



Virginia Small Business  
Financing Authority

# LOAN GUARANTY PROGRAM

## LOAN GUARANTY AGREEMENT

THIS AGREEMENT (“Agreement”) is made this      day of      , 20      , and entered into by and between      (the “Lender”) located at      (full address); and the Virginia Small Business Financing Authority (VSBFA) located at 101 N. 14<sup>th</sup> Street, 11<sup>th</sup> Floor, Richmond, Virginia 23219.

WHEREAS, the parties intend for the Lender to make and for VSBFA to guaranty loans to eligible small businesses (individually referred to hereinafter as the “Borrower”) pursuant to the Virginia Small Business Financing Act.

NOW, THEREFORE, the parties agree as follows:

1. Application for Guaranty. This Agreement shall cover only loans duly approved in writing by the Lender contingent upon guaranty of a percentage of the loan (“Guaranteed Percentage”) by VSBFA. Any loan approved by the Lender contingent upon VSBFA’s guaranty under this Agreement shall be referred to VSBFA for approval upon the separate application of the Lender and the Borrower. The form of such applications shall be provided by VSBFA.

2. Approval of Guaranty. VSBFA shall either approve or decline the guaranty by written notice to the Lender in its sole and absolute discretion (the “VSBFA Approval Letter”). Prior to partial or full disbursement of the loan, any change in the terms or conditions stated in VSBFA’s Approval Letter shall be subject to prior written agreement between VSBFA and the Lender.

3. Closing and Disbursement of Loans. The Lender shall close and disburse each loan or advance on any line of credit in strict accordance with the terms and conditions stated in the Lender’s loan commitment and VSBFA’s Approval Letter. The Lender shall cause to be executed a promissory note (the “Note”) for the maximum amount approved, and all additional instruments, and shall take such other actions, consistent with prudent closing and disbursement practices, required to fully protect or preserve the interests of the Lender and VSBFA in the loan. Failure of the Lender to perfect security interests or obtain guaranties stated as conditions in VSBFA’s Approval Letter or the Lender’s loan commitment, or failure of the Lender to obtain written approval from VSBFA for repayment terms or a repayment schedule other than that originally approved by VSBFA, or failure of the Lender to comply with the terms and conditions of this Agreement, shall release VSBFA from its obligations under this Agreement. Immediately after the closing of each loan, the Lender shall furnish VSBFA with a copy of the executed Note certified by the Lender. VSBFA shall be entitled at any time, after two business days written notice to the Lender, to examine and obtain copies of all Note(s), security agreements, and all other agreements and documents (herein collectively called the “Loan Documents”), and the loan repayment records held by the Lender which relate to loans made pursuant to this Agreement.

The Lender represents and warrants to VSBFA as of the date hereof and as of the date of the closing of each loan that all Loan Documents have been duly and properly executed and delivered, are the valid, binding and enforceable obligations of the Borrower and the guarantors, as applicable, and the Lender has properly perfected all security interests and obtained all guaranties stated as conditions in the Lender’s loan commitment and VSBFA’s Approval Letter. The Lender shall immediately notify VSBFA in writing if there are any errors, omissions or mistakes with respect to any security interests, liens and/or

guaranties or if the loan has not been closed and disbursed in accordance with the Lender's loan commitment or VSBFA's Approval Letter. The Lender shall take all actions necessary and proper for administering and servicing the loan in all respects consistent with all applicable laws and regulations and in a manner consistent with prudent lending practices. The Lender shall take such steps necessary to maintain perfected priority security interests in any collateral for the loan, including, without limitation, if it receives notice that the Borrower has moved any collateral, or otherwise has taken any action that would require re-perfection of the security interest in the collateral.

**3. Semi-annually, the Bank is to submit to the VSBFA within 10 days of the period-end a report listing borrowers and outstanding balances of all Guaranteed Loans as of the end of that period. The reporting periods will be from January 1 – June 30 and July 1 through December 31. The report shall show:**

- 1 Name of Borrower**
- 2 Original Loan Amount**
- 3 Amount of Guaranty**
- 4 Type of Loan (Line or Term)**
- 5 Outstanding balance**

**Loan reports are to be mailed, faxed to VSBFA at 804-225-3384, or emailed as requested.**

4. Report of Status. Lender shall give written notice to VSBFA within thirty (30) days of Lender's receipt of knowledge or notice of an occurrence of a material adverse change in the financial or other condition of the Borrower (howsoever defined). VSBFA shall not be obligated to purchase the Guaranteed Percentage of the outstanding balance of the loan if VSBFA determines that the Lender's failure to provide timely and accurate status information caused or causes any substantial harm to VSBFA.

5. Administration of Loans. The Lender shall hold the Loan Documents and shall receive all payments of principal and interest. The Lender shall maintain accurate records of: (i) any and all disbursements of the loan, (ii) each payment of principal and interest made by the Borrower for credit to the loan, and (iii) all accrued interest on the loan.

The Lender shall not, without prior written consent of VSBFA (VSBFA to provide written response to Lender within 10 business days of each notice or request from Lender):

- (a) make or consent to any amendment, extension or modification of or addition or supplement to the Note, or any of the terms or conditions of any of the Loan Documents; or
- (b) make or consent to any compromise, release, waiver, consent, extension, indulgence or other action or inaction in respect of any of the terms of the Loan Documents or any guarantor or obligor or standby creditor; or
- (c) make or consent to any substitution or release or waiver, in whole or in part, of any security for the Loan Documents or any guaranty which may be held at any time by Lender; or
- (d) make or consent to any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, or the like of Borrower or any guarantor; or
- (e) make or consent to any sale, lease or transfer of any or all of the assets of the Borrower or guarantor to any other person, firm or entity; or
- (f) make or consent to any act or omission on the Lender's part with respect to any of the Loan Documents or fail to file, record or otherwise perfect any of the same; or

- (g) approve or consent to (i) the merger or consolidation of the Borrower with any other entity, or (ii) any material change in Borrower's organizational structure or identity; or
- (h) accelerate the maturity of the Note; or
- (i) sue upon any Loan Documents.

All servicing requirements shall be the responsibility of the Lender, which shall follow accepted standards of loan servicing employed by prudent lenders generally.

6. Defaults and Remedies. Lender shall give written notice to VSBFA within thirty (30) days of Lender's receipt of knowledge or notice of an occurrence of a material default under the Loan Documents (howsoever defined). Lender shall give notice in writing to VSBFA prior to issuing a demand letter to the Borrower or guarantor or prior to taking any enforcement action or exercising any remedy against the Borrower or any guarantor. However, Lender may immediately exercise rights against Collateral, such as set off and foreclosure, if Lender in good faith believes Collateral is subject to removal or spoliation or threatens to speedily decline in value.

The Lender represents, warrants and agrees to diligently pursue, prosecute and use best efforts to exercise any and all rights and remedies against the Borrower and/or any guarantor upon a default or an event of default under any of the Loan Documents.

Prior to requesting that the VSBFA purchase the Guaranteed Percentage of the outstanding principal deficiency balance of the loan, Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action, including exercising the Lender's rights as to any applicable assignment of rents) of any and all such collateral, and the Lender shall make a reasonable effort to sell or liquidate the collateral and apply the proceeds thereof to the Loan.

7. Purchase by VSBFA. After all legal remedies and collection efforts have been exhausted, the Lender may demand in writing that VSBFA purchase the Guaranteed Percentage of the outstanding principal deficiency balance of the loan and that VSBFA reimburse the Lender for a percentage of the Lender's reasonable out-of-pocket collection expenses in accordance with Section 9 of this Agreement. The outstanding principal deficiency balance of the loan is that remaining principal balance due by the Borrower to the Lender which has not been covered by payments, set-offs, liquidation of collateral and assets, and/or payments by guarantors. VSBFA's guaranty under this Agreement does not and shall not include any interest, points and/or fees on the loan or under the Loan Documents. By making written demand that VSBFA purchase the Guaranteed Percentage of the outstanding principal deficiency balance of the loan, the Lender shall be deemed thereby to certify that all collection efforts and liquidation efforts were made by the Lender and have been exhausted, the loan has been disbursed and serviced in compliance with this Agreement, that the Lender has fully complied with the terms and conditions of this Agreement, that this Agreement remains in full force and effect with respect to the loan, and that the representations and warranties in this Agreement are true and correct.

Within 30 days after receipt of the Lender's demand, together with a certified transcript of the loan account and a reporting and accounting of the collection, enforcement and liquidation efforts and proceeds and provided that the Lender is not in breach or default of any terms, conditions, representations or warranties in this Agreement, VSBFA will pay to the Lender the Guaranteed Percentage of the outstanding principal deficiency balance of the loan and a percentage of the reasonable out-of-pocket collection expenses incurred by the Lender in accordance with Section 9 of this Agreement. Purchase by VSBFA shall not waive any right of VSBFA arising from the Lender's negligence, misconduct or violation of any provision of this Agreement. Contemporaneously with or after purchase by VSBFA of the Guaranteed Percentage of the outstanding principal deficiency balance of the loan, the Lender will, if requested in writing by VSBFA, assign and transfer to VSBFA all the Lender's right, title and interest in and to the loan and the Loan Documents.

8. Payment of Expenses. All ordinary expenses of making, servicing, and liquidating a

guaranteed loan shall be paid by, or be recoverable from the Borrower. All reasonable expenses incurred by the Lender or VSBFA in enforcing, collecting or liquidating the loan, including preservation of collateral, which are not recoverable from the Borrower shall be shared by the Lender and VSBFA on a pro rata basis in accordance with the Guaranteed Percentage.

9. Borrower's Agreement. At closing of each loan, the Lender shall have the Borrower and any guarantors execute and deliver a Borrower's Agreement for the benefit of the Lender and VSBFA, in the form provided by VSBFA.

10. Assignment. The Lender shall not assign, transfer, negotiate, sell or participate any of its interests, obligations or rights in the loan, the Loan Documents or this Agreement without the prior written consent of VSBFA.

11. Application and Forward of Payment. After a default or event of default under the Loan Documents, not timely cured by the Borrower, the Lender shall apply any payments or monies received from or on behalf of the Borrower, any collateral for the loan, any guarantor or otherwise, first to the principal of the loan, second to costs of collection, and third to interest, late charges or fees. Notwithstanding the foregoing, after VSBFA has made any payment to the Lender under this Agreement, then any payments or monies received by the Lender or VSBFA, excluding any monies collected by VSBFA under its set-off rights established by Section 2.2 of the Borrower's Agreement executed by the Borrower and the Borrower's guarantors, from or on behalf of the Borrower, any collateral for the loan, any guarantor or otherwise shall be shared by the Lender and VSBFA on a pro rata basis in accordance with the Guaranteed Percentage without set-off or deduction.

12. No Separate Security. The Lender shall not obtain from the Borrower, any guarantor or any other person or entity any additional collateral, guaranty, or security that separately secures the portion of the loan not guaranteed by VSBFA.

13. Entire Agreement. This Agreement and VSBFA's Approval Letter contain the sole and entire understanding and agreement between the Lender and VSBFA with respect to its entire subject matter, and all prior negotiations, discussions, commitments, representations, agreements and understandings with respect thereto are merged herein. This Agreement cannot be changed or terminated orally. This Agreement shall inure to the benefit of, and be binding upon the parties, their successors and assigns.

14. Jurisdiction. The parties agree (a) that this Agreement shall be subject to and construed in accordance with the laws of the Commonwealth of Virginia; (b) that jurisdiction in any action or proceeding hereunder shall be only in the courts of the Commonwealth of Virginia, with venue only at the Circuit Court of the City of Richmond, Virginia; and (c) that service of any summons or complaint in any action or proceeding hereunder shall be made in accordance with applicable Virginia law.

15. Counterparts. This Agreement may be executed in counterpart originals, with each counterpart to be deemed an original Agreement, constituting a single instrument.

**The Lender acknowledges that the guarantees herein made by the Authority are solely those of the Authority. They are not guarantees or liabilities of the Commonwealth of Virginia, and the faith and credit of the Commonwealth are not being pledged therefore.**

IN WITNESS WHEREOF, the Lender and VSBFA have caused this Agreement to be duly executed under seal the date first above written.

\_\_\_\_\_  
Name of Lender

By: \_\_\_\_\_  
(Signature)

Name:

Title:

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

By: \_\_\_\_\_  
(Signature)

Name: Scott E. Parsons

Title: Executive Director

Mailing address:  
Virginia Small Business Financing Authority  
P O Box 446  
Richmond, VA 23218-0446