

LOAN AGREEMENT

This Agreement made in duplicate as of the ____ day of _____ 20__ and shall become effective at the date of signature by the Parties.

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Industry, through Measurement Canada (MC),

AND: _____ (full and legal name of authorized service provider) having its principal place of business at _____ ("Borrower").

WITNESSES THAT:

I **WHEREAS, MC** is authorized, pursuant to the *Public Property Loan Regulations*, SOR/93-745 dated January 14, 1992, to lend for such consideration as MC may determine, public property belonging to Her Majesty for the loan of which there is no other provision in law;

II **WHEREAS**, the Borrower wishes to borrow from Her Majesty certain public Property hereinafter more fully described;

III **AND WHEREAS, MC** considers it appropriate to lend such public Property to the Borrower subject to the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, the parties agree as follows:

1. INTERPRETATION

- a) "**Property**" means the public property listed and more particularly described in Schedule "A" to this Agreement.

2. LOAN

Subject to this Agreement, MC hereby loans to the Borrower the Property described in Schedule A for use only by the Borrower as specified in Article 5 and for the term specified in Schedule A.

3. PAYMENT

There are no payments due in consideration of the loan of the Property.

4. DELIVERY

Delivery of the Property to the Borrower by MC, or, at its order, to a common carrier for delivery to the Borrower, shall constitute delivery to the Borrower. The Borrower shall be responsible for and shall pay all shipping, handling, and storage charges associated with:

- a) transporting the Property to the place or places where it is to be used by the Borrower; and
b) returning the Property to such place as may be designated by MC upon termination of this Agreement.

5. PURPOSE OF LOAN

The Borrower shall use the Property solely to carry out activities as requested by the Minister in accordance with the practices and standards set out in:

- the standard Criteria for the Accreditation of Organizations to Perform Inspections Pursuant to the *Electricity and Gas Inspection Act* and the *Weights and Measures Act* (S-A-01),
- the Registration Program Terms and Conditions, and/or
- the Conditions for the Delegation of Authorities for the Calibration and Certification of Measuring Apparatus Pursuant to the *Electricity and Gas Inspection Act* (C-D-01), as applicable.

6. RISK, INSURANCE

The Property shall be at the risk of the Borrower from the time the Property is released by MC and delivered to the Borrower by MC, or to a common carrier for delivery to the Borrower, until the Property has been returned to MC at its address set out below. The Borrower shall be responsible for any loss, damage or injury arising from any cause whatsoever and hereby confirms that it has taken the necessary steps to protect itself (i.e., general liability insurance policy).

7. SECURITY

The Borrower shall provide full and reasonable physical security in respect of the Property.

8. PHYSICAL INSPECTION

MC shall, on reasonable notice and during normal business hours, have access to the Property for purposes of inspection, whether installed or housed on the premises of the Borrower or third parties.

9. INDEMNITY

The Borrower shall be liable for and shall indemnify and save harmless MC from and against any and all claims, actions, demands, costs, or damages of any nature or kind, including those of third parties, arising from or in connection with, any aspect of this Agreement including, without limitation, the possession or use of the Property by the Borrower or by any other person with the permission of the Borrower during the term of this Agreement or any extension hereof.

Notwithstanding the foregoing, nothing hereunder shall be construed so as to render the Borrower liable to indemnify or save harmless MC from any claims, actions, demands, costs or damages of any kind arising from the negligent or wilful act of MC, its officers, servants or agents.

10. USE

The Borrower shall use and cause to be used the Property in accordance with MC's manual or instructions which have been provided to the Borrower. The Borrower shall, in its use of the Property, comply with all laws and applicable governmental regulations, if any, and with the terms of any permits or licenses issued by the governments or other entities necessary for the use of the Property.

11. NO WARRANTIES

Notwithstanding any other provision hereof, MC makes no representations, warranties or conditions, whether expressed or implied as to the quality, safety or fitness of the Property. MC shall hold any manufacturer's warranties or like assurances relating to the Property for the benefit of the Borrower.

12. ENCUMBRANCE

The Borrower shall not sell, assign or sublet the Property, in whole or in part, or suffer any lien, mortgage, hypothec or pledge upon any interest in the Property.

13. PUBLIC PROPERTY

The Property shall always remain and be deemed to be personal and movable property, even though the Property may hereafter become attached or affixed to realty.

14. INSTALLATION, MAINTENANCE, REPAIRS BY THE BORROWER

Except as otherwise provided in this article, the Borrower shall, at its own cost and expense, install, maintain and keep the Property in good repair, condition and working order and shall furnish and install all parts, mechanisms and devices and servicing required thereof. All parts, mechanisms and devices so furnished and installed shall immediately become part of the Property for all purposes hereof.

For further clarity, unless specifically authorized in writing by MC, the Borrower shall not proceed with any alterations, modifications or repairs that may impact on the accuracy of the Property or any system that the Property may be part of.

15. MODIFICATIONS

The Borrower may not, without the prior written approval of MC, add to or modify the Property. The Borrower shall furnish to MC written particulars, including sketches or plans, of all additions to or modifications of the Property. Unless otherwise agreed in writing, any such addition or modification to the Property shall become the property of Her Majesty.

16. LOSS, REPLACEMENT

In the event that any item of the Property shall become lost, stolen, destroyed or damaged beyond repair for any reason, or in the event of any condemnation, confiscation, theft or seizure or expropriation of such items, the Borrower shall promptly inform MC thereof and shall, if so directed by MC take immediate steps to cause the replacement of such item with property which is free and clear of all liens and encumbrances and which, in the opinion of MC is similar in condition and value to the item of property prior to the occurrence of any of the foregoing events. Such replacement shall take place at the Borrower's expense and, upon completion of the replacement, such replacement or part shall become subject to this Agreement and the replaced item of the Property shall simultaneously be released from the terms hereof. The term "Property" as used in this Agreement shall include such replacement or part unless the context otherwise requires.

17. LOCATION OF PROPERTY

The Borrower shall provide to MC written notice of the location of the Property or any item thereof, and shall inform MC in writing of any change of location of the same.

18. NOTICES

Where in this Agreement any notice, request, direction or other communications is required to be given or made by either party, it shall be in writing and is effective if sent by registered mail, by confirmed facsimile, or delivered in person, postage prepaid or charge prepaid, as the case may be, addressed in the case of Borrower to:

_____ (name of person)
_____ (full and legal name of authorized service provider)
_____ (full address)
Tel: ___ - ___ - ___ Fax: ___ - ___ - ___

and in the case of MC to:

_____ (name of person)
**Measurement Canada District Manager – Weights and Measures or Regional Manager –
Electricity and Gas or Laboratory Services Manager**
_____ (address)
Tel: ___ - ___ - ___ Fax: ___ - ___ - ___

or to such address as either party may in the future designate by notice to the other; and any notice, request, direction or other communications shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by courier when the delivery receipt is acknowledged by the other party, or by delivery.

19. APPROVED USE

Except with the prior written authorization of MC, the Borrower shall not lease or assign the Property. The Borrower may accept to its sole benefit and use all remuneration paid by any third party relating to or resulting from the use of the Property for purposes of the Borrower's commercial services.

20. ASSIGNMENT

This Agreement may not be assigned by the Borrower without the prior written consent of MC.

21. TERMINATION BY NOTICE

MC may terminate this Agreement at any time by giving to the Borrower 30 days' notice in writing, in which case the provisions of Article 24 hereof shall apply. Should such notice be given by MC, the parties shall consult so as to minimize any disruption resulting from termination in accordance with this article.

22. TERMINATION BY THE BORROWER

The Borrower may, with respect to any item of the Property, terminate this Agreement by delivering such item of the Property, in the same condition as it was delivered to the Borrower, reasonable wear and tear excepted, to MC at its address set out in Article 18 or at such other place as MC and the Borrower may have agreed in writing, and by signifying its intention to terminate this Agreement with respect to such item of the Property.

23. TERMINATION FOR CAUSE

MC may, in its discretion, immediately terminate this Agreement by giving written notice thereof to the Borrower should any of the following events occur:

- a) if the Borrower becomes insolvent or makes a general assignment for the benefit of creditors;
- b) if the Borrower uses the Property for a purpose inconsistent with those set forth in Article 5 hereof;
- c) should the Borrower assign or purport to assign this Agreement, or permit a third party to take possession of the Property without obtaining the prior written consent of MC;
- d) should the Borrower cease to make diligent use of the Property;
- e) should the Borrower fail to remedy or take reasonable steps to remedy any default or breach under this Agreement, other than a default or breach otherwise specified in this article, within (30) days of receipt of written notice of such default or breach from MC;
- f) should the Borrower certification be revoked or terminated, the present loan Agreement shall be terminated forthwith.

24. EVENTS UPON TERMINATION

Upon termination of this Agreement for any reason, then, in addition to any other provision or remedy available in law:

- a) the right of the Borrower to possession of the Property shall immediately cease and MC shall have an immediate right to possession of the Property, exercisable without further notice or demand;
- b) the Borrower shall, at its own expense, return the Property and shall be responsible for such until delivery to MC in the same repair and condition as it was received by the Borrower, reasonable wear and tear excepted, at the MC address set out in Article 18 or to such person, and at such place within Canada, as MC and the Borrower may agree;
- c) should, for any reason the Borrower fail to return all of the Property to MC pursuant to paragraph (b) of this Article, or should the Property have been so damaged or altered as to render it unfit for further use by MC, then upon the written request of MC, the Borrower shall pay MC such amount as MC deems to be the value of the Property which has not been returned or which has been so damaged or altered;
- d) MC may enter upon any premises upon which the Property, or any part of it, may be situated, and take possession thereof and remove the same from the custody or control of the Borrower; and
- e) the Borrower shall be liable for and shall pay to MC forthwith, but in any event upon demand, any cost or expense (including reasonable legal expenses) incurred by MC in taking possession of the Property or in transporting the Property to the place referred to in paragraph (b) of this Article.

25. TERM OF LOAN

This Agreement and the Loan of the Property shall commence upon delivery of such Property to the Borrower and terminate not later than the date set out in Schedule A.

26. APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the province of _____ (province of Measurement Canada office) and the Laws of Canada as they may be applicable.

27. ENTIRE AGREEMENT

This Agreement and Schedule A constitute the entire Agreement between the Borrower and MC with respect to the subject matter hereof, and replaces and supersedes all previous contracts, agreements, representations, or warranties, whether oral or written, and whether express or implied, with respect to the loan of the Property.

28. SUCCESSORS

This Agreement shall ensure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns.

29. DISPUTE SETTLEMENT

If a dispute arises concerning this Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter as follows:

- a) First, by negotiation,
- b) Second, by mediation by a mutually acceptable mediator, and third,
- c) If the dispute cannot be resolved otherwise or if the parties are unable to agree on a mediator, the dispute shall be finally settled by binding arbitration in accordance with the *Commercial Arbitration Act* (Canada), and judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction over the matter.

IN WITNESS WHEREOF the parties have executed this Agreement as attested by the signatures of their officers duly authorized for such purposes.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

By: (signature and date)
Measurement Canada District Manager – Weights and Measures
or Measurement Canada Regional Manager – Electricity and
Gas

(full and legal name of authorized service provider)

By: (signature and date)

SCHEDULE A

Property Description
(Revision no. and date)

Description	Quantity	Inventory no.	Year of Purchase	Purchase Value	Return Date

(name)

Measurement Canada District Manager – Weights and Measures or Regional Manager – Electricity and Gas

Date:

(name)

(organization)

Date: