarantee Agreement, and prudent lending practices as outlined in Annex A or as may be prescribed by the Minister as and when may be agreed to, from time to time, by the parties; and
- (iii) the loan is in default and the unpaid balance of principal and accrued interest, plus other reasonable costs, are specified and included in the amount set out in the claim and are due under the terms of the Guarantee Agreement. The maximum period of accrued interest being paid shall not exceed 270 days unless agreed to, in advance and in writing, between the lender and the Minister.

**9. Lender Performance:**

The Minister may, at his/her discretion, review the file to determine whether the lender is in compliance with the terms of the Guarantee Agreement and has followed prudent lending practices, including those set out in Annex A. If the lender has not followed prudent lending practices, the Minister may reduce the payment of the accrued interest or other reasonable costs included in the amount set out in the claim referred to in subsection 8(a).

**10. Payment on Loan Guarantees:**

The Minister shall pay to the lender the amount set out in the claim referred to in subsection 8(a), less any amount that may be determined in accordance with section 9, within 60 days from the receipt by the Minister of the claim or within such further period of time as may be agreed upon by the Minister and the lender.

**11. Lender Assignment to the Minister:**

Where a payment to the lender has been made pursuant to section 10, the lender shall give the Minister an absolute assignment of its rights under the loan and under any judgment obtained by the lender in respect to the loan, and its interest in any insurance policies issued under the terms of the loan.



## 12. Recovery of Defaulted Loans:

- (a) Pursuant to the Band Council Resolution or an authorizing document from a Council of a Band under self-government legislation referred to in subsection 2(c), and subsequent to a lender's claim being paid by the Minister, the Minister will recover amounts paid on defaulted loans:
  - (i) by entering into repayment agreements with the Council of a Band, for the repayment by the Council of a Band of the amount paid by the Minister under section 10, plus interest from the date of payment by the Minister which interest may include an adjustment of the original contract interest rates; or
  - (ii) by taking necessary measures to reimburse the Consolidated Revenue Fund from the security in instances where another form of security, such as trust money or land claim monies, has been used as collateral for the loan guarantee.
- (b) In the case of loans made to individuals and pursuant to the written consent from the individual referred to in subsection 3(b) for recovery on defaulted loans, the Minister may, where applicable, apply Section 24 of the *Indian Act* whereby the Minister approves the transfer of the borrower's right to possession of the lands to the Council of the Band.
- (c) Subsequent to the transfer of the certificate of possession or occupation, location ticket or other documentation held by the individual in respect of the property, from the individual to the Council of the Band, the Council of the Band will commence such proceedings as may be necessary against the borrower to take physical possession of the property related to the certificate of possession.

## 13. Reporting Requirements:

- (a) The Minister may, in consultation with the lenders, prescribe such security forms and reporting requirements as may be required for the purpose of these Terms and Conditions. Annex B provides a list of reports which are currently required.
- (b) Lenders shall provide reports which may be prescribed by the Minister as and when may be agreed to, from time to time, by the parties.

**ANNEX A****Prudent lending practices to be used when approving a non-NHA insured loan for use on-reserve**

1. For loans taken out for housing purposes by the borrower, lenders are expected to manage the loan and any potential default as if it was a conventional loan made to an individual living off-reserve, and as follows:
  - (i) verify the borrower's credit worthiness prior to lending the funds;
  - (ii) in the case of an individual, verify his/her employment history, income levels and stability, assessing that there is sufficient revenue to repay the loan;
  - (iii) confirm that the borrower's equity is available and in place at the time of lending the funds;
  - (iv) should the loan go into default, the lender is expected to notify the borrower of the delinquent account, as soon as possible. The lender will also attempt to implement remedial actions to assist the borrower in meeting their obligation. This may include implementation of a special repayment plan which meets the borrower's circumstances and enables the repayment of the loan and arrears. In the event that the borrower refuses to agree to such a repayment plan or does not fulfill the conditions of such an agreed upon plan, the lender could then request payment through the Ministerial Guarantee; and
  - (v) in every manner, the lender will make and administer a loan subject to a Ministerial Loan Guarantee with the same degree of diligence as would be expected for a non-guaranteed loan, except for matters particular to on-reserve such as recovery and disposal of the property.
2. The lender will not lend more than the reasonable construction, acquisition or renovation cost of the project. The borrower shall provide an estimate of the construction, acquisition or renovation cost along with any required plans and construction information. The lender shall ensure the reasonableness of cost estimates through an appraisal or a comparison with similar projects in the community/area. All new construction and renovation work must meet or exceed National Building Code (NBC) Standards or equivalent standards.
3. Lenders shall submit reports to the Department of Indian Affairs and Northern Development as stipulated in Annex B of these Terms and Conditions. Such reports will be provided to the appropriate DIAND Regional Office as stipulated in the Guarantee Agreement.

**ANNEX B****Reporting Requirements:**

Lenders are required to submit the following reports to the appropriate DIAND Regional Office as stipulated in the Guarantee Agreement:

**1. Guaranteed Loans Terms and Conditions Report (Form 80-059):**

- (a) Within 60 days following the renewal, refinancing, transfer or assignment of a loan, the existing lender and/or new lender must provide written notification to the Minister detailing the applicable information requested in sections 4, 5 and 6 of these Terms and Conditions.
- (b) When a new loan is issued, the lender must provide written notification to the Minister, within 60 days of issuing a new guaranteed loan, providing the related information.

**2. Notification of Loan Default (Form number to be determined):**

In accordance with subsection 7(a), within 90 days of a loan default, the lender will provide a Notification of Loan Default (formerly Arrears Report) to the Minister giving the status of the default situation, the outstanding arrears and principal. Such notification is to be provided every 30 days thereafter that the loan remains in default.

**3. Claim to DIAND for Payment of On-Reserve Housing Guarantee (Form 20-537):**

In accordance with subsection 8(a), within 120 days of initial Notification of Loan Default, the lender will submit to the Minister a claim for payment of the unpaid balance of principal, accrued interest, and any reasonable charges due under the loan pursuant to the terms of the loan guarantee.

**4. Yearly Status Report(s) of Guaranteed Loans (Form 20-491):**

This report is to be submitted by the lender for each guaranteed loan, identifying the outstanding balance, principal and interest at March 31st of any given year.

(Note: the Minister may revise the forms and reporting requirements as and when may be agreed to, from time to time, by the parties.)