

SECOND AMENDMENT AND RESTATED FORBEARANCE AGREEMENT

This Second Amendment and Restated Forbearance Agreement (this “**Agreement**”) is entered into as of November 17, 2008 amongst Komunik Corporation (the “**Borrower**”) and HSBC Bank Canada (the “**Bank**”).

RECITALS

WHEREAS the Bank and the Borrower entered into a facility letter dated February 1, 2007 as amended by letters dated March 22, 2007 and May 1, 2007 (collectively, the “**Facility Letter**”) with respect to certain credit facilities.

WHEREAS the Bank expressed its dissatisfaction in relation to the Borrower’s account and the operating losses being incurred and failure of the Borrower to comply with several of its financial covenants under the Facility Letter was communicated.

WHEREAS in fact the Borrower has incurred losses of approximately \$6.2 million as at April 30, 2008 and \$2.6 million for the five (5) month period ended September 30, 2008.

WHEREAS the Borrower is insolvent and cannot meet its obligations as they generally become due.

WHEREAS such defaults and operating losses of the Borrower (“**Existing Defaults**”) are continuing and have not been cured.

WHEREAS the Bank has advised the Borrower that it wishes to discontinue financing the Borrower and the Borrower has confirmed its intentions to seek re-financing.

WHEREAS, the Bank has now engaged the services of PricewaterhouseCoopers LLP (“**PWC**” or the “**Consultant**”) to review elements of the Borrower’s business without any intervention thereto or partaking in any managerial decisions of the Borrower.

WHEREAS the Borrower has now engaged the services of RSM Richter Inc. (“**Richter**”) to advise it in the restructuring.

WHEREAS the Bank has issued a notice pursuant to Section 244 of the *Bankruptcy and Insolvency Act* and the Borrower has waived any delay in relation to such notice.

WHEREAS, with a view to permit the Borrower to evaluate its alternatives and seek the granting of an Initial Order (as further detailed hereinafter), the Bank is willing to forbear from enforcing its rights that arise because of the Existing Defaults for a limited period of time, provided that the Borrower complies with the terms of this Agreement.

WHEREAS the parties have entered into a Forbearance Agreement dated July 30, 2008 (the “**Original Agreement**”).



WHEREAS the parties have entered into a First Amendment to the Forbearance Agreement dated October 15, 2008 (the "**First Amendment**").

WHEREAS the parties wish to amend, extend and restate the Original Agreement (the Original Agreement, the First Amendment and this Agreement are together referred to as the "**Forbearance Agreement**") in the manner set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1
INTERPRETATION

- 1.1 The introductory paragraph and recitals hereof and all schedules attached hereto form an integral part of this Agreement.
- 1.2 All capitalized terms used herein (including in the introductory paragraph and recitals set forth above) and not otherwise defined herein shall have the meanings assigned to such terms in the Facility Letter and in the Original Agreement.
- 1.3 The following term used in this Agreement shall have the meanings set forth below:

"Weekly Cash Flow Projections" means the Weekly Financial Projections for a rolling thirteen (13) week period, as prepared by the Borrower which will be reviewed by the Bank. Said Weekly Cash Flow Projections shall include the Margin Position. The first Weekly Financial Projection shall be remitted to the Bank by no later than November 20, 2008;

"Monthly Cash Flow Projections" means the Monthly Financial Projections for the fiscal year 2009 as prepared by the Borrower which will be remitted to the Bank, on a confidential basis. Said Monthly Financial Projections shall include, without limitation, a balance sheet, the income statement, the cash flow and the Margin Position for the period. The first Monthly Cash Flow Projection and any update thereof will be remitted to the Bank on a confidential basis;

"Forbearance Default" means (a) the failure of the Borrower to comply with any term, condition or covenant set forth in this Agreement, or (b) any representation made by the Borrower under or in connection with this Agreement shall prove to be materially false or misleading as of the date when made;

"Obligations" means all present and future obligations and liabilities at any time owing by the Borrower to the Bank under or pursuant to the Facility Letter, the Security Documents, this Agreement or any other document referred to herein or therein;

"Monitoring" shall mean the monitoring done by PWC as detailed in a letter dated September 22, 2008, duly signed by the Borrower and PWC;



“**Weekly Margin**” means the margining calculated pursuant to and in accordance with the Facility Letter and the Forbearance Agreement, which will have to be reviewed and accepted by PWC by no later than each Friday, for the following week;

“**Termination Date**” means the earlier to occur of (a) 5:00 p.m. Montreal time on December 19, 2008 or (b) the date upon which a Forbearance Default occurs.

SECTION 2
CONFIRMATION OF OBLIGATIONS

- 2.1 The Borrower acknowledges and agrees that as of the date hereof:
- (a) the Borrower is without right of compensation, offset, defence, or counterclaim with respect to any of the Obligations;
 - (b) it is in default by virtue of the Existing Defaults;
 - (c) the amount of outstanding loans and advances as at November 17, 2008 due to the Bank are as follows:

CAD PRINCIPAL on the Revolving Loan:	CA\$11,876,556.87
CAD INTEREST on the Revolving Loan:	CA\$21,670.43

CAD PRINCIPAL on the Non-Revolving Loan	CA\$4,500,000.00
CAD INTEREST on the Non-Revolving Loan:	CA\$3,575.34

TOTAL:	<u>CA\$16,401,802.64</u>
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USD PRINCIPAL on the US Revolving Loan:	US\$117.57
USD INTEREST on the US Revolving Loan:	US\$54.85
Monthly Activity Fee	USD\$500.00

TOTAL:	<u>US\$672.42</u>
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The aforesaid sums are subject to adjustment for items in circulation, fees, costs and accessories.

SECTION 3
AGREEMENT TO FORBEAR

- 3.1 Provided that no Forbearance Default occurs, the Bank hereby agrees to refrain through the Termination Date from exercising any of its rights and remedies under the Facility letter and the Security Documents.
- 3.2 Nothing in this Agreement shall be construed as a waiver of or acquiescence to any Existing Default. Except as expressly provided herein, the execution and delivery of this Agreement shall not: (a) constitute an amendment, extension, modification, or waiver of



any aspect of the Facility Letter or the Security Documents; (b) extend the due date of any of the Obligations; (c) give rise to any obligation on the part of the Bank to extend, modify or waive any term or condition of the Facility Letter or any of the Security Documents; (d) give rise to any defences or counterclaims to the right of the Bank to compel payment of the Obligations or to otherwise enforce its rights and remedies under the Facility Letter and the Security Documents hereof; or (e) establish a custom or course of dealing between or between the Borrower and the Bank. Except as expressly limited herein, the Bank hereby expressly reserves all of its rights and remedies under the Facility Letter and the Security Documents and under applicable law with respect to each Existing Default. From and after the Termination Date, the Bank shall be entitled to enforce the Facility Letter and the Security Documents according to the original terms thereof.

- 3.3 (a) The parties hereto hereby agree that the Loans and other Obligations shall bear interest at the Bank's Prime Rate plus 2.75%, in the case of an amount to be paid in Canadian dollars, at the Bank's U.S. Base Rate plus 2.75%, in the case of an amount to be paid in U.S. dollars.
- (b) LIBOR loans are no longer available.
- (c) The Foreign Exchange Facility and the Import Loan are no longer available.
- (d) The BA (banker's acceptance) is no longer available.
- (e) The Mastercard Override is no longer available.
- (f) The Standby Letters of Credit ("STBLC") and/or Letters of Guarantee ("BG") shall be limited to an aggregate maximum amount of \$125,527.
- 3.4 Subject to the obtaining a confidentiality undertaking satisfactory to the Bank, the Bank is authorized to disclose any information it has regarding the Borrower to a potential lender or assignee of the Facility Letter and the Borrower shall fully collaborate with the Bank and any potential lender or assignee and it shall assume all costs for same.
- 3.5 The Bank is authorized to seek and obtain additional third party appraisal(s) for the Borrower's assets and the Borrower shall fully collaborate to the execution of said appraisal(s) and it shall assume all costs for same.

SECTION 4

REPRESENTATIONS AND WARRANTIES

In consideration of the limited agreement of the Bank to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby represents and warrants to the Bank, as at the date hereof as follows:

- 4.1 The Borrower has made full disclosure to the Bank of all existing defaults and all other disclosures as is required under the Facility Letter, the Security Documents and the Original Agreement;



- 4.2 The execution, delivery and performance of this Agreement by the Borrower is within such person's power and have been duly authorized by all necessary action.
- 4.3 This Agreement constitutes a valid and legally binding agreement enforceable against the Borrower, in accordance with its terms subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.
- 4.4 The Facility Letter, the Security Documents and the Original Agreement constitute valid and legally binding obligations of the Borrower enforceable in accordance with the terms thereof subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.

SECTION 5
COVENANTS OF THE BORROWER

In order to induce the Bank to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby covenants and agrees with the Bank as follows:

- 5.1 Except as for Existing Defaults, the Borrower shall continue to perform and observe all terms and conditions contained in the Facility Letter, the Security Documents and the Forbearance Agreement and particularly but without restriction to the generality of that which precedes there shall be no default of the margin requirements contained in the Facility Letter.
- 5.2 The Borrower shall deliver to the Bank in a timely fashion each of the following items in form and substance acceptable to the Bank:
 - (a) upon the Bank's request, forecasts, reports and financial information, as may be specified by the Bank from time to time;
 - (b) by no later than each Wednesday the updated Weekly Cash Flow Projections for a thirteen (13) week period, beginning on the previous Monday;
 - (c) by no later than ten (10) days after the expiry of the month, an updated Monthly Cash Flow Projections, which may be subject to revision based on the Borrower's final month-end financial statements;
- 5.3 The Borrower and Richter shall fully collaborate with PWC for the Monitoring and PWC shall have unrestricted access to the information required, the personnel of the Borrower and of Richter and to the reports prepared or being prepared by Richter. The Borrower and Richter will co-operate with PWC and allow PWC to continue ongoing monitoring of borrowing base and the Borrower's financial progress measured against the first Weekly Cash Flow Projection with periodic reports to the Bank as requested by the Bank.
- 5.4 On each Thursday (based on the close of business of the preceding Friday) an aged list of the Borrower's accounts receivable (including the name and address of each debtor and the amount owing by such debtor) and estimate of the inventory and the margining base calculation.



- 5.5 The Borrower shall provide the Bank and PWC with the monthly internal financial statement by no later than the 25th day of the following month.
- 5.6 The Borrower shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the negotiation, preparation and enforcement of this Agreement, in connection with the management of the Borrower's account (including, without limitation, the Bank's fees and expenses, the Bank's attorneys' and Consultant's reasonable fees and expenses), as well as the enforcement and protection of its rights pursuant to the Facility Letter, the Security Documents, the Forbearance Agreement or otherwise and the Bank is hereby authorized to debit the Borrower's account to pay all said fees and expenses.
- 5.7 The Borrower shall pay to the Bank a non-refundable forbearance fee equal to \$35,000 (such fee, the "**Forbearance Fee**"). The Forbearance Fee shall be deemed to be fully earned on the date hereof and is due and payable immediately, and the Bank is hereby authorized to debit the Borrower's account to pay said Forbearance Fees.
- 5.8 The Borrower undertakes to operate its business in a manner that will allow it to cure the Defaults (including any Existing Default). However, such tolerance by the Bank is subject to the condition that the charges created by the Security Documents do legally and factually charge all the assets described therein in order to guarantee the repayment of all Obligations of the Borrower to the Bank.
- 5.9 Should there be a Margin Deficit, in addition to being a Forbearance Default, the Bank may refuse to honour any cheque drawn on the accounts or any payment request of any nature whatsoever.
- 5.10 The Borrower shall undertake a sale process, satisfactory to the Bank, whereby all assets shall be offered for sale. Said process shall be supervised by Richter, as Court-appointed Monitor. A Confidential Information Memorandum shall be completed and sent to the potential purchaser by no later than December 1st, 2008 in accordance with a process and documentation to be agreed upon by the Bank.
- 5.11 In addition, Richter, as Court-appointed Monitor pursuant to the Initial Order, shall monitor and review the receipts and disbursements of the Borrower, on a daily basis and shall report to the Bank and PWC.
- 5.12 The Borrower shall seek the appointment of a Chief Restructuring officer ("**CRO**"), satisfactory to the Bank. Said appointment shall be completed by no later than December 8th, 2008.
- 5.13 Subject to the Administration Charge and the Director's Charge to be granted pursuant to an Initial Order to be rendered (Schedule "A") , should there be any filing by the Borrower of any proceeding under the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act or any similar legislation in any jurisdiction, then the Bank shall be an unaffected and an excluded creditor for all intent and purposes.



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- 5.14 The Borrower reaffirms that the Bank will be at liberty to discuss this account and exchange information regarding the Borrower with HSBC Capital (Canada) Inc.

SECTION 6
TERMINATION

All Obligations will be fully due and payable on the Termination Date, without the Bank being required to send any notice or demand to the Borrower, unless a Forbearance Default has occurred, in which case, all Obligations will be due and payable upon the occurrence of a Forbearance Default.

SECTION 7
GENERAL RELEASE

In consideration of, among other things, the forbearance provided for herein, and any other financial accommodations which the Bank elects to extend to the Borrower, the Borrower forever waives, releases and discharges any and all claims (including, without limitation, cross-claims, counterclaims, rights of compensation, setoff and recoupment), causes of action, demands, suits, costs, expenses and damages that it now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity that arise under or relate to any of the Facility Letter, the Security Documents or this Agreement or any person's rights or obligations thereunder, against the Bank, any of the Bank's subsidiaries and affiliates, and its and their respective successors, assigns, officers, directors, employees, agents, mandataries, lawyers and other representatives, based in whole or in part on facts, whether or not known, existing on or prior to the date of this Agreement. The provisions of this section shall survive the termination of the Facility Letter and payment in full of the Obligations.

SECTION 8
COURT APPROVALS

It is understood and agreed that this Agreement is strictly subject to and conditional on the occurrence of all of the following, by no later than November 19, 2008:

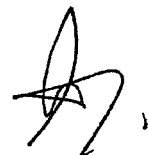
- (a) the issuance of an Initial Order by the Superior Court of Quebec, Commercial Division, District of Montreal, pursuant to the *Companies Creditors' Arrangement Act*, in the form of the draft order attached hereto as Schedule "A";
- (b) the approval of this Agreement by the Superior Court of Quebec, Commercial Division, District of Montreal;
- (c) the Bank expressly reserves its rights to seek any Court Order it may deem required or appropriate during the Initial Order.

In the event that any one or all of the foregoing do not occur then the Bank at its option, may cancel this Agreement upon simple written notice to such effect to be given to the Borrowers.



SECTION 9
MISCELLANEOUS

- 9.1 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 9.2 Governing Law and Language. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the Province of Quebec and the federal laws of Canada applicable therein. The parties hereto have expressly required that this Agreement be drafted in the English language. *Les parties aux présentes ont expressément exigé que la présente convention soit rédigée en anglais.*
- 9.3 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
- 9.4 Continued Effectiveness. Except as expressly set forth in this Agreement, the terms of the Facility Letter, the Security Documents and the Original Agreement remain unchanged, and all such documents shall remain in full force and effect and are hereby confirmed and ratified.
- 9.5 No Novation. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Facility Letter or of any of the Security Documents or, except as expressly provided herein, a waiver by the Bank of any of its rights and remedies under the Facility Letter or the Security Documents, or at law or in equity.
- 9.6 Article 1594 C.C.Q. The Borrower shall be “*en demeure*” by the mere lapse of time for performing its obligations hereunder, as contemplated in Article 1594 of the *Civil Code of Quebec*.
- 9.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof.
- 9.8 Amendments. This Agreement may not be modified or amended except by written agreement of the parties hereto.
- 9.9 Execution. In the event that a copy of this Agreement duly signed by the Borrower is not delivered to the Bank, prior to 3:00 p.m. Montreal time on November 17, 2008, this Agreement shall be deemed to be null and void, and the Bank shall not be bound by this Agreement.

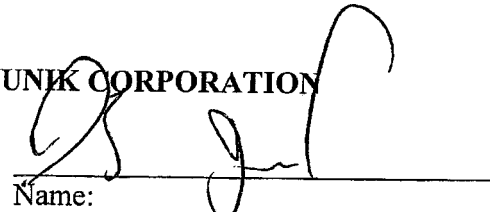


IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

KOMUNK CORPORATION

HSBC BANK CANADA

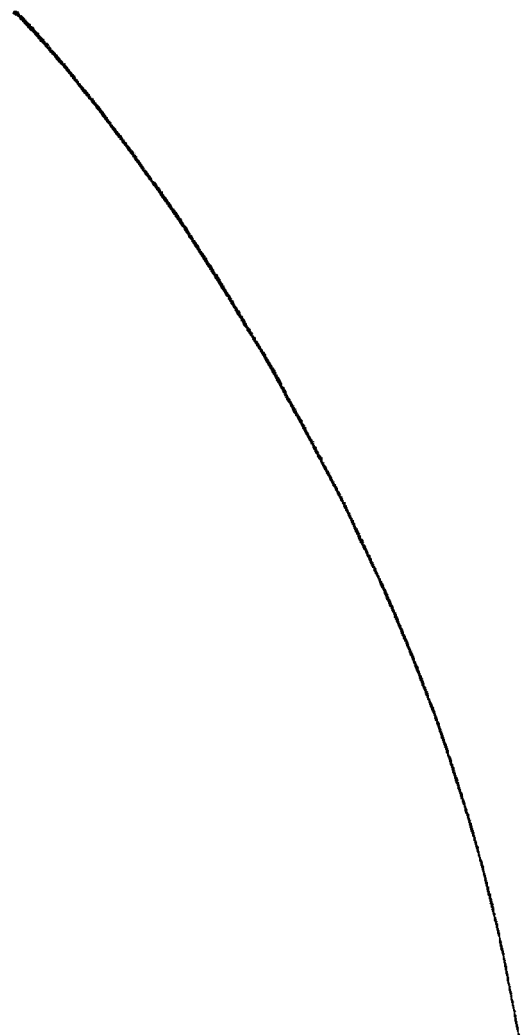
per:



Name:
Duly authorized pursuant to a
resolution of the Board of Directors
dated ■ *November 17, 2008*

per:

Name:
Duly authorized



IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

KOMUNK CORPORATION

HSBC BANK CANADA

per:

[Handwritten signature]

per:

[Handwritten signature]

Name:
Duly authorized pursuant to a
resolution of the Board of Directors
dated ■ *November 17, 2008*

Name:
Duly authorized **STEPHEN G. WAYLAND**
ASSISTANT VICE PRESIDENT

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