

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION
OF CANADA**

**ORGANISME CANADIEN DE RÉGLEMENTATION DU COMMERCE DES
VALEURS MOBILIÈRES**

UNIFORM SUBORDINATED LOAN AGREEMENT

Borden Ladner Gervais LLP
Scotia Plaza, Suite 4400
40 King Street West
Toronto, Ontario
M5H 3Y4

WHEREAS the Member is a member firm or member corporation of the Institution and is subject to the by-laws, rulings and regulations of the Institution; and

WHEREAS the Creditor is directly interested in the successful carrying on by the Member of the Member's business, including the ability of the Member to meet the requirements of the Institution as set out in the Institution's by-laws, rulings and regulations and to this end is prepared to subordinate and postpone the Debt; and

WHEREAS it is the intent of the parties hereto that any moneys or property received by the Institution hereunder, whether received by the Institution as its absolute property or otherwise, shall be used for the benefit of the Customers to the extent necessary to pay their Claims; and

WHEREAS it is the intent of the parties hereto that the valid claims of the creditors of the Member shall be paid in priority of payment as follows:

1. all Claims of Customers;
2. all claims of Banks which are subordinated in favour of Customers;
3. all claims of persons, other than Banks, whose claims are, or are required by the by-laws of the Institution to be, subordinated in favour of Customers but whose claims are expressed to be senior in right of payment to other subordinated claims;
4. all claims of persons, other than Banks, whose claims are, or are required by the by-laws of the Institution to be, subordinated in favour of the Customers and whose claims are not expressed to be senior in right of payment to other subordinated claims; and
5. all claims of creditors not paid in accordance with the foregoing priorities.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for the purposes aforesaid and in consideration of the premises and of the sum of One Dollar (\$1.00) now paid by the Institution to the Creditor (the receipt whereof is hereby acknowledged) and of the sum of One Dollar (\$1.00) now paid by the Member to the Creditor (the receipt whereof is hereby acknowledged) it is agreed by and between the parties hereto as follows:

1. In this agreement, in the recitals hereto and in any schedule hereto:

"Bank" means a bank to which the *Bank Act* (Canada) applies;

"CIPF/FCPE" means Canadian Investor Protection Fund/Fonds canadien de protections des épargnants, a corporation existing under the laws of Canada;

"Customers" means the persons for the time being and from time to time who are or are determined to be eligible for protection by CIPF/FCPE (pursuant to its constitution and any policies adopted by it from time to time) for losses in accounts held by them as

customers of the Member. For the purposes of this definition, Customers of the Member shall be determined as if the Board of Directors of CIPF/FCPE had exercised any discretion necessary to entitle the person to CIPF/FCPE protection. A determination by the Board of Directors (whenever made) as to whether a person is eligible for CIPF/FCPE protection for the purposes of this agreement shall be conclusive and binding on the parties;

"Claims" means all claims of Customers in respect of securities, cash or other property held, or required to be held, by the Member for such Customers and which are eligible for protection by CIPF/FCPE (pursuant to its constitution and policies adopted by it from time to time. For the purposes of this definition, Claims shall be determined as if the Board of Directors of CIPF/FCPE had exercised any discretion necessary to entitle the person to CIPF/FCPE protection. A determination by the CIPF/FCPE Board of Directors (whenever made) as to whether a claim is eligible for CIPF/FCPE protection for the purposes of this agreement shall be conclusive and binding on the parties;

"Debt" means that amount of the indebtedness of the Member to the Creditor, in moneys and/or securities, set forth in Schedule A hereto and includes any interest from time to time due and payable by the Member in respect of the said amount of indebtedness;

"IIROC-Quebec" means the Investment Industry Regulatory Organization of Canada / Organisme canadien de réglementation du commerce des valeurs mobilières when the Member at the date of this agreement has its head office situate in the Province of Quebec;

"persons" includes corporations, partnerships, trusts, associations and other legal or commercial entities; and

"Schedule A" means the schedule marked "Schedule A" attached hereto bearing the most recent date and signed by all the parties hereto.

2. (a) The Creditor hereby postpones the payment and satisfaction of the Debt in favour of the Customers and subordinates the Debt to all Claims to the intent that the Customers shall, subject to paragraph 7 hereof, in the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Member, be paid their Claims in full in priority to and before the Creditor shall have any claims upon any property, assets, rights or benefits of the Member or upon any assets comprising or included in the Debt.
- (b) In the event of dissolution, winding-up, liquidation, insolvency or bankruptcy of the Member,
 - (i) the Creditor, if the Creditor is not a Bank, hereby agrees that the Debt herein subordinated and postponed shall rank subsequent to any valid claim of a Bank against the Member which is then subordinated and postponed in favour of the Customers;
 - (ii) the Creditor, if the Creditor is not a Bank, hereby further agrees that the Debt herein subordinated and postponed and described, or deemed by this

paragraph 2(b) to be described, in Schedule A as "junior subordinated debt" shall rank subsequent to any valid claim of any other creditor against the Member which is then subordinated and postponed in favour of the Customers and which is expressly stated in the instrument effecting the subordination and postponement to be senior subordinated debt or senior in right of payment to claims of the class of junior subordinated debt;

- (iii) subject to clause (ii) of this paragraph 2(b) the Creditor, if the Creditor is not a Bank, hereby further agrees that the Debt herein subordinated and postponed shall rank pari passu with and not prior to any valid claim of another creditor, other than a Bank, against the Member which is then similarly subordinated and postponed in favour of the Customers; and
- (iv) the Creditor, if the Creditor is a Bank, hereby agrees that the Debt herein subordinated and postponed shall rank pari passu with and not prior to any valid claim of another Bank against the Member which is then subordinated and postponed in favour of the Customers, subject to any contrary agreement between the Creditor and such other Bank.

Where the Creditor is not a Bank and Schedule A contains no statement as to whether the Debt herein subordinated and postponed is junior subordinated debt or senior subordinated debt, the Debt herein subordinated and postponed shall be deemed to be described in Schedule A as junior subordinated debt. The term "senior subordinated debt" means the amount of indebtedness of the Member to a creditor which is subordinated in right of payment to claims of Customers and Banks but which is senior in right of payment to claims of the class of junior subordinated debt.

- 3. (a) Except as provided in paragraphs 3(b), 3(c), 3(d) and 7 hereof the Creditor shall not accept repayment of, and the Member shall not repay to the Creditor, the Debt or any part thereof, and the Creditor shall not demand or accept delivery of, and the Member shall not deliver to the Creditor, all or any part of the items listed in Schedule A, or any moneys on account or in respect of such items.
- (b) Where the Institution has given its prior consent in writing, moneys and/or securities may be substituted for the moneys and/or securities set forth in Schedule A or a part or all of the moneys and/or securities may be repaid or redelivered, as the case may be, and upon such consent being delivered to the Member or the Creditor, Schedule A, if it antedates the date of such consent, shall be deemed to have been amended by the parties hereto in accordance with the terms of such consent. Any moneys so repaid or items so redelivered shall cease to form any part of the Debt.
- (c) Nothing contained in paragraph 3(a) hereof shall be deemed to prevent the payment of interest to the Creditor which is now or hereafter due and payable on the moneys or any of the items set out in Schedule A if such payment is permitted in Schedule A and the Institution has not notified the Creditor and Member that such payment shall cease.

- (d) Notwithstanding any other provision of this agreement, where the Creditor is a Bank, interest from time to time due and payable in respect of the Debt shall not form any part of the Debt and shall not be subject to the provisions of this agreement unless the Institution notifies the Creditor and the Member that the Member has ceased to meet the risk adjusted capital requirement of the Institution or the Institution notifies the Creditor and the Member that an interest payment, if made, would cause the Member to cease to meet the risk adjusted capital requirement of the Institution whereupon in either case the Member and the Creditor hereby agree that payment of any interest due and payable in respect of the Debt after the receipt of such notification shall be suspended until such time as the Institution gives its written consent to the resumption of interest payments in respect of the Debt. All interest, the payment of which is suspended, shall form part of the Debt until the Institution gives its written consent to the resumption of interest payments at which time such interest shall cease to form part of the Debt.
4. (a) Any payment, repayment, delivery or redelivery of any part or all of the Debt received by the Creditor otherwise than in accordance with the provisions of paragraph 3 hereof (any such payment, repayment, delivery or redelivery so received by the Creditor being hereinafter in this paragraph 4 referred to as an "Unauthorized Repayment") shall be held by the Creditor in trust for the Customers and for the ratable distribution of the Unauthorized Repayment among the Customers to the extent necessary to pay all Claims in full, and the Creditor shall and hereby agrees to do all things and execute all documents which may be necessary or desirable for effecting such ratable distribution to the extent aforesaid among the Customers; provided that if this agreement shall have been terminated by the Creditor in the manner provided in paragraph 7 hereof, any Unauthorized Repayment shall be held in trust for Customers in accordance with this paragraph 4(a) to the extent necessary to pay only the Claims, if any, which have arisen up to the earlier of the time of suspension or the effective time, both as hereinafter defined in said paragraph 7. Subject to the applicable portion of the succeeding sentence, if the Institution is IIROC-Quebec, the foregoing sentence of this paragraph 4(a) is of no force and effect. Where the Institution is IIROC-Quebec and any payment or repayment of any part or all of the Debt is received by the Creditor otherwise than in accordance with the provisions of paragraph 3 hereof, the Creditor shall without demand, forthwith pay by way of penalty to the Institution, as the Institution's absolute property, an amount equal to the sum so received (or, if this agreement shall have been terminated by the Creditor in the manner provided in paragraph 7 hereof, an amount equal to the lesser of the sum so received or the amount necessary to pay only the Claims, if any, which have arisen up to the earlier of the time of suspension or the effective time, both as hereinafter defined in paragraph 7) with the intent that the Institution shall distribute such amount to the Customers entitled thereto pursuant to the first sentence of this paragraph 4(a) during the course of a distribution to the Customers of the assets of the Member.
- (b) The Creditor shall pay to the Customers entitled pursuant to paragraph 4(a), or in lieu thereof shall pay to the Institution for the benefit of the Customers so entitled,

the equivalent value of any Unauthorized Repayment, but only to the extent that the operation of the provision of paragraph 4(a) hereof did not result in any Unauthorized Repayment being realized by the Customers to the extent of their entitlement thereto in accordance with the provisions of paragraph 4(a). Where payment has been made to IIROC-Quebec pursuant to paragraph 4(a), the amount of the payment shall be deemed to have been realized by the Customers for the purposes of this paragraph 4(b).

- (c) Except where the Institution is IIROC-Quebec, the Creditor hereby assigns to the Institution on behalf of and for the benefit of the Customers, for the purposes and to the extent set out herein, all its right, title and interest in and to any payment or distribution of assets of the Member of any kind or character which the Creditor would, except for the provisions of this agreement, be entitled to receive on account of the Debt upon any dissolution, winding-up, liquidation, insolvency or bankruptcy of the Member, and the Creditor hereby authorizes and directs the Institution in such capacity to make application for payment, such application to be made to the liquidating trustee or agent or other person entrusted with the responsibility of distributing the assets of the Member, whether a trustee in bankruptcy, a receiver or otherwise, and the Institution shall receive and hold any such payment or distribution made by any such party in trust for the Customers and for the ratable distribution among the Customers, all to the extent necessary to provide for the payment of all Claims in full, in accordance with the Customers' respective interests, prior to the making of any payment or delivery on account of or in respect of the Debt; provided that if this agreement shall have been terminated by the Creditor in the manner provided in paragraph 7 hereof any such payment or distribution so received by the Institution shall be held in trust for the Customers in accordance with this paragraph 4(c) to the extent necessary to pay only the Claims, if any, which have arisen up to the earlier of the time of suspension or the effective time, both as hereinafter defined in said paragraph 7.
- (d) Where the Institution is IIROC-Quebec and the Creditor receives from the Member payment of any part or all of the Debt within three months prior to any insolvency or bankruptcy of the Member or in the course of any dissolution, winding-up, liquidation, insolvency or bankruptcy of the Member before the Claims have been paid in full (or, if this agreement shall have been terminated by the Creditor in the manner provided in paragraph 7 hereof, before the Claims which have arisen up to the earlier of the time of suspension or the effective time, both as hereinafter defined in said paragraph 7, have been paid in full), the Creditor, notwithstanding any other provision hereof, shall and hereby agrees to forthwith pay, without demand, by way of penalty to the Institution, as its absolute property, an amount equal to the sum so received with the intent that the Institution shall distribute such amount to the Customers entitled thereto pursuant to paragraph 4(c) hereof; provided, however, that if the Creditor is required by any relevant bankruptcy or insolvency legislation to repay all or any portion of the sum so received to the Member or its trustee in bankruptcy or receiver, such repayment shall be deemed, for the purposes of this agreement, as payment to the Institution.

5. It is understood and agreed that so long only as this agreement shall continue with the approval of the Institution, the Institution hereby declares that it is acting hereunder as trustee on behalf of and for the benefit of all Customers for the time being, with the consent and approval of the Creditor and the Member; provided that this paragraph 5 is of no force and effect if the Institution is IIROC-Quebec.
6. The Institution shall be under no obligation or responsibility of any kind or character to any of the Customers or creditors of the Member, and the Institution shall have no obligation, responsibility or duty to see that the covenants herein contained are carried out and fulfilled or to take any action for the enforcement of this agreement unless and until (i) the Institution is so requested in writing by one or more of the Customers, (ii) the Institution is furnished with security or indemnity satisfactory to it in respect of any such proceedings and (iii) the Institution, in its uncontrolled discretion, deems the action requested to be taken to be to the advantage of the Customers; provided that notwithstanding anything in this paragraph 6 that may be construed to the contrary, the Institution shall be required to fulfil its obligations and responsibilities under paragraph 7 upon the Creditor delivering to the Institution a notice of termination. If the Institution is IIROC-Quebec, the Institution shall be under no obligation of any kind or character to take any action to enforce the rights of the Customers.
7. This agreement shall remain in full force and effect until it is terminated in accordance with this paragraph 7. This agreement may be terminated by the Institution in its absolute discretion by notice in writing given to the Creditor and to the Member.

If the Creditor is a Bank, the Creditor may deliver to the Institution and to the Member notice in writing of the Creditor's intention to terminate (herein called a "notice of termination") whereupon the following provisions apply:

- (a) after the Creditor has delivered notice of termination the postponement and subordination of the Debt provided for in paragraph 2 of this agreement shall continue to be effective with respect to all Claims against the Member which have arisen up to the earlier of the close of business on the day that the Member is suspended, terminated or expelled by the Institution (the close of business on the day of termination, suspension or expulsion, as the case may be, is herein called the "time of suspension") and the close of business on the fortieth day after the day upon which the Creditor has delivered notice of termination (the close of business on such fortieth day is herein called the "effective time");
- (b) the postponement and subordination of the Debt provided for in paragraph 2 of this agreement shall not apply to Claims against the Member which arise subsequent to the time of suspension or the effective time, whichever shall first occur;
- (c) on or before the effective time, the Member shall calculate its risk adjusted capital (as that term is defined by the Institution at the time the calculation is made) as of a day which is within the seven days immediately preceding and the seven days immediately following the day upon which the Creditor has delivered notice of

termination and in making such calculation the Member shall treat the Debt postponed and subordinated by this agreement as if it were not postponed and subordinated and the Institution's designated officer shall check the accuracy of the Member's calculation;

- (d) if in the opinion of the Institution's designated officer the Member meets the risk adjusted capital requirement of the Institution and if the designated officer has no reason to believe that the Member would not, on the day he is checking the accuracy of the Member's calculation, meet the risk adjusted capital requirement as a result of material adverse changes in the financial position of the Member since the day as of which risk adjusted capital was calculated, the Institution shall forthwith deliver to the Creditor and to the Member its written consent to the repayment or redelivery of the Debt postponed and subordinated by this agreement and upon receipt of such consent by the Creditor and the Member this agreement shall terminate and be of no further force and effect, and the Member shall forthwith repay or redeliver the Debt to the Creditor, subject to any equities which there may be between the Creditor and the Member;
 - (e) if in the opinion of the Institution's designated officer the Member does not meet the risk adjusted capital requirement of the Institution or if, as a result of material adverse changes in the financial position of the Member since the day as of which risk adjusted capital was calculated, the designated officer has reason to believe that the Member would not currently meet the risk adjusted capital requirement, the Institution shall forthwith deliver to the Creditor and to the Member notice in writing informing the Creditor and the Member that the Institution will not consent to the repayment or redelivery of the Debt and in this event, subject to the terms and conditions of any agreements between the member and the Creditor relating to the Debt, the Debt postponed and subordinated by this agreement may be declared due and payable by the Creditor; provided that realization by the Creditor of the Debt shall be subject to the terms of this agreement and provided that the Institution may consent to partial repayments or redeliveries of the Debt from time to time in its sole and absolute discretion, notwithstanding that it will not at such time consent to full repayment or redelivery of the Debt;
 - (f) the Creditor prior to or concurrently with commencing any proceedings against the Member for the recovery of the Debt shall notify the Institution; if the Debt or any part thereof is realized by the Creditor, either pursuant to any proceedings or as a result of a voluntary repayment or redelivery by the Member, and the Institution has not consented to such repayment or redelivery, the Debt or any part thereof so realized shall remain subject to the provisions of this agreement.
8. Any notice or communication hereunder or pursuant hereto which is given in writing may be effectively given by delivering the same or mailing the same by prepaid registered post addressed to the Creditor as follows:

and to the Member as follows:

and to the Institution as follows:

or to such address as any of these parties shall have previously specified by notice given to the other parties. Any notice or communication that is mailed by prepaid registered post shall be deemed to have been received on the business day following the day upon which it was mailed unless there is a disruption in the regular mail delivery due to postal strikes or other causes of which public notice has been given, in which case any such notice or communication that is mailed by prepaid registered post shall be deemed not to have been given until it has actually come to the attention of the addressee.

9. Any instrument issued or made by the Member evidencing the Debt shall be clearly marked so as to indicate the subordinated nature thereof and shall have marked conspicuously on its face, with the blanks properly completed, the following legend:

"THE INDEBTEDNESS REPRESENTEDHEREBY IS POSTPONED"

The indebtedness herein evidenced is subject to a subordination agreement dated

between _____
(name of Creditor)

_____ and _____
(name of Member) (name of Institution)

copies of which may be inspected at

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

(address of Institution)

10. Any right or remedy hereby granted, conferred upon or reserved to the Institution on behalf of and for the benefit of the Customers is intended to be exclusive of any other right or remedy and each and every right or remedy shall be in addition to every other right or remedy given hereunder or now existing or hereafter existing by law or by statute or under the terms of this agreement and any one or more of such rights or remedies may from time to time be exercised independently or in combination.
11. This agreement shall extend to and enure to the benefit of and be binding upon the heirs, executors, administrators, successors (which term shall include, without limitation, any firm or corporation which succeeds to all or part of the business of the Member) and assigns of the parties hereto and shall enure to the benefit of the Institution in trust for the Customers, except where the Institution is IIROC-Quebec in which case this agreement shall enure to the benefit of the Institution and its successors and assigns.
12. Where the Institution is IIROC-Quebec, this agreement shall be governed by and construed in accordance with the laws of the Province of Quebec.
13. Whenever the singular or the masculine are used in this agreement, they shall be construed as meaning the plural, feminine or neuter, where the context or the parties hereto so require.
14. This agreement has been drawn up in the English language at the request of the parties. Les parties ont requis que la présente convention soit rédigée en anglais

SIGNED, SEALED AND DELIVERED
in the presence of:

(name of Creditor)

Per:

(signature of authorized signing officer
of Creditor)

SEAL

Per:

(signature of authorized signing officer
of Creditor)

(name of Member)

Per:

(signature of authorized signing officer
of Member)

SEAL

Per:

(signature of authorized signing officer
of Member)

**INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA /
ORGANISME CANADIEN DE
RÉGLEMENTATION DU COMMERCE DES
VALEURS MOBILIÈRES**

Per:

(signature of authorized signing officer
of Institution)

SEAL

Per:

(signature of authorized signing officer
of Institution)

5. In the event of any inconsistency between the terms of this Schedule, the Uniform Subordinated Loan Agreement or any agreements, documents or understandings between the Member and the Creditor relating to or evidencing the Debt, the terms of the Uniform Subordinated Loan Agreement (as construed without reference to this Schedule) shall prevail.

The foregoing is a full and accurate statement of items included in the Debt mentioned in the foregoing agreement dated the _____ day of _____, 20_____.

DATED this _____ day of _____, 20_____.

_____	_____
(name of Member)	(name of Creditor)
Per: _____	Per: _____
_____	_____
(signature of authorized signing officer of Member)	(signature of authorized signing officer of Creditor)
Per: _____ SEAL	Per: _____ SEAL
_____	_____
(signature of authorized signing officer of Member)	(signature of authorized signing officer of Creditor)

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION
OF CANADA / ORGANISME CANADIEN DE RÉGLEMENTATION DU
COMMERCE DES VALEURS MOBILIÈRES**

Per: _____ (SEAL)
(signature of authorized signing officer of Institution)