



Network of Angel Organizations-Ontario is a member of



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## Sample Subscription Agreement Form

TO: [Insert: Full Legal Name of the Company] (the "Corporation")

1. Subject to the terms and conditions of this Form of Subscription, the undersigned (hereinafter referred to as the "Subscriber") hereby irrevocably subscribes for and agrees to purchase [number of shares purchased] Series A Preferred Shares (the "Initial Subscription") of the Corporation described below (the "Securities") at a subscription price of CDN \$[] per share. The Initial Subscription shall be completed on [closing date] (the "Initial Closing") or such other date as the parties may agree. At the Initial Closing, the undersigned shall pay the subscription price for the Initial Subscription by delivering to the Corporation a direct deposit wire transfer to the Corporation, in the amount of CDN\$[].
2. If and whenever at any time or from time to time the Corporation shall (i) subdivide, re-divide or change its then outstanding Common Shares into a greater number of shares; (ii) reduce, combine, consolidate or change its then outstanding Common Shares into a lesser number of shares; or (iii) issue Common Shares to holders of its outstanding securities by way of a dividend or other distribution, appropriate proportional adjustments shall be made to the number of Common Shares issuable pursuant to the Additional Tranche, and in the subscription price payable pursuant to section 2. However, no such adjustment shall be made to reflect the issuance of shares, warrants or other securities:
  - a. To the Minority Shareholders or as part of the Third Round Financing, as those terms are defined in the Shareholders' Agreement;
  - b. To directors, officers, employees or consultants (as such term is defined in Ontario Securities Commission Rule 45-503) (collectively, the "Consultants") of the Corporation or its Affiliates under or pursuant to any bona fide share or other security option plan approved by the Corporation's board of directors (a "Stock Option Plan"); or
  - c. To other persons on an individual basis pursuant to options, warrants or other securities now or in the future authorized by the Board of Directors of the Corporation.
3. The undersigned acknowledges that the Initial Subscription is subject to the acceptance of this Form of Subscription by the Corporation on or before the Initial Closing. It is understood and agreed that this Subscription Form and all monies tendered in respect of the Initial Subscription shall be returned forthwith to the

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undersigned at the address indicated below if this subscription is not accepted by the Corporation on or before the Initial Closing.

The Subscriber acknowledges (on its own behalf and, if applicable, on behalf of each person on whose behalf the Subscriber is contracting) that:

- a. this subscription is subject to rejection or allotment by the Corporation in whole or in part at any time;
- b. the Securities subscribed for by it hereunder form part of a larger issuance and sale by the Corporation of up to a maximum [number] Securities at a subscription price of \$[price] per share (the "Offering"); and
- c. the original certificate representing the Securities purchased by the Subscriber shall be held in trust by the Corporation's legal counsel.
- d. Representations, Warranties and Covenants by Subscriber:
- e. In consideration of the Corporation accepting this subscription and conditional thereon:

The undersigned agrees to be bound, as a party to and as one of the Minority Shareholders in the Corporation, by the terms of the Shareholders' Agreement from time to time amended and in effect (the "Shareholders' Agreement"). The undersigned also agrees to execute and deliver the Shareholders' Agreement in nine (9) counterparts on or before the Initial Closing, and to this end the undersigned hereby irrevocably constitutes and appoints the person from time to time holding the office of President of the Corporation, with full power of substitution, as its, his or her true and lawful attorney and agent, with full power and authority in its, his or her name, place and stead, and for his use and benefit, to execute, swear to, acknowledge, deliver, record and file the Shareholders' Agreement on his behalf. The power of attorney hereby granted is coupled with an interest, is irrevocable, shall survive the death or incapacity of the undersigned, may be exercised by the person from time to time holding the office of the President of the Corporation on behalf of the undersigned by a facsimile signature or by listing all of the persons executing any instrument with a single signature as an attorney and agent for all of them, shall survive the delivery of an assignment by the undersigned or the whole or any portion of his shareholdings in the Corporation, and will extend to and be binding upon the heirs, executors, administrators, legal personal representatives, successors and assigns of the undersigned.

The undersigned hereby represents, warrants and confirms:

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- i. that the undersigned has the legal capacity and competence to execute this Agreement and to take all actions required pursuant hereto and all necessary approvals by directors, shareholders and members of the undersigned, otherwise have been given to authorize it to execute this Form of Subscription and the Shareholders' Agreement, and to take all actions required to be delivered or performed by it hereunder has been duly authorized by all necessary action;
  - ii. that the undersigned is a "non-Canadian" person within the meaning of the Investment Canada Act (the "Investment Act") and is a "non-resident" in Canada within the meaning of the Income Tax Act (Canada);
  - iii. that the undersigned has received, and has furnished to the Corporation true and complete copies of, all necessary or material consents and approvals from governmental agencies and third parties in connection with its investment and holding of shares in the Corporation. If pursuant to the Investment Act, the undersigned is required to provide notice to the Minister (the "Minister") under the Investment Act of the undersigned's investment in the Corporation and its holding of Shares in the Corporation, the undersigned shall:
    - a. Confirm in writing to the Corporation that the required notification of the undersigned's investment in the Corporation and its holding of shares in the Corporation pursuant to this Form of Subscription, the Shareholders' Agreement or otherwise has been given by the undersigned to the Minister. In this regard the undersigned covenants that, if required, it will file the requisite form of Notification with the Minister within the time periods prescribed under the Investment Act and shall, in a timely fashion, fully respond to any requests for further or other information from the Minister;
    - b. Deliver to the Corporation a true copy of any confirmation or deemed confirmation that the undersigned may receive from the Minister that the undersigned's investment in the Corporation and its holding of shares in the Corporation pursuant to this Form of Subscription, the Shareholders' Agreement or otherwise is not a reviewable transaction under the Investment Act;
    - c. To the extent that the undersigned's investment in the Corporation and its holding of shares in the Corporation pursuant to this Form of Subscription, the Shareholders' Agreement or otherwise is a reviewable transaction under the Investment Act, the undersigned covenants that it will file the requisite form of Application for Review with the Minister within the time periods prescribed under the Investment Act and shall, in a timely fashion,

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fully respond to any requests for further or other information from the Minister; and

d. From time to time following the acceptance of this Form of Subscription by the Corporation, join in any request that the Corporation may make for an opinion of the Minister under Section 37 of the Investment Act (the "Investment Opinion") that the undersigned's investment in the Corporation and his holding of shares in the Corporation pursuant to this Form of Subscription and the Shareholders' Agreement:

A. Is neither the acquisition of control or the establishment of a new business in Canada by a non-Canadian; and

B. That in consequence of that investment and the undersigned's holding of shares in the Corporation pursuant to this Form of Subscription and the Shareholders' Agreement, the Corporation is considered a Canadian under the Investment Act controlled by Canadians. The undersigned covenants that he will provide, in a timely fashion, all information as to the ultimate ownership and control of the undersigned and other relevant information, as the Corporation or the Minister may request in connection with the said request for the Investment Opinion or the fulfilment thereof.

iv. That the undersigned acknowledges receipt from that the Corporation of an information statement in the form appended as Schedule "B" concerning the Corporation in the form of Form 45-501F3 prescribed under the Ontario Securities Commission Rule 45-501; such information statement having been provided to the undersigned at least four (4) days prior to the date of this Form of Subscription;

v. That the undersigned:

A. Is purchasing the Initial Subscription and the Additional Tranche as principal,

B. Is resident in or is subject to the laws of the Province of Ontario, and

C. Has reviewed the materials and definitions attached as Schedule "C" and is an "accredited investor" (as that phrase is defined in Ontario Securities Commission Rule 45-501) by virtue of satisfying the indicated criterion on Schedule "C";

vi. That the undersigned shall file all reports and do all such things as may be required pursuant to the Securities Act (Ontario) and all other applicable securities laws in

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connection with the subsequent sale of any of the Common Shares acquired pursuant to this Agreement.

## **5. Representations and Warranties of the Corporation:**

The Corporation hereby represents and warrants to the Subscriber and the Corporation acknowledges that the Subscriber is relying upon such representations and warranties in connection with the transactions contemplated hereby as follows:

- a. the Corporation has been duly incorporated and validly existing under the Business Corporations Act (Ontario) and has not been dissolved, and is not the majority owner of any subsidiaries;
- b. the Corporation has the corporate power and capacity to own its assets and to carry on its business as it is presently being carried on, the Corporation has the corporate power and capacity to enter into, deliver and perform its obligations under this Subscription Agreement and all other agreements, contracts, instruments and actions required to be delivered or performed by the Corporation hereunder;
- c. this Subscription Agreement and each of the agreements, contracts, instruments and actions required to be delivered or performed by the Corporation hereunder have been duly authorized by all necessary corporate action of the Corporation. This Subscription Agreement and each of the agreements to be delivered hereunder have been duly executed and delivered by the Corporation and are valid and binding obligations of the Corporation enforceable in accordance with their terms, subject to limitations on enforcement imposed by bankruptcy, insolvency and other laws affecting creditors' rights generally and to general principles of equity; and
- d. neither the entering into nor the delivery of this Subscription Agreement nor the completion of the transactions and agreements contemplated hereby by the Corporation will in any material respect conflict with or result in the (and the Corporation is not now in) breach or violation of any of the terms, conditions or provisions of, or constitute a default under or result in the creation of any encumbrance under, or relieve any other person from its obligations under: (a) any of the provisions of the articles or by-laws of the Corporation, (b) any agreement or other instrument to which the Corporation is a party or by which the Corporation or any of its property or assets is bound, or (c) to the best of its knowledge, any applicable law, rule, regulation, order, decree, judgment, injunction or other restriction of any government, governmental agency or court to which the Corporation is subject.

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## 6. The undersigned confirms:

- a. that it has conducted his own due diligence investigations into the business and affairs of the Corporation; and
- b. that he has not received nor relied upon any offering memorandum, documents or business plans, purporting to describe the business and affairs of the Corporation prepared primarily for delivery to and review by a prospective purchaser to assist that person to make an investment decision in respect of securities being sold by the Corporation.
- c. The undersigned further confirms and acknowledges that the undersigned does not expect to receive, and has not been accorded hereby, any statutory right action as set out in section 130.1 of the Securities Act (Ontario) or otherwise.

## 7. Closing:

- a. The obligations of the undersigned to purchase the Common Shares pursuant to the Initial Subscription (the completion of each such purchase is referred to as a "Closing") is subject to the fulfilment on or before each Closing of each of the following conditions:
- b. The representations and warranties of the Corporation shall be true and correct on and as of the date of each Closing with the same effect as though such representations and warranties had been made on and as of the date of such Closing;
- c. The Corporation shall have performed and complied with all agreements, obligations and conditions contained in this Agreement and in the Shareholders' Agreement that are required to be performed or complied with by it on or before each Closing;
- d. The Shareholders' Agreement shall have been executed and delivered by the undersigned or its attorney pursuant to the power of attorney contained herein, it shall be in full force and effect as of each Closing and no party shall be in material breach or material default thereof; and
- e. No order to cease or suspend trading in any securities of the Corporation has been issued or made nor have any proceedings been announced or commenced for the making or issuance of any such order by any securities regulatory authority in Canada.
  - a. At each Closing



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- f. The Corporation will deliver to the undersigned a certificate or certificates, registered in the undersigned's name, representing the Common Shares (as adjusted by Section 3 hereof, if applicable) to be purchased by the undersigned at such Closing; and
- g. The undersigned shall deliver a certified cheque or bank draft payable to the Corporation, or a direct deposit wire transfer to the Corporation, in an amount equal to the purchase price (as adjusted by Section 3 hereof, if applicable) payable in respect of the Common Shares to be purchased by the undersigned at such Closing.

**8.** Notwithstanding any other provision of this Form of Subscription, the obligation of the undersigned to purchase the Additional Tranches at the Closing therefore is subject to there having not occurred any serious adverse change, financial or otherwise, in the assets, liabilities or business or in the financial condition, capital or prospects of the Corporation from that as they exist, respectively, on March 31st, 2003.

**9.** This Form of Subscription, and when executed, delivered and accepted, the Shareholders' Agreement, constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, negotiations, discussions and understandings, written or oral, among the parties hereto, including without limitation, letters of intent between the undersigned and the Corporation relating to a proposed purchase and sale of the Initial Subscription and the Additional Tranche provided for in this Form of Subscription. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, expressed or implied, that form part of or affect this Form of Subscription, or which induced any party to enter into this Form of Subscription or on which reliance is placed by any party, except as specifically set forth in this Form of Subscription, and when executed and delivered, the Shareholders' Agreement.

The undersigned and the Corporation acknowledge and agree that they have required that this Agreement and all related documents, be drafted in English. Les parties aux presentes ont exigées que ce contrat et les documents y afférents soient redigés en anglais.

IN WITNESS WHEREOF this subscription has been executed by the undersigned.

Investor Signature:

SUBSCRIPTION ACCEPTED this [] day of [], 200[]

**Company Signature:**

Attach Schedules:

- Shareholders Agreement, Form 45-501F3, and Accredited Investor Certification