



Finance Department Report

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Report To: General Government Committee

Date of Meeting: April 15, 2019

Report Number: FND-009-19 **Resolution:** GG-219-19

File Number: **By-law Number:**

Report Subject: Elexicon Inter-creditor Agreement

Recommendations:

1. That Report FND-009-19 be received;
2. That the By-law attached to Report FND-009-19 be approved; and
3. That all interested parties listed in Report FND-009-19 and any delegations be advised of Council's decision.

Report Overview

The Corporation of the Municipality of Clarington has been requested to enter into an inter-creditor agreement with the other municipal shareholders of Elexicon and TD Bank to provide updated credit facilities to the newly merged Elexicon Corporation and Elexicon Energy. This agreement is similar to the existing inter-creditor agreement which municipal shareholders of Veridian and TD Bank had entered into in 2009.

1. Background

- 1.1 On April 1, 2019, the merger of Whitby Hydro and Veridian was completed creating the new Elexicon Group.
- 1.2 As part of the financial transition process, Elexicon staff worked with TD Bank for updated credit facilities for Elexicon Corporation and Elexicon Energy. TD Bank is requiring an agreement among all creditors of the two companies known as an inter-creditor agreement.
- 1.3 An inter-creditor agreement was in place with the Veridian shareholders which subordinated the shareholder promissory notes to the debt of TD Bank. This was approved most recently in 2009.
- 1.4 It is my understanding that a similar agreement was in place for Whitby Hydro's debt, however this took the form of a General Security Agreement between The Town of Whitby and TD Bank.
- 1.5 With the new company being created, an amending agreement is required and will be signed by all five shareholders. Similar to the previous agreements, this agreement stipulates that the municipal shareholder debt is subordinate to the TD Bank debt.
- 1.6 The agreement does restrict the ability of the Municipality to accelerate the payment of any principal owing from Elexicon. Debt principal payments may not be accelerated without the permission of TD Bank. It is not anticipated that this will present issues for the Municipality. There are no current plans to call the existing promissory note for cash flow purposes.

2. Concurrence

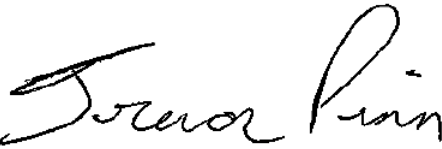

This report has been reviewed by the Municipal Solicitor who concurs with the recommendations.

3. Conclusion

It is respectfully recommended that the attached By-law authorizing the Mayor and Clerk to sign the Amended and Restated Inter-creditor Agreement between The Toronto Dominion Bank, the Municipality of Clarington, the Town of Ajax, the City of Pickering, the City of Belleville, the Town of Whitby, Elexicon Corporation and Elexicon Energy Inc. be approved.

4. Strategic Plan Application

Not applicable.

Submitted by:	 Trevor Pinn, B.Com, CPA, CA, Director of Finance/Treasurer	Reviewed by:	 for Andrew C. Allison, B. Comm, LL.B CAO
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Staff Contact: Trevor Pinn, B.Com, CPA, CA, Director of Finance / Treasurer, 905-623-3379 ext.2602 or tpinn@clarington.net

Attachments:

Attachment 1 - By-law to authorize an Amended and Restated Inter-creditor Agreement with TD Bank, Elexicon Corporation, Elexicon Energy and Municipal Shareholders.

Attachment 2 – Municipal shareholder memo

List of interested parties to be notified of Council's decision is on file in the Finance Department.

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**The Corporation of the Municipality of Clarington
By-law 2019-XXX**

Being a by-law to authorize the execution of an Amended and Restated Inter-creditor Agreement between The Toronto Dominion Bank, the Municipality of Clarington, the Town of Ajax, the City of Pickering, the City of Belleville, the Town of Whitby, Elexicon Corporation and Elexicon Energy Inc.

Whereas on April 29, 2019, Council approved a request from Elexicon to approve and execute an amended and restated inter-creditor Agreement between The Toronto Dominion Bank, the Municipality of Clarington, the Town of Ajax, the City of Pickering, the City of Belleville, the Town of Whitby, Elexicon Corporation and Elexicon Energy Inc. confirming that promissory notes held by the shareholders are subordinated to the bank loans advanced to Elexicon

Now therefore the Council of the Municipality of Clarington enacts as follows:

1. That the Mayor and Municipal Clerk are hereby authorized to execute an Amended and Restated Inter-creditor Agreement, substantially in the form attached as Schedule "A" to this By-law, between The Toronto Dominion Bank, the Municipality of Clarington, the Town of Ajax, the City of Pickering, the City of Belleville, the Town of Whitby, Elexicon Corporation and Elexicon Energy Inc.
2. That the Agreement attached hereto as Schedule "A" forms part of this By-law.

Passed in Open Council this 29th day of April, 2019.

Adrian Foster, Mayor

C. Anne Greentree, Municipal Clerk



MEMORANDUM

To: Brian Cousins, Treasurer and Carol Hinze, Deputy Treasurer, City of Belleville
Trevor Pinn, Treasurer, Municipality of Clarington
Sheila Strain, Treasurer, Town of Ajax
Stan Karwowski, Treasurer, City of Pickering
Ken Nix, Treasurer, Town of Whitby

From: Laurie McLorg, Senior Advisor and Ramona Abi-Rashed, Senior Advisor
Elexicon Energy Inc.

Date: April 9, 2019

Re: Inter-creditor Agreement between Elexicon Energy, Elexicon Corporation, the City of Belleville, the Municipality of Clarington, the Town of Ajax, the City of Belleville, the Town of Whitby and the Toronto-Dominion Bank

Elexicon Energy Inc. and Elexicon Corporation are in the process of entering into new credit facility agreements with Toronto-Dominion (TD) Bank. The new credit facilities will incorporate features of the existing facilities of each of Veridian Connections Inc., Veridian Corporation and Whitby Hydro Electric Corporation and will also expand the borrowing capacity of Elexicon Energy to provide for capital investment funding requirements anticipated over the next 5 years.

The high level financial plans for Elexicon Energy Inc. include ensuring maintaining debt to capitalization ratios on par with industry norms and within any requirements of shareholder agreements, while providing agreed upon levels of shareholder dividend and interest payments.

This memorandum is a request to the Elexicon shareholders to execute an inter-creditor agreement (ICA). Promissory notes that are owed to the shareholders from Elexicon are subordinate to Elexicon obligations to any other financial institutions or lenders. The ICA provides a confirmation of this subordination to the bank and sets out how each of the creditors will service the borrower and how each of the debts of the borrower rank in relation to each other for payment. As creditors of Elexicon Corporation and Elexicon Energy, the municipal shareholders are required to be signatories to the ICA.

The predecessor Veridian shareholders are signed parties to an existing ICA with the TD Bank, confirming that their promissory notes are subordinated to TD Bank loans and credit facilities. This existing ICA was executed in 2009 when Veridian first borrowed from TD Bank for its capital spending requirements.

The Town of Whitby was not a signed party to an ICA with Whitby Hydro Electric Corporation and TD Bank as the TD Bank held a General Security Agreement (GSA), which had the same effect of confirming that their shareholder promissory notes were subordinated to the debt of TD Bank.

The new ICA is very similar to the existing Veridian ICA and has been thoroughly reviewed and accepted by Elexicon legal counsel.

Elexicon respectfully requests Council to execute the inter-creditor agreement as appended.



Laurie McLorg



Ramona Abi-Rashed

cc

Paul Murphy, Board Chair – Elexicon Energy Inc.
Norm Fraser – Interim CEO, Elexicon Energy Inc.
Patrick McNeil – Board Chair – Elexicon Corporation

AMENDED AND RESTATED INTER-CREDITOR AGREEMENT

THIS AGREEMENT made as of the ____ day of April, 2019.

BETWEEN:

THE TORONTO-DOMINION BANK, a Canadian chartered bank

(herein called the “**Senior Creditor**”)

- and -

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON, a municipal corporation existing under the laws of the Province of Ontario

(herein called “**Clarington**”)

- and -

THE CORPORATION OF THE TOWN OF AJAX, a municipal corporation existing under the laws of the Province of Ontario

(herein called “**Ajax**”)

- and -

THE CORPORATION OF THE CITY OF PICKERING, a municipal corporation existing under the laws of the Province of Ontario

(herein called “**Pickering**”)

- and -

THE CORPORATION OF THE CITY OF BELLEVILLE, a municipal corporation existing under the laws of the Province of Ontario

(herein called “**Belleville**”)

- and -

THE CORPORATION OF THE TOWN OF WHITBY, a municipal corporation existing under the laws of the Province of Ontario

(herein called “**Whitby**”)

- and -

ELEXICON CORPORATION, a corporation amalgamated under the laws of the Province of Ontario

(herein called “**Parent Borrower**”)

- and -

ELEXICON ENERGY INC., a corporation amalgamated under the laws of the Province of Ontario

(herein called “**Regulated Borrower**”)

WHEREAS the Obligors and certain of the Creditors are party to an inter-creditor agreement dated December 23, 2009 (as amended prior to the date hereof, the “**Existing ICA**”);

AND WHEREAS the Obligors and the Creditors wish to amend and restate the Existing ICA on the terms and conditions set forth herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants herein contained and other good and valuable consideration, given by each of the parties hereto (the receipt and sufficiency of which are hereby acknowledged by all of the parties hereto), the parties hereto hereby agree with each other as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions.

The following defined terms shall for all purposes of this agreement, or any amendment hereto, have the following respective meanings unless the context otherwise specifies or requires or unless otherwise defined herein:

“**Business Day**” means any day other than a Saturday or Sunday on which banks are generally open for business in Toronto, Ontario.

“**Credit Agreements**” means the Parent Borrower Credit Agreement and the Regulated Borrower Credit Agreement and “**Credit Agreement**” means either of them.

“**Creditors**” means the Senior Creditor and the Subordinated Creditors and “**Creditor**” means any of the Creditors.

“**Default**” means any of the events of default specified in any Loan Agreement entitling a Creditor to demand or accelerate payment of any Obligations.

“Demand” means any notification by any of the Creditors to either Obligor of a demand for payment under any Loan Agreement.

“Insolvency Legislation” means the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy Code* (United States) and any similar statute or law in any jurisdiction.

“Loan Agreements” means the Senior Loan Agreements and the Subordinated Loan Agreements and **“Loan Agreement”** means any one of the Loan Agreements.

“Obligations” means Senior Obligations and the Subordinated Obligations.

“Obligors” means the Parent Borrower and the Regulated Borrower.

“Parent Borrower Credit Agreement” means the credit agreement made as of April __, 2019 between the Parent Borrower and the Senior Creditor, as the same may be amended, modified, supplemented or replaced from time to time.

“Regulated Borrower Credit Agreement” means the credit agreement made as of April __, 2019 between the Regulated Borrower and the Senior Creditor, as the same may be amended, modified, supplemented or replaced from time to time.

“Senior Loan Agreements” means all documents, instruments and agreements evidencing the Senior Obligations, including, without limitation, the Credit Agreements.

“Senior Obligations” means all indebtedness, obligations and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Parent Borrower or Regulated Borrower to the Senior Creditor or remaining unpaid by the Parent Borrower or Regulated Borrower to the Senior Creditor under or in connection with the Senior Loan Agreements.

“Subordinated Creditors” means Clarington, Ajax, Pickering, Whitby and Belleville.

“Subordinated Loan Agreements” means any agreement entered into from time to time between either Obligor and any of the Subordinated Creditors evidencing any Subordinated Obligations, including, without limitation, the following:

- (a) the fifth amended and restated term promissory note in the principal amount of \$5,966,000 dated April 1, 2019 and made by the Regulated Borrower in favour of Clarington;
- (b) the fifth amended and restated term promissory note in the principal amount of \$5,588,000 dated April 1, 2019 and made by the Regulated Borrower in favour of Belleville;

- (c) the fifth amended and restated term promissory note in the principal amount of \$14,060,000 dated April 1, 2019 and made by the Regulated Borrower in favour of Ajax;
- (d) the fifth amended and restated term promissory note in the principal amount of \$17,974,000 dated April 1, 2019 and made by the Regulated Borrower in favour of Pickering;
- (e) the seventh amended and restated term promissory note in the principal amount of \$2,206,000 dated April 1, 2019 and made by the Parent Borrower in favour of Belleville;
- (f) the seventh amended and restated term promissory note in the principal amount of \$5,550,000 dated April 1, 2019 and made by the Parent Borrower in favour of Ajax;
- (g) the seventh amended and restated term promissory note in the principal amount of \$7,095,000 dated April 1, 2019 and made by the Parent Borrower in favour of Pickering;
- (h) the seventh amended and restated term promissory note in the principal amount of \$2,355,000 dated April 1, 2019 and made by the Parent Borrower in favour of Clarington;
- (i) the first amended and restated term promissory note in the principal amount of \$1,460,300 dated April 1, 2019 and made by the Regulated Borrower in favour of Whitby;
- (j) the first amended and restated term promissory note in the principal amount of \$5,061,000 dated April 1, 2019 and made by the Regulated Borrower in favour of Whitby;
- (k) the first amended and restated term promissory note in the principal amount of \$21,816,642 dated April 1, 2019 and made by the Regulated Borrower in favour of Whitby;
- (l) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Clarington in respect of the Subordinated Loan Agreement referred to in paragraph (a) of this definition;
- (m) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Belleville in respect of the Subordinated Loan Agreement referred to in paragraph (b) of this definition;
- (n) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Ajax in respect of the Subordinated Loan Agreement referred to in paragraph (c) of this definition;

- (o) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Pickering in respect of the Subordinated Loan Agreement referred to in paragraph (d) of this definition;
- (p) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Whitby in respect of the Subordinated Loan Agreement referred to in paragraph (i) of this definition;
- (q) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Whitby in respect of the Subordinated Loan Agreement referred to in paragraph (j) of this definition; and
- (r) the guarantee dated April 1, 2019 made by Elexicon Corporation in favour of Whitby in respect of the Subordinated Loan Agreement referred to in paragraph (k) of this definition.

“Subordinated Obligations” means all indebtedness, obligations and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by either Obligor to any of the Subordinated Creditors or remaining unpaid by either Obligor to any of the Subordinated Creditors under or in connection with the Subordinated Loan Agreements.

1.2 Other Usages.

References to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this Inter-Creditor Agreement and not to any particular Article, Section or other subdivision of this Inter-Creditor Agreement. Any references to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this Inter-Creditor Agreement as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

1.3 Plural and Singular.

Where the context so requires, words importing the singular number shall include the plural and vice versa.

1.4 Headings.

The division of this agreement into Articles, Sections and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

1.5 Applicable Law.

This agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any legal action or proceeding with respect to this agreement may be brought in the courts of the Province of Ontario and, by execution and delivery of this agreement, the parties hereby accept for themselves and in respect of their property, generally and unconditionally, the non-exclusive

jurisdiction of the aforesaid courts. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party to the address prescribed by Section 6.11, such service to become effective five Business Days after such mailing. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

1.6 Time of the Essence.

Time shall in all respects be of the essence of this agreement.

1.7 Paramountcy.

In the event of any conflict or inconsistency between the provisions of this agreement and the provisions of any other agreement (including, for certainty, the Subordinated Loan Agreements) which is referred to herein or delivered pursuant hereto, the provisions of this agreement shall prevail and be paramount.

1.8 No Rights Conferred on the Obligors.

Nothing in this agreement shall be construed as conferring any rights upon the Obligors or any third party. The terms and conditions hereof are and shall be for the sole and exclusive benefit of the Creditors.

**ARTICLE 2
CONSENT**

2.1 Consent of Creditors.

Each Creditor consents to the incurring of the Obligations by the Obligors and waives any Default that the incurring of the Obligations may have constituted under the terms of the Loan Agreements.

**ARTICLE 3
PRIORITY OF OBLIGATIONS**

3.1 Priority of Obligations.

Except as otherwise expressly provided in Section 3.3, the Subordinated Obligations shall be and are hereby postponed and made subordinate in right of payment to the prior payment in full in cash of the Senior Obligations.

3.2 Prohibited Payments to Subordinated Creditors.

Except as otherwise expressly provided in Section 3.3, the Obligors shall not make nor be entitled to make, and the Subordinated Creditors shall not accept and shall not be entitled to accept, any payment or prepayment of principal, interest or other amount under the

Subordinated Loan Agreements, whether in the form of cash, securities or otherwise and whether by way of payment, set off or otherwise.

3.3 Permitted Payments to the Subordinated Creditors.

So long as no Bank Default Notice (as defined below) has been sent by the Senior Creditor and continues to be effective or no Default would result directly or indirectly from any payment described below, as between the parties hereto, the Obligors shall be permitted to pay the Subordinated Creditors and the Subordinated Creditors shall be permitted to receive, regularly scheduled payments on account of interest (but not principal) in accordance with the Subordinated Loan Agreements.

If a Default occurs and a notice of such Default (a “**Bank Default Notice**”) is sent by or on behalf of the Bank to the Obligors and the Subordinated Creditors, the payments otherwise permitted under this Section 3.3 shall not be permitted to be made or received from the date of the Bank Default Notice until such time as the Default which is the subject of such Bank Default Notice has been cured or waived.

3.4 Certain Covenants of Subordinated Creditors.

The Subordinated Creditors shall not and shall not be entitled to without the Senior Creditor’s prior written consent:

- (a) accelerate the time for payment of any of the Subordinated Obligations or otherwise enforce or take any action to enforce payment of all or any part of the Subordinated Obligations, whether by way of set off or otherwise, unless and until all indebtedness of the Obligors to the Senior Creditor under or in connection with the Credit Agreements has become immediately due and payable pursuant to the terms thereof;
- (b) petition either of the Obligors into bankruptcy or initiate any similar proceeding under any applicable Insolvency Legislation;
- (c) amend, alter or otherwise modify the Subordinated Loan Agreements in a manner that may reasonably be expected to adversely impact the Senior Creditor; or
- (d) hold or obtain any security from the Obligors or any person on their behalf, for payment or performance of the Subordinated Obligations.

3.5 Distributions.

To the extent not otherwise permitted under the Credit Agreement, the Obligors shall not make nor be entitled to make, and the Subordinated Creditors shall not accept nor be entitled to accept the payment of any dividends or other distribution on or in respect of any shares in the capital of the Obligors.

The Obligors shall not make nor be entitled to make, and the Subordinated Creditors shall not accept nor be entitled to accept the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any shares in the capital of the Obligors or

any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for shares in the capital of the Obligors, including, without limitation, options, warrants, conversion or exchange privileges and similar rights. Notwithstanding the foregoing, the Subordinated Creditors shall be entitled to convert their interest under the Subordinated Loan Agreements as provided for therein.

3.6 Effect of Non-Compliance.

In the event any prepayments or other payments are made to or received by the Subordinated Creditors in contravention of this agreement, the Subordinated Creditors shall hold such prepayments or payments in trust for the Senior Creditor and shall not commingle such proceeds with any of their own funds and shall forthwith pay such prepayments or payments to the Senior Creditor to be applied by the Senior Creditor in reduction of the Senior Obligations.

Any action taken or thing done by any Subordinated Creditors in contravention of this agreement shall be null and void and of no effect.

ARTICLE 4 REMEDIES

4.1 Remedies.

The Obligors and the Subordinated Creditors hereby agree that all covenants, provisions and restrictions contained herein are necessary and fundamental in order to establish the respective priorities of the Creditors in connection with the Obligations, and that a breach by any of the Obligors or the Subordinated Creditors of any such covenant, provision or restriction would result in damages to the Senior Creditor that could not adequately be compensated by monetary award. Accordingly, it is expressly agreed by the Obligors and the Subordinated Creditors that in addition to all other remedies available to it including, without limitation, any action for damages, the Senior Creditor shall be entitled to the immediate remedy of a restraining order, interim injunction, injunction or other form of injunctive or other relief as may be decreed or issued by any court of competent jurisdiction to restrain or enjoin the Obligors or the Subordinated Creditors from breaching any such covenant, provision or restriction.

4.2 Default Notice.

Each Creditor agrees to give written notice to each other Creditor simultaneously with or immediately after the delivery to either of the Obligors of any written notice of a Demand or a Default. Failure of a Creditor to give notice as provided in this Section 4.2 shall not affect the priorities established or other agreements provided for herein, nor shall such Creditor be liable for failure to give any such notice nor shall any such failure in any way limit or derogate from the obligations of the other Creditors.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE SUBORDINATED CREDITORS

5.1 Representations and Warranties of the Subordinated Creditors.

Each of the Subordinated Creditors hereby represents and warrants to the Senior Creditor as follows and acknowledges and confirms that the Senior Creditor is relying upon such representations and warranties in extending credit to the Obligors under the applicable Senior Loan Agreements:

- (a) each Subordinated Creditor is a municipal corporation duly incorporated and organized and validly subsisting under the laws of its jurisdiction of incorporation. Each Subordinated Creditor has all requisite corporate capacity, power and authority to enter into, and carry out the transactions contemplated by, this agreement;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this agreement by each Subordinated Creditor and each Subordinated Creditor has duly executed and delivered this agreement. This agreement is a legal, valid and binding obligation of the Subordinated Creditor, enforceable against each Subordinated Creditor by the Senior Creditor in accordance with its terms.

ARTICLE 6 MISCELLANEOUS

6.1 Consent of the Obligors.

Each Obligor, by its execution hereof, hereby agrees to be bound by, and shall act in accordance with, the terms, provisions and intent of this agreement.

6.2 Information Exchange.

Each Creditor agrees to disclose to each other Creditor upon reasonable request from time to time the aggregate amounts then owing by the Obligors to it and whether it has any actual knowledge of any Default. Each Obligor hereby consents to each Creditor providing the other Creditor with such information, financial or otherwise, regarding the Obligors and the Creditors' respective Obligations as may be deemed advisable by the Creditors from time to time.

6.3 Non-Impairment of the Senior Creditors' Rights.

No right of the Senior Creditor to enforce its rights hereunder shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Obligors or by any act or failure to act by the Senior Creditor, or by any non-compliance by the Obligors or the Subordinated Creditors with the terms of this agreement, regardless of any knowledge thereof which the Senior Creditor may have or be otherwise charged with. Without the Subordinated

Creditors' consent, the Senior Creditor may extend, renew, modify, or increase the Senior Obligations or amend or waive the terms of the Senior Loan Agreements and otherwise deal freely with either Obligor, all without affecting the liabilities and obligations of the Obligors and the Subordinated Creditors hereunder and without causing or constituting a breach of or default under any of the Subordinated Obligations. Notwithstanding the foregoing, the Senior Creditor agrees to provide the Subordinated Creditors with prior written notice of any such extension, renewal, modification, amendment or increase in the Senior Obligations in accordance with the notice provisions contained in 6.11 hereof provided that the inadvertent failure to provide such notice shall not result in any liability of the Senior Creditor to the Subordinated Creditors.

6.4 Waivers and Amendments.

No failure or delay by the Senior Creditor in exercising any right hereunder shall operate as a waiver of such right nor shall any single or partial exercise of any power or right preclude its further exercise or the exercise of any other power or right. Any term, covenant, condition or obligation of this agreement may only be amended with the written consent of all of the parties hereto or compliance therewith may only be waived (either generally or in a particular instance and either retroactively or prospectively) by the Senior Creditor in writing and in any such event the failure to observe, perform or discharge any such term, covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such term, covenant, condition or obligation.

6.5 Liability of Subordinated Creditors.

The Senior Creditor hereby acknowledges and agrees that, except as may be expressly provided for herein, the Subordinated Creditors are not and will not be liable in any way for payment or performance of the Senior Obligations.

6.6 Severability.

Each provision of this agreement is intended to be severable and if any provision is illegal, invalid or unenforceable, such illegality, unenforceability or invalidity shall not affect the validity of this agreement or the remaining provisions.

6.7 Counterparts.

This agreement may be executed in any number of counterparts, all of which shall be deemed to be an original and such counterparts taken together shall constitute one agreement, and any of the parties hereto may execute this agreement by signing any such counterpart.

6.8 Further Assurances.

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this agreement and every part thereof. No party to this agreement shall take any action whereby the priorities and rankings set out in this agreement might be impaired or defeated.

6.9 Assignment.

This agreement shall enure to the benefit of and shall be binding upon the respective successors (including, without limitation, any trustee in bankruptcy or liquidator) and permitted assigns of the parties hereto. The Subordinated Creditors shall not assign any of their rights and obligations hereunder or under the Subordinated Loan Agreements. The rights and the obligations of the Senior Creditor hereunder may be assigned by the Senior Creditor in whole or in part without the consent of the other parties hereto but only in connection with or as part of an assignment by the Senior Creditor of its rights under the Credit Agreement.

6.10 Entire Agreement.

This agreement contains the entire understanding of the parties with respect to the priority of the Obligations and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the priority of the Obligations. There are no restrictions, agreements, promises, warranties, covenants or undertakings relating to the priority of the Obligations other than those set forth in this agreement.

6.11 Notices.

Except as otherwise provided herein, all notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by telefacsimile, charges prepaid, at or to the applicable addresses or telefacsimile numbers, as the case may be, set out opposite the relevant party's name below or at or to such other address or addresses, telefacsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by telefacsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

(a) In the case of the Senior Creditor:

The Toronto-Dominion Bank
South-East Commercial Banking Centre
2 King Street East
Oshawa, Ontario L1H 7L3

Attention: Director, Corporate Banking
Telefax: (905) 576-9147

- (b) In the case of the Obligor:

Elexicon Corporation/Elexicon Energy Inc.

55 Taunton Road East
Ajax, Ontario L1T 3V3

Attention: Vice-President, Corporate Affairs and
Secretary Treasurer
Telefax: (905) 619-0210

- (c) In the case of Clarington:

The Corporation of the Municipality of Clarington
40 Temperance Street
Bowmanville, Ontario L1C 3A6

Attention: Mayor
Telefax: (905) 623-5717

- (d) In the case of Ajax:

The Corporation of the Town of Ajax
65 Harwood Avenue South
Ajax, Ontario L1S 2H9

Attention: Mayor
Telefax: (905) 683-1061

- (e) In the case of Pickering:

The Corporation of the City of Pickering
1 The Esplanade
Pickering, Ontario L1V 3P4

Attention: Mayor
Telefax: (905) 420-9695

- (f) In the case of Whitby:

Corporation of the Town of Whitby
575 Rossland Rd. E
Whitby, ON L1N 2M8

- (g) In the case of Belleville:

The Corporation of the City of Belleville
169 Front Street
Belleville, Ontario K8N 2Y8

Attention: Mayor
Telefax: (613) 967-3209

6.12 Termination of Agreement.

This agreement shall terminate and shall be of no further force or effect upon the earlier to occur of:

- (a) all Senior Obligations being repaid in full and all commitments of the Senior Creditor under the Senior Loan Documents having been terminated; and
- (b) the written agreement of the Senior Creditor to such effect.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

By: _____
Name:
Title:

**THE CORPORATION OF THE
MUNICIPALITY OF CLARINGTON**

By: _____
Name:
Title:

By: _____
Name:
Title:

**THE CORPORATION OF THE TOWN OF
AJAX**

By: _____
Name:
Title:

By: _____
Name:
Title:

**THE CORPORATION OF THE CITY OF
PICKERING**

By: _____
Name:
Title:

By: _____
Name:
Title:

**THE CORPORATION OF THE CITY OF
BELLEVILLE**

By: _____
Name:
Title:

By: _____
Name:
Title:

**THE CORPORATION OF THE TOWN OF
WHITBY**

By: _____
Name:
Title:

By: _____
Name:
Title:

ELEXICON CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

ELEXICON ENERGY INC.

By: _____
Name:
Title:

By: _____
Name:
Title: