

COMMON INTEREST PRIVILEGE AND JOINT DEFENCE AGREEMENT

This Common Interest Privilege and Joint Defence Agreement (the “**Agreement**”) is entered into as of this ● day of ~~March~~April, 2019 by and among the financial institutions and other entities listed in Appendix A hereto (each a “**CAFII Member**”), the Canadian Association of Financial Institutions in Insurance (“**CAFII**”) and outside legal counsel to CAFII, Stikeman Elliott LLP (“**Counsel**”, together with CAFII and CAFII Members, the “**Parties**”), in connection with the legal and regulatory analysis aspects of the CAFII 2019 Credit Card Balance Protection Insurance Special Project, which includes but is not limited to, working to minimize the risks associated with any potential litigation or regulatory inquiries/investigations and/or taking reasonable steps to be prepared to respond to any litigation or regulatory inquiries/investigations that arise in connection therewith (the “**Project**”).~~[NTD: Amend to add consultant retained by Stikeman Elliott LLP or otherwise consultant can sign a joinder.]~~

WHEREAS the Parties acknowledge and agree that they have a common interest in and a desire to cooperate with respect to the completion of the Project, and without limiting the generality of the foregoing to share, subject to appropriate protocols being put in place, information, documents, material, work product, and strategies to address legal and regulatory issues under, and at all times in compliance with, all applicable legislation, including insurance laws and the *Competition Act*, and in the defence of any actual or threatened legal proceedings or inquiries or investigations in respect of the subject matters covered by the Project before an administrative tribunal, court or regulatory body, including all appeals therefrom (collectively, “**Regulatory Compliance**”);

AND WHEREAS the Parties acknowledge and agree that it is in their several and common interest to share information for the dominant purpose of addressing Regulatory Compliance and to instruct ~~counsel~~Counsel in relation thereto;

AND WHEREAS the Parties wish to pursue their common interest with respect to Regulatory Compliance, ensure that all confidentiality and privileges which apply continue to be maintained through the joint effort to address Regulatory Compliance, and avoid the possibility of any argument of waiver of confidentiality and privilege in respect of the Project;

AND WHEREAS the Parties desire and intend to preserve the confidential and privileged nature of all information and materials exchanged and intend that all privileges, immunities and protections otherwise afforded shall not be waived;

AND WHEREAS each Party has its own privileges which underly and inform the Parties’ common interest privilege;

AND WHEREAS the Parties intend and agree that this Agreement is itself a fundamental aspect of their common interest with respect to Regulatory Compliance and is privileged and confidential and not to be disclosed except in accordance with this Agreement~~:-~~.

NOW, THEREFORE, in consideration of the mutual covenants and protections contained herein, and for other good and valuable consideration, the receipt and sufficiency of which each Party hereby acknowledges, the Parties agree as follows:

A. General Provisions

1. The Parties each acknowledge and agree that they have a common interest in addressing Regulatory Compliance, and that the Parties would benefit from the sharing, on a legally privileged and confidential basis, of (among other things) documents, information, data, financial projections, opinions, factual materials, mental impressions, memoranda, notes, chronologies, analyses, summaries, interview reports, legal and litigation strategies and related agreements and documents (including drafts thereof), communications between the Parties, communications with Counsel, communications between the Parties or Counsel and other third parties, legal advice and other information (orally, in writing, or otherwise) related to the Parties which are protected by solicitor-client privilege, litigation privilege, work product doctrine, settlement privilege, or other applicable privileges, immunities or protections (collectively, "**Common Interest and Joint Defence Materials**").
2. The Parties agree that all Common Interest and Joint Defence Materials previously disclosed or to be disclosed or shared by one Party to another or shared among the Parties in connection with Regulatory Compliance are subject to this Agreement. This Agreement is intended as the written embodiment of prior agreements and understandings of the Parties related to confidentiality and maintenance of privilege in respect of Common Interest and Joint Defence Materials.
3. The Parties agree that the existence of this Agreement (including all drafts and communications in respect of this Agreement) is privileged and confidential and is not to be disclosed without the prior written consent of all Parties, except as required by law (subject to paragraph 16 below) or if disclosure is necessary for the enforcement of this Agreement.

B. No Waiver of Privilege

4. The Parties agree that the sharing or disclosure of Common Interest and Joint Defence Materials among the Parties or to any of the persons contemplated herein will not diminish in any way the confidentiality of such materials and will not constitute a waiver of any applicable privilege, immunity or protection. The Parties agree that they shall not claim or assert that there has been such a waiver as a result of the sharing or disclosure, and that they will **assiduously** diligently assert the application of privilege, immunity and protection to Common Interest and Joint Defence Materials if any third party argues otherwise and/or seeks disclosure of such materials.
5. The Parties will use their best efforts to ensure that the privilege and confidentiality of the Common Interest and Joint Defence Materials is maintained at all times, and that no disclosure is made to any person not authorized by this Agreement to receive Common Interest and Joint Defence Materials without the prior written consent of all Parties expressly agreeing to the waiver of privilege and confidentiality. Any waiver

of privilege and confidentiality as to particular Common Interest and Joint Defence Materials shall not be construed to relate to any other Common Interest and Joint Defence Materials not explicitly covered by the applicable waiver.

6. The Parties agree that, in the event of any breach of the Agreement by any Party, such breach shall not be construed as a waiver of any applicable privilege, immunity or protection.

C. Non-Derogation of Rights

7. The Parties acknowledge and agree that nothing in this Agreement imposes any obligation on any Party to disclose any documents or information, including Common Interest and Joint Defence Materials, to any other Party or individual employed by any other Party.
8. Nothing in this Agreement shall prevent any Party from waiving whatever privilege it may hold over its own ~~(sole)~~ internally-created Common Interest and Joint Defence Materials (i.e., not received from or created jointly with another Party) and/or providing those materials to a third party.
9. Nothing in this Agreement affects Counsel's right or obligation to advise CAFII according to what Counsel believes to be in CAFII's best interest. Nothing in this Agreement shall bind or obligate any Party to agree to a single course of action or to take any specific action with respect to Regulatory Compliance.
10. Nothing in this Agreement shall affect any rights of ownership to and control over any of the Common Interest and Joint Defence Materials.

D. Permitted Disclosure and Use

11. The Parties agree that Common Interest and Joint Defence Materials received pursuant to the Agreement, or the contents thereof, may be disclosed to their respective directors, officers, employees and agents but only to the extent that such ~~employees persons~~ have a need to receive such information (collectively, "**Permitted Recipients**"). The Parties agree that all Permitted Recipients are subject to the terms of this Agreement and the disclosing Party will ensure compliance by the Permitted Recipients with this Agreement.
12. The Parties agree that the sharing of Common Interest and Joint Defence Materials, and the information contained therein, is for the ~~sole~~ purpose of addressing Regulatory Compliance ~~and for no other purpose~~ while maintaining solicitor-client and litigation privilege.
13. The Parties agree that a Party may use or disclose information generated by that Party or obtained independently of this Agreement by that Party, and such use or disclosure includes the right to disclose information to other Parties in a redacted format and to impose additional limitations on the use of Common Interest and Joint Defence Materials. By written designation, a Party may limit disclosure of Common Interest and Joint Defence Materials to "Counsel and Experts Only", in which case

Counsel and any relevant Experts will accordingly limit any disclosure of such Common Interest and Joint Defence Materials or redact as appropriate.

14. The Parties agree that for the purposes of assisting with respect to addressing Regulatory Compliance, a Party may disclose Common Interest and Joint Defence Materials received pursuant to this Agreement, or the contents thereof, to third party ~~economic or other~~ experts or consultants ("**Permitted Third Party Recipients**") who have a signed undertaking to abide by the terms of this Agreement.
15. Nothing in this Agreement shall limit the right of each Party to use, or to disclose to anyone, any of its own documents or information, or any documents or information obtained independently and not pursuant to this Agreement. The obligations set out in this Agreement shall not apply in respect of Common Interest and Joint Defence Materials which:
 - a. are or become generally available to the public other than as a result of unauthorized disclosure by a Party;
 - b. were already lawfully in possession of, or known by, the receiving Party on a non-confidential basis before receipt from the originating Party;
 - c. become available lawfully and in good faith to the receiving Party on a non-confidential basis from a source other than the Parties hereto, provided, however, that, to the knowledge of the receiving Party after reasonable inquiry, such source is not bound by a confidentiality agreement with, or other obligation of secrecy to, the disclosing Party or another person or otherwise prohibited from giving the Common Interest and Joint Defence Materials to the receiving Party by a contractual, legal or fiduciary obligation; or
 - d. are developed by the receiving Party independently of any Common Interest and Joint Defence Materials received from the originating Party.

E. Judicial, Regulatory or Governmental Requests for Production

16. If any other person or entity not a Party to this Agreement (including any regulatory or administrative authority) requests or demands of a Party (the "**Receiving Party**") by document request, summons, subpoena, motion or application, or otherwise, that the Receiving Party produce Common Interest and Joint Defence Materials, the Receiving Party shall promptly notify all Parties of the request or demand unless prohibited by law. Unless and until written notice is received from the other affected Parties that all applicable rights, privileges, protections and immunities have been waived, the Receiving Party shall take all appropriate steps reasonably necessary to assert all applicable rights, privileges, protections and immunities with respect to the Common Interest and Joint Defence Materials, ~~and~~ will cooperate with all Parties in any judicial or administrative proceeding relating to such requested or demanded disclosure of Common Interest and Joint Defence Materials, with each Party (including the Receiving Party) to bear its own costs in connection with such a proceeding, request or demand.

F. Joint and Limited Scope Retainer

~~F.~~ Legal Relationships

17. ~~Nothing in this Agreement shall be deemed to create a solicitor-client relationship between Counsel and anyone other than CAFII. Nothing~~ Subject to the terms of this Agreement, each CAFII Member agrees to retain Counsel pursuant to a joint and limited scope retainer for legal services in connection with the Project as it pertains to the CAFII Member's status as a member of CAFII ("JLS Retainer"). Each CAFII Member confirms that its consent to the JLS Retainer is informed, genuine and uncoerced. The Parties agree that nothing disclosed to Counsel in respect of the JLS Retainer will be confidential so far as the other Parties are concerned, and if a conflict develops the Parties agree to work together in good faith to determine the extent to which Counsel can continue to act. Notwithstanding the foregoing, nothing in this Agreement shall be construed to affect the separate and independent representation of any Party by its own customary counsel. ~~Apart from the obligations to preserve the privilege and confidentiality of information as specified in this Agreement, Counsel shall have no obligations to any Party other than CAFII. No Party shall assert that Counsel is prohibited from accepting any mandate that is not the Regulatory Compliance as a result of this Agreement.~~ For the avoidance of doubt, it is acknowledged that CAFII will pay Counsel's fees with respect to dealings with CAFII Members concerning the Project unless otherwise agreed.

18. Conflict waiver: Each CAFII Member waives any conflict relating to Counsel's engagement under the JLS Retainer and will not assert the JLS Retainer as the basis of any conflict in relation to engagements not substantively related to the JLS Retainer.

19. ~~18.~~ This Agreement shall not create any agency or similar relationship between the Parties. None of the Parties to this Agreement shall have authority to waive any applicable privilege, immunity or protection on behalf of the other Parties, nor shall any waiver of privilege or confidentiality by one Party be construed to apply to the other Parties.

G. Termination of Agreement

20. ~~19.~~ Any Party may terminate its participation in this Agreement at any time upon giving express written notice to the other Parties. Such termination shall not affect or impair the obligations set out in this Agreement with respect to Common Interest and Joint Defence Materials previously provided pursuant to this Agreement, and the Parties agree that all rights, privileges, protections, and immunities continue to apply in respect of Common Interest and Joint Defence Materials even after the termination of this Agreement.

H. Right to Have Documents Returned

21. ~~20.~~ Subject to the provisions of ~~section [21]~~ paragraph 22, the Parties agree that documents constituting Common Interest and Joint Defence Materials will, upon request in writing at any time by a Party that originally disclosed such documents, regardless of whether that Party is still a Party to this Agreement, which written request will identify the specific Common Interest and Joint Defence Materials that

are the subject of the request: (a) be promptly returned to that requesting Party within a reasonable time period; (b) be promptly destroyed within a reasonable time period and a written statement be provided to that Party that such materials and records have been destroyed.

22. ~~21. Section [20]~~ Paragraph 21 does not require a Party to return any Common Interest and Joint Defence Materials which are work-product to be used in connection with Regulatory Compliance, the return of which could prejudice it. The obligation to return or destroy Common Interest and Joint Defence Materials upon request does not require the Parties to return or destroy any Common Interest and Joint Defence Materials that reside in electronic archiving and back-up storage media, and which must legally be retained for document retention purposes.

I. Remedies

23. ~~22.~~ The Parties will at all times use their best efforts to ensure that the confidentiality of the Common Interest and Joint Defence Materials is maintained at all times, and that no disclosure is made to any person not authorized by this Agreement to receive Common Interest and Joint Defence Materials without the prior written consent of all Parties.

24. ~~23.~~ The Parties agree that, in the event of any breach of this Agreement by any Party, such breach could not adequately be remedied by damages, that interim, interlocutory and permanent injunctive relief is appropriate as a remedy, and that this Agreement shall be specifically enforceable where otherwise appropriate.

J. Dispute Resolution

25. ~~24.~~ This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada.

K. Miscellaneous

26. ~~25.~~ The recitals and Schedules to this Agreement form part of the terms and conditions of the Agreement.

27. ~~26.~~ This Agreement shall not affect or alter any other obligations or agreements between the Parties now existing or which will come into existence in the future.

28. ~~27.~~ This Agreement may be modified, amended, or supplemented only by a written amendment signed and agreed to by all the Parties hereto.

29. ~~28.~~ This Agreement shall be binding on the Parties, ~~their officers~~ Permitted Recipients, ~~directors~~ Permitted Third Party Recipients, ~~employees, agents, and their~~ successors and assigns.

30. ~~29.~~ Each Party signing this Agreement represents that ~~it is~~ its Permitted Recipients are fully informed of the terms of this Agreement, and that the Party has agreed to be bound by all of the terms of this Agreement.

31. ~~30.~~ Each provision in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity of enforceability of any other provision hereof or thereof.

32. ~~31.~~ This Agreement may be executed in counterparts, all of which comprise one document.

IN WITNESS WHEREOF we have affixed our signatures below:

CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS IN INSURANCE

Name: [Keith Martin](#)

Title: [Co-Executive Director, CAFII](#)

Name: [Brendan Wycks](#)

Title: [Co-Executive Director, CAFII](#)

STIKEMAN ELLIOTT LLP

Name:

Title:

~~{add signature lines for members}~~

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MEMBERS:

Name: Joseph Ryan

Title: Vice President, Consumer Lending, Insurance & Internal Acquisition, AMEX Bank of Canada

Name: Paul Cosgrove

Title: VP Business Partnerships, Assurant Canada

Name: Peter McCarthy

Title: President & CEO, BMO Life Insurance Company of Canada

Name: David Fear

Title: Senior Vice-President, The Canada Life Assurance Company

Name: Nicole Benson

Title: CEO, Canadian Premier Life

Name: Sandra Rondzik

Title: Vice President, CIBC Insurance

Name: Kelly Tryon

Title: VP Creditor Insurance and Retail Distribution—Eastern Canada, CUMIS Life Insurance Company

Name: Christian DuFour

Title: Senior Vice-President, Desjardins

Name: Wally Thompson

Title: VP Sales & Marketing, Partnerships and CoverMe, Insurance Manulife

Name: Peter Thompson

Title: Senior Vice President, Insurance and President, National Bank Insurance

Name: Chris Lobbezoo

Title: VP, Creditor Product & Sales Distribution, RBC Insurance

Name: Zack Fuerstenberg

Title: Senior Vice President, Insurance Canada, ScotiaLife Financial

Name: Chris Knight

Title: Senior Vice President, Life, Health and Creditor Products, TD Insurance

Name: Janice Farrell Jones

Title: VP Strategy and Innovation, TD Insurance

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SCHEDULE "A"

~~[NTD: List members.]~~

CAFII MEMBERS

AMEX Bank of Canada

Assurant Canada

BMO Life Insurance Company of Canada

Canada Life Insurance Company

Canadian Premier Life

CIBC Insurance

CUMIS Life Insurance Company

Desjardins

Manulife

National Bank Insurance

RBC Insurance

ScotiaLife Financial

TD Insurance

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Comparison Details	
Title	compareDocs Comparison Results
Date & Time	4/8/2019 11:55:58 AM
Comparison Time	3.57 seconds
compareDocs version	v4.3.205.1

Sources	
Original Document	[SEDOCS][#109502316] [v2] CAFII - JD&CIPA.doc
Modified Document	[SEDOCS][#109502316] [v6] CAFII - JD&CIPA.doc

Comparison Statistics	
Insertions	65
Deletions	11
Changes	30
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	106

Word Rendering Set Markup Options	
Name	Office 2016
Insertions	
Deletions	
Moves / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False

Flatten Field Codes	Word	True
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