

Aboriginal Loan Guarantee Program Outline of Loan Guarantee Agreement

The following is an outline of the terms that may be included in a loan guarantee provided by the Province under the Aboriginal Loan Guarantee Program. These terms are general in nature. They are set out on this website to assist applicants and lenders as they negotiate the process of qualifying for a loan guarantee offered under the Province's Aboriginal Loan Guarantee Program.

The terms of a loan guarantee provided by the Province under the Aboriginal Loan Guarantee Program will be customised to ensure compliance with the Aboriginal Loan Guarantee Program and will address the particularities of the structure and details of an underlying project.

For avoidance of any doubt, before entering into any loan guarantee agreement, the Province must be satisfied with the terms and conditions of the underlying loan agreement (between the applicant and an approved lender) and with an applicant's qualifications under the Aboriginal Loan Guarantee Program.

The Province may require changes to the structure or terms of a loan agreement in order to meet the Aboriginal Loan Guarantee Program criteria prior to entering into a loan guarantee. The applicant and lender should expect that the Province will have comments on a lender's form of loan agreement.

- i. **Guaranteed Amount:** If the loan agreement meets the criteria for eligibility under the Aboriginal Loan Guarantee Program, the Province may guarantee to the lender the applicant's repayment of the outstanding principal amount plus any accrued but unpaid interest (as such interest is calculated under the loan agreement).

For avoidance of doubt, the Province will not guarantee the payment of any fees, penalties, make-whole amounts or other such amounts that may become due under the loan agreement.

- ii. **Guarantee Fee:** The applicant will be required to pay an annual guarantee fee to the Province. The Province will determine the amount of the guarantee fee for each transaction. At this time, the guarantee fee is 25 basis points (0.25%) of the principal amount of the loan at the time the guarantee is entered into, and thereafter annually based on the outstanding balance of the loan, including accrued but unpaid interest. The first payment is due on closing.
- iii. **Applicant's Obligations:** The applicant will be required to comply with the terms of the guaranteed loan as a condition of the loan guarantee. In addition, there will be conditions in the loan guarantee to ensure the applicant meets the terms of the Aboriginal Loan Guarantee Program.

The Province will determine the appropriate conditions for each transaction, including those set out below. Note that the Province may add or delete any conditions at its discretion depending on the specific transaction:

- a. The applicant must be wholly-owned by one or more First Nation, Métis, or other Indigenous communities.
- b. The applicant will be required to provide satisfactory evidence of its authority to enter

into the loan and loan guarantee agreement and ancillary agreements in order to qualify for a loan guarantee under the Aboriginal Loan Guarantee Program. The Province may require further evidence of support from the applicant's parent(s). This support may be evidenced by a support agreement or other security from the applicant's parent or related First Nation and may include a Band Council Resolution.

- c. The applicant will be required to provide confirmation that the material agreements that are required to carry out the project are in place and provide copies of the agreements.
 - d. The applicant will be required to provide security to the lender for the loan on terms that are satisfactory to the Province. The security will usually relate to the applicant's interest in the project and may need to be negotiated in cooperation with any other secured lenders.
 - e. The applicant will be required to open bank accounts that are subject to withdrawal and use restrictions. For example, the applicant will likely be required to establish and maintain a proceeds account into which all its project revenues are paid and which will be used to fund its loan repayments and guarantee fee payments. The applicant may also be required to establish and maintain a reserve account with a minimum balance that can be used to fund loan repayments and guarantee fee payments if there are insufficient project revenues. The applicant will likely be required to agree to restrictions on its use of funds related to the project, such as:
 - i. Making loan payments, guarantee fee payments, and maintaining a certain minimum balance in the reserve account before other withdrawals are permitted, such as for dividend payments; and
 - ii. Further restrictions on withdrawals if the debt service coverage ratio is below a defined threshold or if the applicant is in violation of the loan or guarantee agreements.
 - f. The applicant may be required to obtain insurance satisfactory to the Province.
 - g. The applicant will be required to fulfill ongoing covenants while the loan guarantee is in place, including allowing the Province to review documents and information relating to the loan and project, providing information and reports to the Province, complying with restrictions on its operations, and other matters as the Province requires.
 - h. The applicant will be required to obtain the Province's consent prior to taking certain actions that may impact the applicant's ability to repay the loan, such as:
 - i. Creating additional security interests in its assets or borrowing additional funds;
 - ii. Selling or otherwise making a disposition of any of its assets;
 - iii. Engaging in additional operations or businesses;
 - iv. Amending or terminating relevant agreements or constating documents; or
 - v. Changes in ownership.
- iv. **Lender's Obligations:** As with the applicant, the lender will be required to comply with the terms of the guaranteed loan as a condition of the loan guarantee. In addition, the Province will require the lender to agree to conditions relating to the Aboriginal Loan Guarantee Program as part of the guarantee agreement. These terms shall be subject to the discretion of the Province based on the particular transaction and are likely to include the following:
- a. The lender will follow its usual practices in entering into the loan agreement

with the applicant and will make advances and administer the loan agreement in accordance with the terms of the loan agreement.

- b. The lender will be required to create and maintain a security interest(s) appropriate to the transaction and will need to provide confirmation to the Province of its receipt of security that is satisfactory to the Province. The lender will be required to obtain the Province's consent before realizing on the security. The lender will be required to apply any proceeds of realization of the security to the loan before applying it to any other indebtedness. The lender will not be required to attempt to realize on the security prior to making a claim under the guarantee but the lender will be required to obtain the written consent of the Province before realizing on the security. The lender will be required to assign the loan agreement and security to the Province upon payment of a claim under the guarantee.
 - c. The lender will be required to notify the Province if the applicant is in default of the loan agreement or if it becomes aware of any material deterioration in the financial condition of the applicant or the value of the security.
 - d. Neither the lender nor the applicant will be permitted to amend the loan agreement without the Province's prior written consent.
 - e. The lender will be required to provide information to the Province with respect to the administration of the loan including information on advances.
- v. **Payment of Claims:** The loan guarantee agreement will contain specific requirements and terms respecting the process for the lender to make a claim under the guarantee. The Province expects that the lender will call on the guarantee as a last resort, having regard to the terms of the loan agreement (for example, if the applicant fails to pay principal or interest under the loan agreement). The Province will make all reasonable efforts to pay any valid claim within ninety days of receipt of a claim and supporting documentation. The lender will be required to assign the loan agreement and security to the Province upon payment of a claim under the guarantee.