****

**CANADIAN DERIVATIVES REPORTING COUNTERPARTY DESIGNATION
AND AMENDING AGREEMENT**

This Canadian Derivatives Reporting Counterparty Designation and Amending Agreement (this “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_, 201\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Party A”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Party B”) for the purpose of designating one of the Parties as the Reporting Counterparty for the reporting of Derivatives Data pertaining to Transactions entered into under [SELECT ONE AND DELETE THE OTHER  - (A):] [any oral or written agreement between the Parties  that governs the terms and conditions of one or more Transactions[[1]](#footnote-2)[1] that each such Party has or may enter into as principal] [OR (B)] [that certain \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert name of agreement(s) to be covered] dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, between the Parties, or their predecessors in interest] (each a “Covered Agreement” and collectively with every additional contract or agreement the Parties may from time to time hereafter agree in writing to make subject to this Agreement, the “Covered Agreements”) and amends each Covered Agreement to the extent provided herein.

WHEREAS, Section 25(1)(d) of MSC Rule 91-507; AMF Regulation 91-507 and CSA Multilateral Instrument 96-101[[2]](#footnote-3) (collectively “the TR Rules”) provides, in pertinent part, that the counterparties to a reportable Transaction may agree in writing that one of them will be the Reporting Counterparty with respect to that Transaction.

AND WHEREAS, the Parties wish to agree, upon the terms and conditions set forth herein, which of them will be the Reporting Counterparty with respect to Transactions governed by the Covered Agreements.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows:

**Article 1:**

**Amendment of each Covered Agreement**

**1.1** The Parties hereby amend each Covered Agreement as set forth herein. In the event of any inconsistency between the provisions of this Agreement and a Covered Agreement, this Agreement shall prevail for the purpose of the relevant Transaction. In the event of any inconsistency between the provisions of any confirmation entered into after the date hereof and this Agreement, such confirmation shall prevail for the purpose of the relevant Transaction.

**Article 2:**

**Definitions**

**2.1** Capitalized terms used in this Agreement and not otherwise defined herein are defined below.

“*Accredited Counterparty*” has the meaning given to that term in Section 3, and includes application of Section 7, of the Quebec Derivatives Act.

“*AMF*” means the Autorité des marchés financiers, the body mandated by the government of Québec to regulate the province's financial markets.

“*ASC*” means the Alberta Securities Commission.

“*BCSC*” means the British Columbia Securities Commission.

“*CSA*” means the Canadian Securities Administrators and for the purposes of this Agreement, means the authorities that published the proposed multilateral instrument 96-101; namely the Alberta Securities Commission, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission.

“*Derivatives Data*” has the meaning given to the term “derivatives data” in the TR Rules.

“*Derivatives Dealer*” has the meaning given to the term “derivatives dealer” in the TR Rules.

*“Eligible Contract Participant”* has the meaning given to the term in the Commodity Exchange Act (7 U.S.C.A. Section 1a (18).

“*FCAA*” means the Financial and Consumer Affairs Authority of Saskatchewan.

“*FCNB*” means the Financial and Consumer Services Commission of New Brunswick.

“*Local Counterparty*” with respect to each Party has the meaning given the term “local counterparty” in the respective TR Rule of the respective province where each such Party would be deemed to be a local counterparty.

*“MSC*” means the Manitoba Securities Commission.

*“NCSC”* means the Nova Scotia Securities Commission.

*“Qualified Party”* has the meaning given to that term in ASC Blanket Order 91-506; in BCSC Blanket Order 91-501 (BC); FCAA General Order 91-907 and FCNB Local Rule 91-501 respectively or as amended or replaced by the respective provincial legislatures.

“*Party*” means either Party A or Party B, as the context requires and “Parties” means both of them.

“*Recognized* *Trade Repository”* means a trade repository approved, designated or recognized by the respective provincial securities regulator where either of the Parties would be deemed a Local Counterparty.

“*Reporting Counterparty*” means the Party designated by the Parties pursuant to this Agreement as the reporting counterparty for the purposes of reporting Derivatives Data pertaining to Transactions under the Covered Agreements in accordance with Section 25(1)(d) of the TR Rules.

“*Transactions*” has the meaning given to the term “transaction” in the TR Rules.

**2.2** As used in this Agreement, (i) “or” is not necessarily exclusive; (ii) “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement in its entirety; (iii) “Articles”, “Sections” and “Exhibits” refer to Articles, Sections and Exhibits hereof unless otherwise stated or indicated; (iv) “including” is not limiting and means “including without limitation”; and (v) all references to a particular entity include a reference to such entity’s successors and (if applicable) permitted assigns.

**Article 3:**

**Representations**

**3.1** Each Party represents to the other as of the date hereof that:

(a) one or more of the factors of the definition of a Local Counterparty apply to it and this representation shall be deemed repeated each time the Parties enter into a Transaction that is subject to the reporting requirements under the TR Rules (the “Reporting Requirements”), unless a Party notifies the other Party to the contrary in writing prior to entering into such a Transaction;

(b) it has all requisite power and authority and, if applicable, third party and regulator consents, necessary to execute and perform this Agreement;

(c) it is duly organized or incorporated and in good standing under the laws of the jurisdiction of its organization or incorporation; and

(d) the information concerning it set forth in Exhibit A is true, correct and complete.

**3.2** Without limiting the representations of the Parties to each other under the applicable Covered Agreement, but amending such representations to the extent inconsistent herewith, each Party represents to the other as of the date hereof, and as of the time of each Transaction, unless otherwise stated on Exhibit A or in a subsequent notice delivered to the other Party, that it is, and any guarantor, credit support provider or pledgor of assets in support of its obligations are each an Accredited Counterparty or a Qualified Party or an Eligible Contract Participant (for cross border transactions), as the case may be.

**3.3** No event of default, termination event, grounds to vitiate, rescind, cancel or otherwise terminate a Transaction, or other similar event shall be deemed to occur under a Covered Agreement or any other contract between the Parties solely on the basis of a breach of any representation, covenant or agreement set forth solely in Article 3 or Article 4 of this Agreement; provided, however, that nothing in this Section 3.3 shall prejudice any other right or remedy of a Party at law, under such Covered Agreement, or any other contract in respect of any misrepresentation or breach hereunder or thereunder. This Section 3.3 shall not limit or alter a Party’s termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not set forth solely in Article 3 or Article 4 hereof. Any provisions in a Covered Agreement that limit the liability of one Party to the other Party are not amended or affected by this Agreement.

**3.4** Each Party will promptly notify the other Party, before entering into any Transaction, if any representation made by such Party in this Agreement becomes incorrect or misleading in any material respect.

**Article 4:**

**Designation of Reporting Counterparty**

**4.1** The Parties hereby agree that the Party designated in Exhibit A as the “Reporting Counterparty” shall be the Reporting Counterparty with respect to Transactions governed by the Covered Agreements. For each such Transaction, the Reporting Counterparty agrees that it will report, to a Recognized Trade Repository, all Derivatives Data that is required to be reported by the Reporting Counterparty under the TR Rules.

**4.2** The Reporting Counterparty will provide to a Recognized Trade Repository, or if no Recognized Trade Repository is available then to the respective provincial securities regulator, all Derivatives Data that is required to be provided under the TR Rules.

**4.3** Each Party will provide, at its own expense, to the other Party any information reasonably requested by such other Party to enable such other Party to comply with the TR Rules in connection with any Transaction, including any information required by the Reporting Counterparty from the other Party in connection with the Reporting Counterparty’s reporting obligations under the TR Rules.

**4.4** Notwithstanding any non-disclosure, confidentiality or similar agreement between the Parties, each Party consents to the disclosure of information about it and/or any Transaction only to the extent required by the TR Rules and only to the persons or entities contemplated by those TR Rules.

**Article 5:**

**Miscellaneous**

**5.1** This Agreement (i) is governed by the law specified to govern the applicable Transaction; and (ii) may be executed and delivered in counterparts (including by facsimile transmission or PDF files), all of which taken together shall constitute one and the same instrument.

**5.2** Each Party, upon the reasonable request of the other, will perform such further acts and execute such further documents as may be necessary to carry out the essential intent and purpose hereof.

**5.3** Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

**5.4** This Agreement does not create any third-party beneficiaries that are in addition to those provided under a Covered Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**PARTY A PARTY B**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: By:

Name: Name:

Title: Title:

**EXHIBIT A**

|  |  |
| --- | --- |
| **Party A: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Party B: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| Legal Entity Identifier: | Legal Entity Identifier: |
| Principal Address:Phone:Fax:Email: | Principal Address:Phone:Fax:Email: |
|  |  |
| Address:Phone:Fax:Email: | Address:Phone:Fax:Email: |
| **Reporting Counterparty: (select only one)** |
| * Party A
 | * Party B
 | * Other [specify]
 |
| **Trade Repository(ies) selected by the Reporting Counterparty:** |
| Recognized Trade Repository if Party A is the Reporting Counterparty:Recognized Trade Repository if Party B is the Reporting Counterparty: |
| **Reportable Events to be reported by Reporting Counterparty:** |
| * Pre-Existing Derivatives Transactions entered into before November 1, 2016, the derivative expires or terminates on or before January 31, 2017.
 |
| **Qualified Party:**  |
| Party A:* Yes
* No
 | Party B:* Yes
* No
 |
| **Accredited Counterparty:**  |
| Party A:* Yes
* No
 | Party B:* Yes
* No
 |
| **Eligible Contract Participant (if applicable):****If any one or more Covered Agreements is a cross-border transaction in which at least one party is a U.S. person, then each party to each such Covered Agreement hereby represents and warrants to the other party to each such Covered Agreement, as of the date of this Agreement and as of the date of each Transaction entered into from time to time under each such Covered Agreement, that it is, and any guarantor, credit support provider or pledger of assets in support of its obligations under each such Covered Agreement is, an Eligible Contract Participant.**  |
| Party A:* Yes
* No
 | Party B:* Yes
* No
 |

1. [1] Can add in paragraph or attach separate exhibit or schedule. [↑](#footnote-ref-2)
2. Effective May 1, 2016. [↑](#footnote-ref-3)