

- (iii) notify the Agent, each Syndicated Lender and the Borrower whether said demand for payment was properly made under such Letter of Credit.
- (f) On the date that any assignee becomes a party to this Agreement as a Lender, participating interests in any outstanding Fronted LCs under which the assignor Lender is liable, will be proportionately reallocated between such assignee and such assignor Lender.
- (g) Effective on the date of issuance of each Fronted LC, the LC Fronting Lender irrevocably agrees to grant and hereby grants to each Syndicated Lender, and each such Syndicated Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the LC Fronting Lender, on the terms and conditions hereinafter stated and, for such Syndicated Lender's own account and risk an undivided interest (equal to such Syndicated Lender's then Proportionate Share of the Syndicated Facility) in the LC Fronting Lender's obligations and rights under each Fronted LC issued by the LC Fronting Lender and the amount paid by the LC Fronting Lender thereunder. Each such Syndicated Lender unconditionally and irrevocably agrees with the LC Fronting Lender that, if an amount is paid under any Fronted LC for which the LC Fronting Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such Syndicated Lender will pay to the Agent, for the account of the LC Fronting Lender, upon demand at the Agent's address specified herein, an amount equal to such Syndicated Lender's Proportionate Share of such amount, or any part thereof, which is not so reimbursed.
- (h) Each Syndicated Lender hereby agrees that its obligation to participate in each Fronted LC, and to pay or to reimburse the LC Fronting Lender for its Proportionate Share of the amounts drawn or amounts otherwise paid thereunder, is absolute, irrevocable and unconditional and will not be affected by any circumstances whatsoever, and that each such payment will be made without offset, abatement, withholding or other reduction whatsoever. For greater certainty, the obligation of each Syndicated Lender to reimburse the LC Fronting Lender for its Proportionate Share of the amounts paid or drawn under a Fronted LC shall continue notwithstanding that, after the issuance of such Fronted LC, such Syndicated Lender requests that the Agent demand repayment of the Obligations owed by the Borrower to such Syndicated Lender or that a Pending Event of Default or an Event of Default has occurred and is continuing. Such reimbursement obligation shall continue until the earlier of:
  - (i) the Borrower having provided Collateral to the Agent in an amount equal to such Syndicated Lender's Proportionate Share of the Face Amount of such Fronted LC; or
  - (ii) such Fronted LC expires or is returned to the LC Fronting Lender, in each case without any draw or payment being made by the LC Fronting Lender thereunder.
- (i) If any amount that is required to be paid by any Syndicated Lender to the LC Fronting Lender pursuant to Section 7.19(g), is not paid to the LC Fronting Lender when such amount is due, such Syndicated Lender will pay to the Agent, for the account of the LC Fronting Lender, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Prime Rate Advances or U.S. Base Rate Advances hereunder depending on whether the amount paid under such Letter of Credit is in Canadian Dollars or U.S. Dollars. A certificate of the LC Fronting Lender submitted to any Syndicated Lender with respect to any amounts owing under this Section 7.19(i) will be conclusive in the absence of manifest error.

(j) If at any time after the LC Fronting Lender has received from any Syndicated Lender that Syndicated Lender's Proportionate Share of such payment in accordance with Section 7.19(g), the LC Fronting Lender receives from the Borrower any reimbursement on account of such draw, the LC Fronting Lender will pay to the Agent, for the account of such Syndicated Lender that Syndicated Lender's Proportionate Share thereof; provided, however, that in the event that any such payment received by the LC Fronting Lender is required to be returned by the LC Fronting Lender, such Syndicated Lender will return to the Agent for the account of the LC Fronting Lender, the portion thereof previously distributed to it.

#### **7.20 Records**

Each LC Issuing Lender shall maintain records evidencing the undrawn and unexpired amount of each Letter of Credit issued or renewed by it outstanding hereunder and the Agent shall maintain records evidencing each Syndicated Lender's Proportionate Share of such amount for each Fronted LC and for each Letter of Credit issued or renewed hereunder such records shall include:

- (a) the dates of issuance or renewal and expiration thereof;
- (b) the Face Amount thereof; and
- (c) the date and amount of all payments made thereunder.

Each LC Issuing Lender shall make copies of such records available to the Borrower, the Agent or any Lender upon its reasonable request.

#### **7.21 Uniform Customs**

Each Letter of Credit, except as specifically provided therein, and subject to any provision hereof to the contrary, will be subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, current at the time of issuance or renewal of such Letter of Credit.

#### **7.22 Letter of Credit Procedures and Limitations**

The following provisions shall apply to LC Advances:

- (a) each Letter of Credit issued under the Syndicated Facility shall be in a Face Amount equal to or greater than \$500,000 (or the Equivalent Amount in U.S. Dollars) and the aggregate amount of all Letters of Credit that may be issued and outstanding under the Syndicated Facility shall not exceed \$10,000,000 (or the Equivalent Amount in U.S. Dollars);
- (b) the Face Amount of each Letter of Credit issued under the Swingline Facility shall not exceed \$500,000 (or the Equivalent Amount in U.S. Dollars) and the aggregate amount of all Letters of Credit that may be issued and outstanding under the Swingline Facility shall not exceed \$5,000,000 (or the Equivalent Amount in U.S. Dollars);
- (c) no Letter of Credit issued under the Syndicated Facility or the Swingline Facility shall have a maturity date that is later than the then current Maturity Date;
- (d) the LC Issuing Lender shall not have any obligation to issue a Letter of Credit until such ancillary documents, including applications and indemnities, as it normally requires for similar transactions have been executed and delivered to it; and

(e) all payments made by an LC Issuing Lender to any Person pursuant to a Letter of Credit shall, unless the Borrower reimburses such LC Issuing Lender for each such payment on or before the date it is made, be deemed as and from the date of such payment to be a Prime Rate Advance for payments made by such LC Issuing Lender in Canadian Dollars and a U.S. Base Rate Advance for payments made by such LC Issuing Lender in U.S. Dollars, in each case for a Letter of Credit issued under the Syndicated Facility or the Swingline Facility, with the proceeds of such Prime Rate Advance or U.S. Base Rate Advance, as the case may be, being applied against the Borrower's obligations to reimburse the applicable LC Issuing Lender, for payments made under the Letter of Credit.

#### 7.23 Payment Under Letters of Credit

The Borrower unconditionally and irrevocably authorizes each LC Issuing Lender to pay the amount of any draft or demand made on each LC Issuing Lender under and in accordance with the terms of any Letter of Credit on demand without requiring proof of the agreement of the Borrower that the amount so demanded was due and notwithstanding that the Borrower may dispute the validity of any such draft, demand or payment.

No LC Issuing Lender shall have any responsibility or liability for, or any duty to inquire into, the authorization, execution, signature, endorsement, correctness, genuineness or legal effect of any certificate or other document presented to it pursuant to any Letter of Credit which appear on their face to be in order, and the Borrower fully and unconditionally assumes all risks with respect to the same and, without limiting the generality of the foregoing, all risks of the acts or omissions of any beneficiary of any Letter of Credit with respect to the use by any beneficiary of any Letter of Credit. No LC Issuing Lender shall be responsible for:

- (a) the use which may be made of any Letter of Credit;
- (b) any acts or omissions of the beneficiary of any Letter of Credit including the application of any payment made to such beneficiary;
- (c) payment by the LC Issuing Lender of any draft which does not comply with the terms of any Letter of Credit, unless such payment results from the gross negligence or wilful misconduct of the LC Issuing Lender;
- (d) the failure of any document or instrument to bear any reference or adequate reference to any Letter of Credit;
- (e) any failure to note the amount of any draft on any Letter of Credit or on any related document or instrument; any failure of the beneficiary of any Letter of Credit to meet the obligations of such beneficiary to either the Borrower or any other Person;
- (f) the validity of certificates or other documents delivered under or in connection with any Letter of Credit that appear on their face to be in order, even if such certificates or other documents should in fact prove to be invalid, fraudulent or forged;
- (g) errors, omissions, interruptions or delays in transmission or delivery of any messages by mail, cable, telegraph, telefax or otherwise, whether or not they are in code;
- (h) errors in translation or for errors in the interpretation of technical terms or for errors in the calculation of amounts demanded under any Letter of Credit;

- (i) any failure or inability of any LC Issuing Lender to make payment under any Letter of Credit as a result of any Applicable Laws rightfully or wrongfully exercised by any Person asserting or exercising governmental or paramount powers; or
- (j) any other consequences arising in respect of a failure by each LC Issuing Lender to honour a Letter of Credit due to causes beyond the control of such an LC Issuing Lender;

and none of the above shall affect or impair any of the rights or powers of an LC Issuing Lender hereunder or the obligations of the Borrower under this Section 7.23. Without limiting the generality of the foregoing, it is agreed that any payment made by an LC Issuing Lender in good faith under and in accordance with the terms of a Letter of Credit shall be binding upon the Borrower, and shall not result in any liability of an LC Issuing Lender to the Borrower and shall not lessen the obligations of the Borrower under Section 7.23.

#### **7.24 Reimbursement Obligations of the Borrower**

The Borrower shall reimburse each LC Issuing Lender on demand (in the currency of the applicable Letter of Credit) for any amounts paid by each LC Issuing Lender from time to time as contemplated by Section 7.23 and, without limiting the generality of the foregoing, the Borrower shall, indemnify and save each LC Issuing Lender harmless on demand from and against any and all other losses (including any currency exchange costs), costs, damages, expenses, claims, demands or liabilities which it may suffer or incur arising in any manner whatsoever in connection with the making of any such payments (including, without limitation, in connection with proceedings to restrain the LC Issuing Lenders from making, or to compel the LC Issuing Lenders to make, any such payment).

#### **7.25 Indemnification of LC Fronting Lender**

Each Syndicated Lender agrees to indemnify the LC Fronting Lender with respect to such Fronted LC issued under the Syndicated Facility (to the extent not reimbursed by the Borrower), according to its Proportionate Share of the Syndicated Facility on the date such Fronted LC is issued from and against any and all liabilities and obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the LC Fronting Lender in any way relating to or arising out of the issuance of a Fronted LC under the Syndicated Facility in accordance with this Agreement, provided that no Syndicated Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the LC Issuing Lender's gross negligence or wilful misconduct.

#### **7.26 Acceleration**

Upon the Agent making or being deemed to make a declaration under Section 10.2, the Face Amount of each Letter of Credit which is then outstanding shall immediately become due and payable to the Agent by the Borrower notwithstanding that the Agent or the applicable LC Issuing Lender has not at such date been required to make payment under any such Letter of Credit. Any such amount paid to the Agent for the account of the Lenders shall be held by the Agent for the account of the Lenders in a separate collateral account as security for the repayment of future indebtedness of the Borrower to the Lenders in respect of Letters of Credit which are drawn down and, pending the expiry of all outstanding Letters of Credit, any amounts paid to the Agent for the account of the Lenders shall bear interest at the rate established by the Agent from time to time as that payable in respect of demand deposits of the Agent for monies of like amount.

#### **7.27 Conflict with Applications**

To the extent that any provision of any application for the issuance of a Letter of Credit in the standard form of the LC Issuing Lender or such other form as may be approved by the LC Issuing Lender or the other Lenders is inconsistent with the provisions of this Agreement, and applicable Letters of Credit, the provisions of this Agreement shall apply.

#### **7.28 Cash Collateralization of Letters of Credit**

If any Letters of Credit issued under this Agreement remain outstanding as of the then current Maturity Date of the Syndicated Facility or the Swingline Facility, as applicable, the Borrower shall, (a) not less than ten (10) days prior to such Maturity Date, deliver a notice to the Agent (in the case of a Letter of Credit under the Syndicated Facility), and the Swingline Lender (in the case of a Letter of Credit under the Swingline Facility) identifying each such Letter of Credit, including the respective amounts, and stated expiry dates thereof and (b) not less than five (5) Business Days prior to such Maturity Date, deposit Collateral with the Agent (in the case of a Letter of Credit under the Syndicated Facility), or with the Swingline Lender (in the case of a Letter of Credit under the Swingline Facility), on terms and conditions satisfactory to the Agent or the Swingline Lender, as the case may be, in an amount equal to the Face Amount of such Letters of Credit outstanding on such date, provided, however, the obligations of the Borrower under this Agreement in respect of such Letters of Credit shall survive such Maturity Date and shall remain in effect until no such Letters of Credit remain outstanding.

### **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

#### **8.1 Representations and Warranties**

The Borrower represents and warrants to the Agent and the Lenders for itself and each Guarantor Subsidiary that:

- (a) each Loan Party is duly organized and validly existing under the laws of its jurisdiction of organization, each is duly registered to carry on business in each Relevant Jurisdiction, and each Loan Party has the power, capacity and authority to enter into and perform its obligations under each Credit Document to which it is a party;
- (b) each Loan Party has the power and authority to own or lease its Property to carry on and conduct its business as presently conducted and to borrow money hereunder or to guarantee the Obligations of the other Loan Parties (as applicable) and to perform its obligations under each Credit Document to which it is a party;
- (c) each Loan Party has obtained and maintained all Permits necessary or desirable to the ownership of its Property and material to the conduct of its business in each Relevant Jurisdiction;
- (d) each Loan Party is duly authorized to execute and deliver the Credit Documents to which it is a party and to perform its obligations thereunder, and all corporate and other steps and proceedings necessary for the due execution and delivery by it of the Credit Documents to which it is a party and the performance of its obligations thereunder have been taken;
- (e) the Credit Documents to which each Loan Party is a party have been duly executed and delivered by it, and constitute legal, valid and binding obligations, enforceable in accordance

with their respective terms, subject to the rights of creditors generally and rules of equity of general application;

(f) the execution and delivery by each Loan Party of the Credit Documents to which it is a party and the performance by it of its obligations thereunder, do not and will not:

- (i) contravene, violate or result in a breach of its Constatting Documents or any shareholders' agreement (or other similar agreement) relating to it;
- (ii) contravene, violate or result in a breach of any Applicable Law;
- (iii) contravene, violate or result in a breach of any Contract to which it is a party or other agreement or commitment to which it or its Property is bound that could reasonably be expected to have a Material Adverse Effect;
- (iv) contravene, violate or result in a breach of any resolution of its directors, officers or partners or any committee thereof;
- (v) constitute, with or without notice or lapse of time or both, an event or circumstance entitling any Person to accelerate or demand the payment of any Funded Debt;
- (vi) result in the creation or imposition of any Encumbrance on any of its Property other than in favour of the Agent and the Lenders or result in any requirement on it to grant any Encumbrance or result in any Person becoming entitled to call for any Encumbrance from it other than in favour of the Agent and the Lenders;

(g) no consent, authorization, approval or other action by, and no publication, notice to or filing or registration with, any Governmental/Judicial Body is required for the due execution and delivery by any Loan Party of the Credit Documents to which it is a party and the performance by it of its Obligations thereunder or to ensure the validity or enforceability thereof other than filings and registrations necessary to perfect and protect the Encumbrances constituted by the Security;

(h) there are no actions, suits, claims or proceedings (including counterclaims or third party proceedings) existing or, threatened against any Loan Party or affecting any of their Property before any Governmental/Judicial Body which could reasonably be expected to have a Material Adverse Effect;

(i) in respect of each Contract to which a Loan Party is a party, and each Governmental/Judicial Body license, franchise, approval or permit of which a Loan Party is a holder:

- (i) no Loan Party has defaulted in the performance or observance of any of the terms or conditions contained or referenced therein that could reasonably be expected to have a Material Adverse Effect; and
- (ii) to the knowledge of the Borrower, no other party thereto is in default thereunder in any respect, nor has any such party taken any action to terminate the same which in any case could reasonably be expected to have a Material Adverse Effect;

(j) each Loan Party is in compliance in all material respects with all Applicable Laws and all material Contracts to which it is a party or by which it or its Property is bound;

- (k) no Event of Default and no Pending Event of Default has occurred and is continuing hereunder or under any of the other Credit Documents;
- (l) the Borrower is the direct or indirect legal and beneficial owner of all of the issued and outstanding Shares in each of the Guarantor Subsidiaries;
- (m) each Loan Party has in full force and effect such policies of insurance in such amounts issued by such insurers of recognized standing covering its Property including, business interruption, replacement cost and environmental damage insurance, as are customarily maintained by Persons engaged in the same or similar business in the locations where its Property is located but specifically excluding property damage insurance relating to the tanks owned by the Loan Parties and equipment related thereto;
- (n) attached hereto as Schedule "E" is a complete list of all of the Subsidiaries of the Borrower;
- (o) the legal name and authorized and issued Shares of each Subsidiary of the Borrower is set forth in Schedule "E". All such issued Shares have been validly issued and are outstanding as fully paid (the consideration is set forth in Schedule "E") and non-assessable Shares of the applicable Subsidiary;
- (p) the location of the place of business of each Loan Party or, if it has more than one place of business, its chief executive office, and, in the case of the U.S. Guarantor Subsidiaries, its state of organization, is set forth in Schedule "E";
- (q) all of the Financial Statements and financial information which has been furnished to the Agent and the Lenders in connection with this Agreement are complete in all material respects and, to the knowledge of the Responsible Officers of the Borrower, the Financial Statements of the Borrower most recently delivered to the Lenders, (i) fairly present its financial position as of the dates referred to therein and have been prepared in accordance with IFRS; and (ii) since the date of such Financial Statements, there has not occurred any matter, event or circumstance which has had, or would reasonably be expected to have, a Material Adverse Effect;
- (r) it is not in default in any material respect under any of the Permitted Debt related to it;
- (s) it is not in default under any of the Permitted Encumbrances relating to it;
- (t) the business and assets of each Loan Party are being operated in substantial compliance with Applicable Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of the knowledge of the Responsible Officers of the Borrower, there are no material breaches thereof and no enforcement actions in respect thereof are threatened or pending, which, in any such case, could reasonably be expected to have a Material Adverse Effect;
- (u) it has good and marketable title to its Properties (including, without limitation, all trademarks and other intellectual property rights attached thereto);
- (v) each Loan Party has duly filed on a timely basis all tax returns required to be filed by it, and it has paid all Taxes and remittances which are due and payable by it, and has paid all assessments and reassessments, and all other Taxes, governmental charges, governmental royalties, penalties, interest and fines claimed against it (except where it is contesting the

payment of same in good faith, and it has established to the satisfaction of the Agent a sufficient reserve or, if requested by the Agent (acting reasonably), deposited with a court of competent jurisdiction or assessing authority (or to such other Person as is acceptable to the Agent) sufficient funds or a surety bond, for the total amount claimed, where the application of such reserve, funds or bond would result in the discharge of such claim and the contestation thereof postpones the rights of the applicable Governmental/Judicial Body to enforce its collection remedies in respect thereof); all employee source deductions (including income taxes, unemployment insurance and Canada Pension Plan), sales taxes (both federal and provincial), payroll taxes and workers compensation payments are currently paid and up to date and there are no unfunded indebtedness, liabilities or obligations relating to any employee retirement or pension plans of any Loan Party; each Loan Party has made adequate provision for, and all required installment payments have been made in respect of, Taxes and remittances payable for the current period for which returns are not yet required to be filed; there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any Tax return or the payment of any Taxes or remittances described above; there are no actions or proceedings being taken by Canada Revenue Agency or any other Governmental/Judicial Body to enforce the payment of any Taxes or remittances described above and it has no knowledge of any such actions or proceedings being contemplated by such authorities; and

(w) both prior to and after giving effect to the transactions contemplated in this Agreement and other Credit Documents: (i) the aggregate net realizable value of each Loan Party's Property exceeds the aggregate liabilities of such Loan Party and (ii) each Loan Party is able to pay its liabilities generally as they mature and become due.

## **8.2 Survival of Representations and Warranties**

Unless expressly stated to be made as of a specific date, the representations and warranties made in this Agreement shall survive the execution of this Agreement and all other Credit Documents, and shall be deemed to be repeated as of the date of each Advance (including any deemed Advance) and as of the date of delivery of each Compliance Certificate, subject to modifications made by the Borrower to the Agent and the Lenders in writing and accepted by the Agent and the Lenders. The Agent and the Lenders shall be deemed to have relied upon such representations and warranties at each such time as a condition of making an Advance hereunder or continuing to extend the Facilities hereunder.

## **ARTICLE IX COVENANTS**

### **9.1 Positive Covenants**

During the term of this Agreement, the Borrower covenants and agrees with the Agent and the Lenders that it shall and it shall cause each Guarantor Subsidiary to:

- (a) duly and punctually pay the Obligations due and payable by it at the times and places and in the manner required by the terms of this Agreement and each other Credit Document;
- (b) promptly provide the Agent with all information reasonably requested by the Agent from time to time concerning its financial condition, business and Property and at all reasonable times and from time to time upon reasonable notice, permit representatives of the Agent to inspect any of its Property, and to examine and take extracts from its financial books, accounts and

records, including but not limited to accounts and records stored in computer drives, data banks and computer software systems, and to discuss its financial condition with its senior officers and (in the presence of such of its representatives as it may designate) its auditors, the reasonable expense of all of which shall be paid by the Borrower, provided that until the occurrence and during the continuance of an Event of Default, the exercise of the rights of the Agent under this paragraph shall not be more frequent than is reasonably necessary;

- (c) maintain insurance on all its Property with financially sound and reputable insurance companies or associations including all-risk property insurance, comprehensive general liability insurance and business interruption insurance (with the Agent shown as first mortgagee and loss payee), in amounts and against risks that are determined to be appropriate by the Borrower acting prudently, furnish to the Agent, on written request, but in any event annually, satisfactory evidence of the insurance carried and notify the Agent of any claims it made under the foregoing insurance policies in excess of \$2,000,000 (or the Equivalent Amount in any other currencies);
- (d) maintain and preserve its existence, organization and status in each Relevant Jurisdiction and make all corporate, partnership, limited liability company and other filings and registrations necessary or advisable in connection therewith;
- (e) continue to carry on the business currently being carried on and maintain all of its Property in good repair and working condition and carry on and continuously conduct its business currently being conducted in an efficient, diligent and businesslike manner and in accordance with good industry practices;
- (f) comply with Applicable Laws and obtain and maintain all Permits necessary or desirable to the ownership of its Property and to the conduct of its business in each jurisdiction where it carries on business or owns Property, including but not limited to those issued or granted by Governmental/Judicial Bodies;
- (g) duly file on a timely basis all tax returns required to be filed by it, and duly and punctually pay all business, goods and services, income, capital and/or profits taxes and other Taxes and governmental charges levied or assessed against it or its Property;
- (h) use the proceeds of any Advance hereunder only for the purposes set out in Section 2.4;
- (i) as and when a Subsidiary becomes a "Guarantor Subsidiary" or as and when required pursuant to Section 9.1(s), cause each Subsidiary to execute and deliver to the Agent and the Lenders, the Guarantor Subsidiary Guarantee and the other Security contemplated by Article V together with such other mortgages, charges, security interests, certificates and legal opinions as and when such may reasonably be required by the Agent and Lender's Counsel;
- (j) ensure that the Security granted by it to the Agent and the Lenders remains legal, valid, binding and enforceable, in accordance with its terms (subject to Applicable Laws affecting the rights of creditors generally and rules of equity of general application);
- (k) cooperate with the Agent and the Lenders to permit the Agent to forthwith register, file and record the Security (or notices, financing statements or other registrations in respect thereof) in all proper offices where such registration, filing or recording may be necessary or advantageous to perfect or protect the Encumbrances constituted by the Security and maintain all such registrations in full force and effect;

- (l) provide to the Agent all such further and additional Encumbrances that the Agent may reasonably require to effectively mortgage, charge and subject to a security interest all of the present and future Property of each Loan Party;
- (m) promptly notify the Agent of:
  - (i) any event or circumstance that could reasonably be expected to have a Material Adverse Effect;
  - (ii) any Event of Default or Pending Event of Default of which it becomes aware;
  - (iii) any material change in, or the occurrence of a default under, any Contract entered into by it with respect to Funded Debt;
  - (iv) the occurrence or threat of any litigation, arbitration or other proceeding against or affecting any Loan Party which could reasonably be expected to have a Material Adverse Effect and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status thereof; and
  - (v) Hazardous Materials located on, above or below the surface of any land which it controls or contained in the soil or water constituting such land (except those Hazardous Materials being stored, used or otherwise handled in substantial compliance with all Applicable Law), and (ii) the occurrence of any material reportable Release of Hazardous Materials that has occurred on or from such land;
- (n) provide to the Agent at its request, acting reasonably, from time to time and at the expense of the Borrower, an environmental audit or inspection report of the real Property interests of each Loan Party, from auditors or inspectors acceptable to the Agent;
- (o) provide to the Agent, from time to time, upon the request of the Agent (acting reasonably), a detailed report describing the terms and provisions of each Cash Management Agreement;
- (p) provide to the Agent, from time to time, upon the request of the Agent (acting reasonably), a detailed report describing the terms and provisions of each Eligible Hedge Agreement;
- (q) provide the Agent with written notice of the termination of any Cash Management Agreement;
- (r) provide the Agent with written notice of the termination of any Eligible Hedge Agreement;
- (s) ensure that, at all times, (i) the total assets of the Borrower and the Guarantor Subsidiaries (determined on an unconsolidated basis) that have executed and delivered to the Agent the Security and other documents described in Section 5.1 constitute more than 90% of the book value of the total assets of the Borrower determined on a consolidated basis in accordance with IFRS, and (ii) the total EBITDA for the then immediately preceding consecutive four (4) Fiscal Quarters of the Borrower and the Guarantor Subsidiaries (determined on an unconsolidated basis) that have executed and delivered to the Agent the Security and other documents described in Section 5.1 constitute more than 90% of the consolidated EBITDA of the Borrower for such Fiscal Quarters. The foregoing shall be confirmed to the Agent and the Lenders in the Compliance Certificate delivered to the Agent at the end of each Fiscal Quarter;

- (t) if (i) a Loan Party is contemplating moving its tangible personal Property with a value of greater than \$3,000,000 to any jurisdiction in which the Agent has not registered or perfected the Encumbrances constituted by the Security, or (ii) any U.S. Guarantor Subsidiary is contemplating changing its jurisdiction of organization, such Loan Party or U.S. Guarantor Subsidiary shall use reasonable commercial efforts to ensure that Security, in a form acceptable to the Agent and the Lenders (in consultation with Lenders' Counsel), is provided to the Agent and the Encumbrances constituted by such Security are registered and perfected prior to moving such tangible personal Property or changing such jurisdiction, and in any event, not later than thirty (30) days after moving such tangible personal Property or changing such jurisdiction. As of the date hereof, the Security will only be registered in (i) the Provinces of Alberta, British Columbia, Saskatchewan and Manitoba and (ii) the states of Delaware and Washington, D.C.; and
- (u) provide the Agent with such other information, documents, opinions, consents, acknowledgments and agreements as the Agent may reasonably request.

## 9.2 Reporting Requirements

During the term of this Agreement, the Borrower shall:

- (a) as soon as practicable and in any event within forty-five (45) days of the end of each Fiscal Quarter (other than the fourth Fiscal Quarter), cause to be prepared and delivered to the Agent the interim unaudited consolidated Financial Statements of the Borrower as at the end of such Fiscal Quarter, including without limitation accounts payable and accounts receivables listings;
- (b) as soon as practical and in any event within ninety (90) days after the end of each Fiscal Year, cause to be prepared and delivered to the Agent the annual consolidated Financial Statements of the Borrower which shall be audited by an internationally recognized accounting firm and shall be prepared in accordance with IFRS, including without limitation accounts payable and accounts receivables listings;
- (c) concurrently with the delivery of its Financial Statements referred to in Sections 9.2(a) and 9.2(b) above, provide the Agent with a Compliance Certificate, signed by the Chief Executive Officer, the Chief Financial Officer, the Executive Vice-President, Finance or the Vice-President, Finance of the Borrower;
- (d) within ninety (90) days after the end of each Fiscal Year, provide the Agent with pro forma consolidated Financial Statements for the next two (2) succeeding Fiscal Years, setting out such pro forma financial information for each Fiscal Quarter for the first Fiscal Year and year-end projections for the second Fiscal Year, in substantially the same form as the Financial Statements referred to in Sections 9.2(a) and 9.2(b) above, together with the calculation of financial covenants set out in Section 9.4, a Capital Expenditure Budget (approved by the Majority Lenders, not to be unreasonably delayed) to include all planned Capital Expenditures and contemplated Acquisitions and cash flow projection for such two (2) Fiscal Years, all containing such information and detail as the Agent may reasonably request; and
- (e) promptly provide the Agent with such other information as it may reasonably request respecting the Borrower, any Guarantor Subsidiary or any Subsidiary.

### 9.3 Negative Covenants

During the term of this Agreement, the Borrower shall not and shall not permit any Subsidiary to:

- (a) cease to carry on its business currently being carried on by it or operate its business in a manner that could reasonably be expected to have a Material Adverse Effect;
- (b) consolidate, amalgamate or merge with any other Person, or enter into any Restructuring Transaction without the Lenders' prior written consent, provided however, that a Loan Party may enter into a Restructuring Transaction with another Loan Party, if:
  - (i) the successor or transferee resulting from the Restructuring Transaction, will, effective after such Restructuring Transaction, be a Loan Party;
  - (ii) no Pending Event of Default or Event of Default has occurred that is continuing and no Pending Event of Default or Event of Default would exist after any such Restructuring Transaction; and
  - (iii) the Agent is provided with all such acknowledgements, opinions and other documents as it may reasonably request confirming, among other things, the continued enforceability of the Loan Documents, as applicable;
- (c) do or permit anything to adversely affect the ranking or validity of the Security except by incurring a Permitted Encumbrance;
- (d) permit any of its Property with an aggregate value in excess of \$3,000,000 to be located in a jurisdiction outside of Canada or the United States;
- (e) change its jurisdiction of organization, without providing the Agent with at least ninety (90) days prior written notice thereof or change its name, without providing the Agent with at least thirty (30) days prior written notice thereof and promptly take other steps, if any, as the Agent may, in its discretion reasonably request to permit the Agent to maintain the perfection of the Security with respect to the change in name or jurisdiction of organization;
- (f) permit its chief executive office to be located in any jurisdiction where the Security given by such Loan Party, has not been registered, without providing the Agent with at least ninety (90) days prior written notice thereof and promptly take other steps, if any, as the Agent may, in its discretion, reasonably request to permit the Agent to perfect the Security with respect to the change in location;
- (g) create, incur, assume or permit any Funded Debt of any Loan Party to remain outstanding, other than Permitted Debt, provided that the aggregate amounts of Funded Debt of the Borrower and its Subsidiaries with respect to Purchase Money Obligations, Capital Leases and the amount referred to in Paragraph (e) of the "Permitted Debt" definition shall not exceed \$7,500,000 (or the equivalent thereof);
- (h) provide any Guarantee to any Person except in respect of Permitted Debt;
- (i) except for Permitted Acquisitions, make any Acquisition without the prior written consent of the Lenders, which consent shall be requested by the Borrower in writing at least ten (10) days prior to the date of the proposed Acquisition;

- (j) make or permit to be made any Distributions unless no Pending Event of Default or Event of Default shall have occurred or shall occur as a result of making such Distributions;
- (k) make or permit to be made any Investment, other than Permitted Investments;
- (l) create, incur, assume or permit to exist any Encumbrance upon any of the Property of the Borrower or any Subsidiary, except Permitted Encumbrances;
- (m) make any Asset Dispositions other than Permitted Dispositions;
- (n) make any Capital Expenditures in any Fiscal Year which exceed in the aggregate 110% of the amount included in the Capital Expenditure Budget provided to the Agent and approved by the Lenders pursuant to Section 9.2(d) for such Fiscal Year;
- (o) enter into or otherwise become a party to or be obligated under any Hedge Agreements unless the same is entered into for the purpose of eliminating or mitigating currency risk, commodity risk or interest rate risk (and not for any speculative purpose) and the same is entered into with a Hedge Lender); or
- (p) enter into any Contracts or transactions with any Affiliate (other than a Loan Party) of the Borrower, unless such Contract or transaction is on terms and conditions not more onerous to the applicable Loan Party than if such Contract or transaction was completed at fair market value with an arm's length third party.

#### 9.4 Financial Covenants

During the term of this Agreement, the Borrower covenants and agrees with the Agent and the Lenders that it shall:

- (a) ensure that at all times, the Total Funded Debt to EBITDA Ratio of the Borrower shall not exceed 2.00:1.00, such Total Funded Debt to EBITDA Ratio to be confirmed to the Agent in the Compliance Certificate delivered to the Agent at the end of each of the first three (3) Fiscal Quarters and at the end of each Fiscal Year, as required pursuant to Subsection 9.2(c); and
- (b) ensure that at all times, the Fixed Charge Coverage Ratio of the Borrower shall be greater than or equal to 1.10:1.00, such Fixed Charge Coverage Ratio to be confirmed to the Agent in the Compliance Certificate delivered to the Agent at the end of each of the first three (3) Fiscal Quarters and at the end of each Fiscal Year, as required pursuant to Subsection 9.2(c).

If prior to the end of any Fiscal Quarter (the "Relevant Fiscal Quarter") or prior to the date on which a Compliance Certificate is due relating to the period ending at the end of such Relevant Fiscal Quarter, a Loan Party has consummated a material transaction approved by the Lenders, the Borrower may, or the Agent may request that the Borrower, submit to the Agent a *pro forma* Compliance Certificate, together with a management analysis (including supporting financial statements) respecting the *pro forma* Compliance Certificate, certified by a Responsible Officer, setting forth what would have been the Total Funded Debt to EBITDA Ratio and the Fixed Charge Coverage Ratio, in each case as at the end of such Relevant Fiscal Quarter had the material transaction closed at the beginning of the period in respect of which the Total Funded Debt to EBITDA Ratio and the Fixed Charge Coverage Ratio is calculated (the "Relevant Period"), and if in the opinion of the the Lenders, acting reasonably, the *pro forma* Compliance Certificate accurately represents what would have been the Total Funded Debt to EBITDA Ratio or the Fixed Charge Coverage Ratio at the end

of the Relevant Fiscal Quarter had the material transaction closed at the beginning of the Relevant Period, then such Total Funded Debt to EBITDA Ratio and/or Fixed Charge Coverage Ratio, as applicable, shall be the value of that ratio as disclosed in such *pro forma* Compliance Certificate.

## ARTICLE X DEFAULT

### 10.1 Events of Default

Each of the following events shall constitute an Event of Default under this Agreement:

- (a) the Borrower fails to pay any amount of principal when the same becomes due and payable hereunder, whether at maturity or otherwise; or a Loan Party fails to pay any amount of interest, fees or other Obligations (other than principal) within three (3) Business Days after the same becomes due and payable hereunder; or
- (b) a Loan Party does not observe or perform any covenant or obligation contained herein or in any other Credit Document to which it is a party (not otherwise specifically dealt with in this Section 10.1) and such breach or omission shall continue unremedied for more than twenty (20) days after the earlier of a Responsible Officer of the Borrower having knowledge of the breach or omission or the Borrower receiving written notice from the Agent of such breach or omission; or
- (c) a Loan Party makes any representation or warranty under any of the Credit Documents to which it is a party which is untrue, incorrect or incomplete when made or deemed to be made and (i) the untrue, incorrect or incomplete representation or warranty is not capable of being remedied by a Loan Party, or (ii) if the matter is capable of being remedied by a Loan Party, the same shall be continued unremedied for more than seven (7) Business Days after the earlier of a Responsible Officer of the Borrower having actual knowledge of the untrue, incorrect or misleading representation or warranty, or the Borrower receiving written notice from the Agent of such incorrect or misleading representation or warranty; or
- (d) a Loan Party defaults in the performance of any of its obligations under a one or more Contracts in respect of Indebtedness in the aggregate in excess of \$2,000,000 (or the Equivalent Amount in any other currencies); or
- (e) a Loan Party shall:
  - (i) become insolvent, or generally not pay its debts or meet its liabilities as the same become due, or suspend or threaten to suspend the conduct of its business, or admit in writing its inability to pay its debts generally, or declare any general moratorium on payment of its indebtedness or interest thereon, or propose a compromise or arrangement between it and any of its creditors;
  - (ii) make an assignment of its Property for the general benefit of its creditors whether or not under the *Bankruptcy and Insolvency Act* (Canada) or the Bankruptcy Code (U.S.), or make a proposal (or file a notice of its intention to do so) whether or not under the *Bankruptcy and Insolvency Act* (Canada) or the Bankruptcy Code (U.S.);
  - (iii) institute any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, administration, compromise, arrangement,

scheme of arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any other statute, rule or regulation relating to bankruptcy, winding-up, insolvency, reorganization, administration, plans of arrangement, relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the ABCA, any other applicable *Business Corporations Act*, *Company Act* or the *Bankruptcy Code* (U.S.));

- (iv) apply for the appointment of, or the taking of possession by, a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or any material part of its Property; or
- (v) take any overt action to approve, consent to or authorize any of the actions described in this paragraph (e) or in paragraph (f) below;

(f) if any petition shall be filed, application made or other proceeding instituted by a third party against or in respect of a Loan Party:

- (i) seeking to adjudicate it an insolvent, or a declaration that an act of bankruptcy has occurred;
- (ii) seeking a receiving order against it including under the *Bankruptcy and Insolvency Act* (Canada) or the *Bankruptcy Code* (U.S.);
- (iii) seeking liquidation, dissolution, winding-up, reorganization, administration, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any statute, rule or regulation relating to bankruptcy, winding-up, insolvency, reorganization, administration, plans of arrangement, relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the ABCA and any other applicable *Business Corporations Act*, *Company Act* or the *Bankruptcy Code* (U.S.)); or
- (iv) seeking the entry of an order for relief or the appointment of a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or any material part of its Property,

and such petition, application or proceeding shall continue undismissed, or unstayed and in effect, for a period of seven (7) Business Days after the institution thereof, provided that if an order, decree or judgment which is not stayed has been granted (whether or not entered or subject to appeal) against a Loan Party thereunder in the interim, such grace period shall cease to apply; or

(g) if Property of a Loan Party having a fair market value in excess of \$2,000,000 (or the Equivalent Amount in such other currencies) shall be seized (including by way of execution, attachment, garnishment or distress) or any Encumbrance theron shall be enforced, or such Property shall become subject to any receivership, or any charging order or equitable execution of a court, or any writ of enforcement, writ of execution or distress warrant with respect to obligations in excess of \$2,000,000 (or the Equivalent Amount in any other currencies) shall exist in respect of a Loan Party or such Property, or any receiver, sheriff, civil enforcement agent or other Person shall become lawfully entitled to seize or restrain

upon any such Property under the *Civil Enforcement Act* (Alberta), the *Workers' Compensation Act* (Alberta), the *Personal Property Security Act* (Alberta) or any other Applicable Laws whereunder similar remedies are provided, and in any case such seizure, execution, attachment, garnishment, distress, receivership, charging order or equitable execution, or other seizure or right, shall continue in effect and not released or discharged for more than sixty (60) days, provided that such sixty (60) day cure period shall not apply unless the applicable Loan Party procures a stay of proceedings with respect to any such seizure, receivership, order, execution or writ, within five (5) Business Days after the entry thereof; or

- (h) if one or more judgments for the payment of money in the aggregate in excess of \$2,000,000 (or the Equivalent Amount in such other currencies) from time to time, and not substantially covered by insurance, shall be rendered by a court of competent jurisdiction against a Loan Party and such party shall not have (i) provided for its discharge in accordance with its terms within sixty (60) days from the date of entry thereof, or (ii) procured a stay of execution thereof within five (5) Business Days from the date of entry thereof; or
- (i) if any material provision of any Credit Document shall at any time cease to be perfected or in full force and effect, be declared to be void or voidable or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by a Loan Party, or a Loan Party shall deny that it has any or any further liability or obligation thereunder; or
- (j) there is, in the opinion of the Agent and the Lenders, acting reasonably, an event or circumstance with respect to a Loan Party which would reasonably be expected to have a Material Adverse Effect;
- (k) if there occurs a Change of Control in respect of a Loan Party and the Lenders have not consented to such Change of Control. In this Section 10.1(k), "Change of Control" means in respect of a Loan Party, the occurrence of any of the following events:
  - (i) the direct or indirect sale, transfer or other disposition (other than by way of consolidation, amalgamation, arrangement, merger or issue of voting Shares), in one or a series of related transactions, of all or substantially all of the Property of a Loan Party to any Person or group of Persons (other than another Loan Party) acting jointly or in concert for purposes of such transaction; or
  - (ii) a Person or group of Persons (other than a Loan Party), acting jointly or in concert, acquires, directly or indirectly 50% or more of the issued and outstanding voting Shares of a Loan Party; or
- (l) a Loan Party fails to pay any amounts owing under an Eligible Hedge Agreement when due.

## 10.2 Acceleration and Termination of Rights

If any Pending Event of Default or Event of Default occurs, which is continuing, no Lender shall be under any further obligation to make Advances and, upon the occurrence and during the continuance of an Event of Default, the Majority Lenders may instruct the Agent to give notice to the Borrower or any other Loan Party (i) declaring the Lenders' obligations to make Advances to be terminated, whereupon the same shall forthwith terminate, and/or (ii) declaring the Obligations under the Credit Agreement to be forthwith due and payable, whereupon they shall become and be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided however, the

Agent shall be deemed to give such notice to the Borrower immediately upon the occurrence of an Event of Default described in Section 10.1(e) or Section 10.1(f).

#### **10.3 Payment of Bankers' Acceptances and Letters of Credit**

Immediately upon the making or the deemed making of a declaration by the Agent referred to in Section 10.2, the Borrower shall, without necessity of further act or evidence, be and become thereby unconditionally obligated to deposit forthwith with the Agent for the Lenders' benefit Collateral equal to the full principal amount at maturity of all Bankers' Acceptances and Notional Bankers' Acceptances then outstanding and the Face Amount of all Letters of Credit then outstanding for the Borrower's account, and the Borrower hereby unconditionally promises and agrees to deposit with the Agent immediately upon such demand Collateral in the amount so demanded. The Borrower authorizes the Lenders, or any of them, to debit its account with (i) the amount required to pay such Bankers' Acceptances and Notional Bankers' Acceptances, notwithstanding that any such Bankers' Acceptances and Notional Bankers' Acceptances may be held by the Lenders, or any of them, in their own right at maturity and (ii) the amount required to pay any drawings under Letters of Credit. Amounts paid to the Agent pursuant to such a demand in respect of Bankers' Acceptances or Notional Bankers' Acceptances shall first be applied against, and in respect of a demand by the Agent shall reduce, pro rata among the BA Lenders and Non BA Lenders, in the case of Bankers' Acceptances and Notional Bankers' Acceptances (to the extent of the amounts paid to the Agent in respect of Bankers' Acceptances or Notional Bankers' Acceptances, as the case may be), the obligation of the Borrower to pay amounts then or thereafter payable under such Bankers' Acceptances or Notional Bankers' Acceptances accepted or issued hereunder at the times such amounts become payable under or in respect thereof, as the case may be. Amounts paid to the Agent pursuant to such a demand in respect of Letters of Credit shall first be applied to reimburse the LC Issuing Lenders for any claims made under such Letters of Credit.

#### **10.4 Remedies**

Upon the making of a declaration contemplated by Section 10.2, the Security shall become immediately enforceable and the Agent may take such action or proceedings as the Lenders in their sole discretion deem expedient to enforce the same, all without any additional notice, presentment, demand, protest or other formality, all of which are hereby expressly waived by the Borrower.

#### **10.5 Saving**

Neither the Lenders nor the Agent shall be under any obligation to the Borrower or any other Person to realize any Property of a Loan Party subject to the Security or enforce the Security or any part thereof or to allow any of the Property of a Loan Party subject to the Security to be sold, dealt with or otherwise disposed of. The Lenders shall not be responsible or liable to the Borrower or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the Property of a Loan Party subject to the Security or any part thereof or the failure to allow any of the Property of any Loan Party subject to the Security to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that a Lender will be responsible or liable for any loss or damage arising from the wilful misconduct or gross negligence of that Lender.

#### **10.6 Perform Obligations**

If an Event of Default has occurred and is continuing and if a Loan Party has failed to perform any of its covenants or agreements in the Credit Documents, the Lenders, may, but shall be under no obligation to, instruct the Agent on behalf of the Lenders to perform any such covenants or agreements in any manner

deemed fit by the Lenders without thereby waiving any rights to enforce the Credit Documents. The reasonable expenses (including any legal costs) paid by the Agent and/or the Lenders in respect of the foregoing shall be added to and become part of the Obligations and shall be secured by the Security.

#### **10.7 Third Parties**

No Person dealing with the Agent, the Lenders or any of them, or any agent of the Lenders shall be concerned to inquire whether the Security has become enforceable, or whether the powers which the Agent or the Lender is purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the Property subject to such Security or any part thereof.

#### **10.8 Remedies Cumulative**

The rights and remedies of the Agent and the Lenders (or any of them) under the Credit Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by the Agent and the Lenders (or any of them) of any right or remedy for a default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect, or prejudice any other right or remedy or other rights or remedies to which the Agent or the Lenders (or any of them) may be lawfully entitled for the same default or breach. Any waiver by the Agent or the Lenders (or any of them) of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained, and any indulgence granted by the Agent or the Lenders (or any of them) shall be deemed not to be a waiver of any subsequent default.

#### **10.9 Set-Off or Compensation**

In addition to and not in limitation of any rights now or hereafter granted under applicable law, the Lenders, or any of them, may at any time and from time to time without notice to the Borrower or any other Person, any notice being expressly waived by the Borrower, set-off, combine accounts and compensate and apply any and all deposits, general or special, time or demand, provisional or final, matured or unmatured, in any currency, and any other indebtedness at any time owing by the Lenders, or any of them, to or for the credit of or the account of the Borrower, against and on account of the Obligations notwithstanding that any of them are contingent or unmatured. When applying a deposit or other amount owing to a Lender in a currency that is different than the currency of the Obligations, such Lender will convert the deposit or other amount using the Exchange Rate in effect at the time of such conversion.

### **ARTICLE XI THE AGENT AND THE LENDERS**

#### **11.1 Authorization of Agent and Relationship**

Each Lender hereby appoints TD as agent and TD hereby accepts such appointment. The appointment may only be terminated as expressly provided in this Agreement. Each Lender hereby authorizes the Agent to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and the other Credit Documents, together with all powers reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Agent shall have no duties or obligations except those expressly set forth herein and no other duties or obligations of the Agent shall be implied in this Agreement or in any other Credit Documents. The Agent may perform such duties or obligations by or through its agents or employees. The Agent shall not by reason of this Agreement or any of

the other Credit Documents have a fiduciary duty in respect of any Lender. As to any matters not expressly provided for by this Agreement, the Agent is not required to exercise any discretion or to take any action, but is required to act or to refrain from acting (and is fully protected in so acting or refraining from acting) upon the instructions of the Lenders or the Majority Lenders, as the case may be. Those instructions shall be binding upon all Lenders, but the Agent is not required to take any action which exposes the Agent to personal liability or which is contrary to this Agreement or Applicable Law.

### 11.2 Disclaimer of Agent

The Agent makes no representation or warranty, and assumes no responsibility with respect to the due execution, legality, validity, sufficiency, enforceability or collectability of this Agreement or any other Credit Document. The Agent assumes no responsibility for the financial condition of the Borrower or any Subsidiary, or for the performance of the obligations of the Borrower or any Subsidiary under this Agreement or any other Credit Document. The Agent assumes no responsibility with respect to the accuracy, authenticity, legality, validity, sufficiency or enforceability of any documents, papers, materials or other information furnished by the Borrower or any Subsidiary to the Agent. The Agent shall not be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or as to the use of the proceeds of the Facilities or of the existence or possible existence of any Pending Event of Default or Event of Default unless the officers or employees of the Lender acting as Agent active in their capacity as officers or employees on the accounts of the Borrower have actual knowledge thereof, or have been notified thereof in writing by the Borrower or a Lender. Neither the Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them as Agent under or in connection with the Agreement except for its or their own gross negligence or wilful misconduct. With respect to its Commitment, the Lender acting as Agent shall have the same rights and powers hereunder as any other Lender, and may exercise the same as though it were not performing the duties and functions delegated to it as Agent hereunder.

### 11.3 Agent's Clawback

(a) **Funding by Lenders; Presumption by Agent.** Unless the Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Agent such Lender's share of such Advance, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may (although it is not its current practice to do so), in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Advance available to the Agent, then such Lender and the Borrower severally agree to pay or in the case of the Borrower, repay, to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to such Advances. If the Borrower and such Lender shall pay such interest to the Agent for the same or overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Lender for such period. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Proportionate Share included in such Advance and if the Borrower has previously paid such amount to the Agent, the Agent will re-advance such Proportionate Share to the Borrower. Any payment by the Borrower shall be

without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Agent.

(b) **Payments by Borrower; Presumptions by the Agent.** Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of any Lender or LC Fronting Lender hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the applicable Lenders and the LC Fronting Lenders, if applicable. In such event, if the Borrower has not in fact made such payment, then each of the applicable Lenders and the LC Fronting Lenders, if applicable, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender and the LC Fronting Lender, if applicable, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at a rate equal to the rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.

#### 11.4 Cash Collateral and Withholding from Defaulting Lenders

(a) Each Defaulting Lender shall be required to provide to the Agent cash in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all obligations of such Defaulting Lender to the Agent that are owing or may become owing pursuant to this Agreement, including such Defaulting Lender's obligation to pay, on a pro rata basis, any indemnification or expense reimbursement amounts not paid by the Borrower. Such cash shall be held by the Agent in one or more cash collateral accounts, which accounts shall be in the name of the Agent and shall not be required to be interest bearing.

(b) Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower) on a pro rata basis (and, in calculating the pro rata basis, the Commitment of any Defaulting Lender shall be excluded) any amount that a Defaulting Lender fails to pay the Agent and which is due and owing to the Agent. Each Defaulting Lender agrees to indemnify each other Lender for any amounts paid by such Lender and which would otherwise be payable by the Defaulting Lender.

(c) The Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent amounts (whether principal, interest, fees or otherwise) received by the Agent and due to a Defaulting Lender pursuant to this Agreement, which amounts shall be used by the Agent:

- (i) first, to reimburse the Agent for any amounts owing to it by the Defaulting Lender pursuant to any Credit Document; and
- (ii) second, to cash collateralize all other obligations of such Defaulting Lender to the Agent owing pursuant to this Agreement in such amount as shall be determined from time to time by the Agent in its discretion, including such Defaulting Lender's obligation to pay, on a pro rata basis, any indemnification or expense reimbursement amounts not paid by the Borrower.

(d) For greater certainty and in addition to the foregoing, neither the Agent nor any of its Affiliates nor any of its respective shareholders, officers, directors, employees, agents or representatives shall be liable to any Lender (including, without limitation, a Defaulting

Lender) for any action taken or omitted to be taken by it in connection with amounts payable by the Borrower to a Defaulting Lender and received and deposited by the Agent in a cash collateral account and applied in accordance with the provisions of this Agreement, save and except for the gross negligence or wilful misconduct of the Agent.

- (e) Without limiting the foregoing, if any Lender becomes a Defaulting Lender as a result of the failure to fund any payment or its portion of any Advances required to be made by it hereunder or to purchase any participation required to be purchased by it hereunder and under the other Credit Documents, then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations until all such unsatisfied obligations are fully paid in cash.
- (f) Without limiting the foregoing, if a Defaulting Lender as a result of the exercise of a set off shall have received a payment in respect of its outstanding applicable Advances or participation required hereunder which results in its outstanding applicable Advances and participation share being less than its pro rata share thereof, then no payments will be made to such Defaulting Lender until such time as all amounts due and owing to the Lenders have been equalized in accordance with each Lender's Proportionate Share. Further, if at any time prior to the acceleration or maturity of the Advances, the Agent shall receive any payment in respect of principal while one or more Defaulting Lenders shall be party to this Agreement, the Agent shall apply such payment first to the Obligations for which such Defaulting Lender(s) shall have failed to fund its Proportionate Share until such time as such Obligations are paid in full or each Lender (including each Defaulting Lender) is owed its Proportionate Share of all Obligations. After acceleration or maturity of the Advances, subject to clause (e) above, all principal will be paid ratably as otherwise provided herein.

### **11.5 Funding if there is a Defaulting Lender**

- (a) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:
  - (i) the Standby Fees payable pursuant to Section 4.3 shall cease to accrue on the unused portion of the Commitment(s) of such Defaulting Lender if and for so long as such Lender is a Defaulting Lender pursuant to (a) or (b) of the definition thereof;
  - (ii) a Defaulting Lender shall not be included in determining whether, and the Commitments and Proportionate Share of such Defaulting Lender shall be excluded in determining whether the Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 11.9);
  - (iii) a Defaulting Lender shall not be required to consent to a decrease in the Standby Fees payable pursuant to Section 4.3 provided that such decrease applies to all other Applicable Lenders; and
  - (iv) for certainty, the Borrower, the Agent, the Applicable Lenders and the LC Fronting Lender shall retain and reserve its other rights and remedies respecting each Defaulting Lender;

provided that the Agent shall only be required to give effect to (i) and (ii) above if the Agent has actual knowledge that a Lender is a Defaulting Lender. If the Agent acquires actual knowledge that a Lender is a Defaulting Lender, then the Agent shall promptly notify the Borrower and the other Lenders that such Lender is a Defaulting Lender (and such Lender shall be deemed to have consented to such disclosure); provided that, for certainty, the Agent shall have no duty to inquire as to whether any Lender is a Defaulting Lender.

- (b) If the Agent has actual knowledge that a Lender is a Defaulting Lender at the time that the Agent receives a Drawdown Notice or a repayment notice that relates to a Letter of Credit or will result in a currency conversion, then each Non-Defaulting Lender shall fund its Proportionate Share of such affected Advance (and, in calculating such Proportionate Share, the applicable Commitment of each such Defaulting Lender shall be ignored); provided that such re-allocation may only be effected if and to the extent that (i) such re-allocation would not cause any Non-Defaulting Lender's Proportionate Share of all Advances to exceed its applicable Commitment(s), and (ii) the conditions precedent in Section 6.2 are satisfied at such time. Each Defaulting Lender agrees to indemnify each Non-Defaulting Lender for any amounts paid by such Non-Defaulting Lender under this Section 11.5(b) and which would otherwise have been paid by the Defaulting Lender if its applicable Commitment had been included in determining the Proportionate Share of such affected Advances.
- (c) If any Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender, then:
  - (i) all or any part of such Defaulting Lender's Proportionate Share of such Letter of Credit shall be re-allocated among the Non-Defaulting Lenders in accordance with their respective Proportionate Share; provided that such re-allocation may only be effected if and to the extent that such re-allocation would not cause any non-Defaulting Lender's Proportionate Share of all Advances to exceed its applicable Commitment(s);
  - (ii) if the re-allocation described in clause (i) above cannot be effected, or can only partially be effected, then such Defaulting Lender shall, within one (1) Business Day following notice by the Agent, provide cash collateral to the Agent for such Defaulting Lender's Proportionate Share of such Letter of Credit (after giving effect to any partial re-allocation pursuant to clause (i) above) for so long as such Letter of Credit is outstanding, and if such Defaulting Lender shall fail to provide such cash collateral, then, at the request of the LC Fronting Lender, the Borrower shall provide such cash collateral to the Agent; and
  - (iii) if the Proportionate Share of the non-Defaulting Lenders are re-allocated pursuant to this Section 11.5(c), then the Letter of Credit Fees payable to the Lenders shall be adjusted to give effect to such re-allocations in accordance with each such non-Defaulting Lender's Proportionate Share and if the Borrower provides cash collateral pursuant to clause (ii) above, then the Borrower shall not be required to pay the Letter of Credit Fees attributable to the cash collateralized exposure of such Letters of Credit.
- (d) So long as any Lender is a Defaulting Lender, no LC Fronting Lender shall be required to issue, amend or increase any Letter of Credit unless such LC Fronting Lender is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting

Lenders and/or cash collateralized in accordance with Section 11.5(c), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 11.5(b) or 11.5(c)(i) as applicable (and Defaulting Lenders shall not participate therein).

- (e) If any Lender shall cease to be a Defaulting Lender (as determined by the Agent, the Borrower, the Applicable Lenders and the LC Fronting Lender, each acting reasonably), then, upon becoming aware of such change, the Agent shall notify the non-Defaulting Lenders and on such date of notice (i) such Lender (which has ceased to be a Defaulting Lender) is deemed to have purchased from the other Lenders at par, and the other Lenders are deemed to have sold to such Lender, portions of such Advances (including participations in Letters of Credit) equal in total to such Lender's Proportionate Share thereof-without regard to this Section 11.5 and (b) if no Pending Event of Default or Event of Default exists, then any remaining cash collateral posted by the Borrower pursuant to clause (c)(ii) above with respect to such Lender shall be returned to the Borrower.
- (f) Each Defaulting Lender hereby indemnifies the Borrower for any losses, claims, costs, damages or liabilities (including reasonable out-of-pocket expenses and reasonable legal fees on a solicitor and his own client basis) incurred by the Borrower as a result of such Defaulting Lender failing to comply with the terms of this Agreement including any failure to fund its portion of any Advances required to be made by it hereunder.

#### **11.6 Payments by the Borrower and Guarantor Subsidiaries**

All payments made by or on behalf of a Loan Party pursuant to this Agreement or the other Credit Documents shall be made to and received by the Agent on behalf of the Lenders (other than regularly scheduled payments made by the Borrower under the Swingline Facility shall be made to the Swingline Lender prior to the delivery of deemed delivery of an Acceleration Notice) and shall be distributed by the Agent to the Lenders as soon as possible upon receipt by the Agent. Subject to the provisions of Section 11.7 hereof, the Agent shall distribute in the following order:

- (a) unpaid fees, costs and expenses of the Agent;
- (b) payments of interest and fees: (i) in accordance with each Lender's Proportionate Share of the Facilities, or (ii) after a declaration is made pursuant to Section 10.2, the Agent shall distribute payments of interest and fees (including without limitation any payment of interest or fees obtained by the Agent as a result of the enforcement of the Security) in accordance with each Lender's Proportionate Share of the then outstanding Obligations owing to all of the Lenders at the time of such declaration. For the purpose of this Section 11.6(b), "Lenders" shall include those Persons holding Obligations under Eligible Hedge Agreements which were Lenders hereunder at the time such Eligible Hedge Agreements were entered into, but which are not Lenders hereunder at the time of a declaration pursuant to Section 10.2;
- (c) repayments of principal: (i) in accordance with each Lender's Proportionate Share of the Facilities, or (ii) after a declaration is made pursuant to Section 10.2, the Agent shall distribute repayments of principal (including without limitation any repayments of principal obtained by the Agent as a result of the enforcement of the Security) in accordance with each Lender's Proportionate Share of the aggregate of all of the then outstanding Obligations owed to all of the Lenders at the time of such declaration. For the purpose of this Section 11.6(c), "Lenders" shall include those Persons holding Obligations under Eligible Hedge Agreements

which were Lenders hereunder at the time such Eligible Hedge Agreements were entered into, but which are not Lenders hereunder at the time of a declaration pursuant to Section 10.2;

- (d) amounts received (net of all relevant costs and expenses of the Agent) by the Agent as a result of the exercise of any right of set-off, combination or consolidation of accounts, or by counterclaim or cross-action, in accordance with each Lender's Proportionate Share of the then outstanding Obligations owing to all of the Lenders at the time of such set-off, combination or consolidation of accounts or if applicable, at the time of the receipt of such amounts from any counterclaim or cross-action. For the purpose of this Section 11.6(d), "Lenders" shall include those Persons holding Obligations under Eligible Hedge Agreements which were Lenders hereunder at the time such Eligible Hedge Agreements were entered into, but which are not Lenders hereunder at the time of such set-off, combination or consolidation, or if applicable, at the time of receipt of such amounts from any counterclaim or cross-action; and
- (e) all other payments received by the Agent under this Agreement, in accordance with what would otherwise be each Lender's Proportionate Share of the Facilities.

Notwithstanding the foregoing, any such distribution that would otherwise be made pursuant to Section 11.6(d) on account of any outstanding Bankers' Acceptances, Notional Bankers' Acceptances or Letters of Credit shall be set aside in a separate collateral account for the primary benefit of the Lenders who have issued such Bankers' Acceptances, Notional Bankers' Acceptances or Letters of Credit (and for the secondary benefit of the Lenders in respect of other Obligations owing by the Borrower to the Lenders) until and to the extent that such Obligations become matured and not contingent, at which time such distributions shall be made to the Lenders for whose primary benefit such amounts are held.

Subject to Section 11.7, if the Agent does not distribute a Lender's Proportionate Share of a payment made by the Borrower to or for the benefit of that Lender for value on the day that payment is made or deemed to have been made to the Agent, the Agent shall pay to the Lender on demand an amount equal to the product of (i) the Agent's rate per annum applicable to overnight deposits for amounts approximately equal to the amount of the payment multiplied by (ii) the Lender's Proportionate Share of the amount received by the Agent from the Borrower and not so distributed, multiplied by (iii) a fraction, the numerator of which is the number of days that have elapsed from and including the date of receipt of the payment by the Agent to but excluding the date on which the payment is made by the Agent to such Lender and the denominator of which is 365 or 366 (as applicable).

Each of the Parties hereto acknowledges and agrees that if during the time that a Person is a Lender hereunder, such Person enters into Eligible Hedge Agreements, and thereafter such Person ceases to be a Lender hereunder, the Obligations owing to such Person under the Eligible Hedge Agreements to which it is a party, shall be secured by the Security and any amounts received by the Agent in respect of the Obligations after a declaration has been made or is deemed to have been made pursuant to Section 10.2, shall be distributed by the Agent to the Lenders hereunder and to the Person holding Obligations under the Eligible Hedge Agreements in accordance with their Proportionate Shares. Except for the right of such Person to receive its Proportionate Share of the amounts received by the Agent, as set out in Sections 11.6(b), (c) and (d), such Person shall not have any rights under this Agreement, the Security or under any other Credit Document. Without limiting the generality of the foregoing, without notice to or the consent of any such Person, the Lenders hereunder may:

- (a) permit any increase or decrease, however significant, of the Facilities or the Obligations or otherwise supplement, amend, restate, substitute, in whole or in part, however significant, the

Obligations, this Agreement, the Security or any other Credit Document, or in whole or in part, terminate the availability of Facilities or demand payment or performance of all or any of the Obligations;

- (b) enforce or take any action under or abstain from enforcing or taking action under this Agreement or any other Credit Document;
- (c) take, give up, subordinate, release or discharge any Security, supplement, amend, restate, substitute, renew, abstain from receiving, perfect or abstain from perfecting or maintaining the perfection of any Security, enforce, take action under or realize in any manner or abstain from enforcing, taking action under or realizing any Security, deal with or abstain from dealing with all or any part of the undertaking, property and assets subject to the Security or allow the Borrower, the Borrower's Subsidiaries or others to deal with such undertaking, properly;
- (d) renew all or any part of the Facilities or the Obligations or grant extensions of time or any other indulgences to the Borrower, the Guarantor Subsidiaries or any other Person;
- (e) accept or make compromises or arrangements with or release, discharge or otherwise deal with or abstain from dealing with the Borrower, the Guarantor Subsidiaries or any other Person;
- (f) in whole or in part prove or abstain from proving a claim in any bankruptcy or insolvency proceeding of or affecting the Borrower, Guarantor Subsidiaries or any other Person; and
- (g) agree with the Borrower, Guarantor Subsidiaries or any other Person to do anything described in Subsections (a) to (f) above.

Each Person which holds Obligations under Eligible Hedge Agreements at the time a declaration is made or is deemed to have been made pursuant to Section 10.2, but is not at such time a Lender hereunder, acknowledges and agrees that the Agent on the instructions of the Majority Lenders shall be entitled to vote the claims of such Person in respect of the Obligations owed to it under all of the Eligible Hedge Agreements in any bankruptcy or insolvency proceeding relating to the Borrower and the Guarantor Subsidiaries. Such Person shall do, execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered, every such further act, deed or document that the Agent may reasonably request, to give effect to the foregoing.

#### **11.7 Payments by Agent**

- (a) For greater certainty, the following provisions shall apply to any and all payments made by the Agent to the Lenders hereunder:
  - (i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;
  - (ii) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, the Agent shall have no obligation to remit to each Lender any amount other than such Lender's Proportionate Share (based on the then outstanding Obligations of the Borrower hereunder) of that amount which is the amount actually received by the Agent;

- (iii) if any Lender advances more or less than its Proportionate Share of the Facilities, such Lender's entitlement to such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
- (iv) if a Lender's Proportionate Share of an Advance has been advanced for less than the full period to which any payment by the Borrower relates, such Lender's entitlement to such payment shall be reduced in proportion to the length of time such Lender's Proportionate Share of the applicable Advance has actually been outstanding;
- (v) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall, in the absence of manifest error, be binding and conclusive;
- (vi) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (vii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set forth opposite such Lender's name on the signature pages hereto unless notice to the contrary is received by the Agent from such Lender.

(b) Unless the Agent has actual knowledge that the Borrower has not made or will not make a payment to the Agent for value on the date in respect of which the Borrower has notified the Agent that the payment will be made, the Agent shall be entitled to assume that such payment has been or will be received from the Borrower when due and the Agent may (but shall not be obliged to), in reliance upon such assumption, pay the Lenders' corresponding amounts. If the payment by the Borrower is in fact not received by the Agent on the required date and the Agent has made available corresponding amounts to the Lenders, the Borrower shall, without limiting its other obligations under this Agreement, indemnify the Agent against any and all liabilities, obligations, losses (other than loss of profit), damages, penalties, and all reasonable costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on or incurred by the Agent as a result of such non-payment. A certificate of the Agent with respect to any amount owing under this Section 11.7(b) shall be *prima facie* evidence of the amount owing in the absence of manifest error. If a payment is not in fact received by the Agent from the Borrower and the Agent has paid to a Lender a corresponding amount, such Lender shall pay to the Agent on demand an amount equal to the aggregate of the amount of such payment made to the Lender plus the product of (i) the Lender's rate per annum applicable to overnight deposits for amounts approximately equal to the amount paid by the Agent to such Lender and not so received from the Borrower multiplied by (ii) the amount paid by the Agent to such Lender and not so received from the Borrower, multiplied by (iii) a fraction, the numerator of which is the number of days that have elapsed from and including the date of payment by the Agent to the Lender to but excluding the date on which payment is made by such Lender to the Agent and the denominator of which is 365 or 366 (as applicable).

## 11.8 Direct Payments

The Lenders agree among themselves that, except as otherwise provided for in this Agreement and except as necessary to adjust for Advances that are not in each Lender's Proportionate Share under the Facilities, all sums received by a Lender relating to this Agreement, by virtue of the other Credit Documents, any Eligible Hedge Agreements or any Cash Management Agreements, whether received by voluntary

payment, by the enforcement of the Security, the exercise of the right of set-off, combination or consolidation of accounts, or compensation or by counterclaim, cross-action or otherwise, shall be shared by each Lender in its Proportionate Share of the Facilities or the Obligations then outstanding, as applicable, in accordance with Section 11.6 and each Lender undertakes and agrees to do all such things as may be reasonably required to give full effect to this Section 11.8, including, without limitation, the purchase from other Lenders of a portion of any Advances by the Lender who has received an amount in excess of its Proportionate Share as shall be necessary to cause such purchasing Lender to share the excess amount rateably in its Proportionate Share with the other Lenders. If any sum which is so shared is later recovered from the Lenders who originally received it, the Lender shall restore its Proportionate Share of such sum to such Lenders, without interest. If any Lender (a "Receiving Lender") shall obtain any payment of the Obligations as referred to above, the Receiving Lender shall forthwith remit such payment to the Agent and, upon receipt, the Agent shall distribute such payment in accordance with the provisions of Section 11.6.

#### 11.9 Administration of the Facilities

- (a) Unless otherwise specified herein, the Agent shall perform the following duties under this Agreement:
  - (i) take delivery of each Lender's Proportionate Share of an Advance under the Syndicated Facility and make all Advances under the Syndicated Facility hereunder in accordance with the procedures set forth in Sections 7.6 and 7.9;
  - (ii) use reasonable efforts to collect promptly all sums due and payable by the Borrower pursuant to this Agreement;
  - (iii) make all payments to the Lenders in accordance with the provisions hereof;
  - (iv) hold all legal documents relating to the Facilities, maintain complete and accurate records showing all Advances made by the Lenders under the Syndicated Facility, all remittances and payments made by the Borrower to the Agent under the Syndicated Facility, all remittances and payments made by the Agent to the Lenders under the Syndicated Facility and allow each Lender and their respective advisors to examine such accounts, records and documents at their own expense, and provide any Lender, upon reasonable notice, with such copies thereof as such Lender may reasonably require from time to time at its expense;
  - (v) except as otherwise specifically provided for in this Agreement, promptly advise each Lender upon receipt of each notice and deliver to each Lender, promptly upon receipt, all other written communications furnished by the Borrower to the Agent pursuant to this Agreement, including without limitation copies of financial reports and certificates which are to be furnished to the Agent;
  - (vi) forward to each of the Lenders, one copy each of this Agreement and other Credit Documents;
  - (vii) promptly forward to each Lender, upon request, an up-to-date loan status report and any other information respecting the Borrower reasonably requested by such Lender; and
  - (viii) upon learning of same, promptly advise each Lender in writing of the occurrence of an Event of Default or the occurrence of any event, condition or circumstance which

could be expected to have a Material Adverse Effect, provided that, except as aforesaid, the Agent shall be under no duty or obligation whatsoever to provide any notice to the Lenders and further provided that each Lender hereby agrees to notify the Agent of any Pending Event of Default or Event of Default of which it may reasonably become aware.

- (b) The Agent may take the following actions only with the prior consent of the Majority Lenders, unless otherwise specified in this Agreement:
  - (i) subject to Section 11.9(c), exercise any and all rights of approval and consent specifically conferred upon the Lenders (and not the Agent) by this Agreement;
  - (ii) amend, modify or waive any of the terms of this Agreement (including waiver of an Event of Default) if such action is not otherwise provided for in Section 11.9(c);
  - (iii) declare an Event of Default or take action to enforce performance of the Obligations of the Borrower and the Guarantor Subsidiaries under and in respect of the Credit Documents, enforce the Security and/or pursue any other legal remedy necessary; and
  - (iv) pay insurance premiums, Taxes and any other sums as may be reasonably required to protect the interests of the Lenders.
- (c) The Agent may take the following actions only if the prior unanimous consent of the Lenders is obtained, unless otherwise contemplated or provided for in this Agreement:
  - (i) amend, modify, discharge, terminate or waive any of the material terms of the Security;
  - (ii) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Facilities, reduce the interest rate applicable to the Facilities, reduce the fees payable with respect to the Facilities, extend any date fixed for payment of principal or interest relating to the Facilities (including a waiver of any requirement of the Borrower to repay outstanding Obligations pursuant to Section 3.4 and a waiver of an Event of Default described in Section 10.1(a)), extend the Maturity Date (other than the Maturity Date for the Swingline Facility, which Maturity Date may be extended by the Swingline Lender in its sole discretion), or affect the priority of the Security; and
  - (iii) amend the definition of "Majority Lenders" or this Section 11.9(c).
- (d) As between the Borrower, on the one hand, and the Agent and the Lenders, on the other hand:
  - (i) all statements, certificates, consents and other documents which the Agent purports to deliver on behalf of the Lenders or the Majority Lenders shall be binding on each of the Lenders, and the Borrower shall not be required to ascertain or confirm the authority of the Agent in delivering such documents;
  - (ii) all certificates, statements, notices and other documents which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been delivered to each of the Lenders;

- (iii) all payments which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders; and
- (iv) unless a Pending Event of Default or an Event of Default has occurred and is continuing, the consent of the Borrower to the appointment of any Successor Agent must be obtained, but such consent shall not be unreasonably withheld.

#### **11.10 Rights of Agent**

- (a) In administering the Facilities or in realizing on the rights available under this Agreement or the other Credit Documents, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrower, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.
- (b) The Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed by the proper individual or individuals, and shall be entitled to rely and shall be protected in relying as to legal matters upon opinions of independent legal advisors selected by it. The Agent may also assume that any representation made by the Borrower is true and that no Pending Event of Default or Event of Default has occurred unless the officers or employees of the Lender acting as Agent, active in their capacity as officers or employees responsible for the Borrower's accounts have actual knowledge to the contrary or have received notice to the contrary from any other party to this Agreement.
- (c) The Agent may, without any liability to account, but subject to the terms of this Agreement, enter into swap agreements, futures contracts and other similar agreements with the Borrower, accept deposits from and lend money to and generally engage in any kind of banking, or other business with the Borrower, as if it were not the Agent.
- (d) The Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to any of the Property of the Borrower or any Subsidiary of the Borrower, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts, or agents engaged by it as permitted hereby.

#### **11.11 Acknowledgements, Representations and Covenants of Lenders**

- (a) It is acknowledged and agreed by each Lender that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, property, affairs, status and nature of the Borrower and each Guarantor Subsidiary. Accordingly, each Lender confirms to the Agent that it has not relied, and will not hereafter rely, on the Agent (i) to check or inquire on its behalf into the adequacy or completeness of any information provided by the Borrower or a Guarantor Subsidiary under or in connection with this Agreement, the other Credit Documents or the transactions herein contemplated (whether or not such information has been or is hereafter distributed to such Lender by the Agent) or (ii) to assess or keep under review on its behalf the financial condition, creditworthiness, property, affairs, status or nature of the Borrower or a Guarantor Subsidiary.

- (b) Each Lender represents and warrants that it has the legal capacity to enter into this Agreement pursuant to its charter and any Applicable Laws and has not violated its charter, constating documents or any Applicable Laws by so doing.
- (c) Each Lender agrees to indemnify the Agent (to the extent not reimbursed by the Borrower), rateably according to its Proportionate Share of the Facilities from and against any and all liabilities and obligations (whether direct or indirect, contingent or otherwise), losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of the Credit Documents or the transactions therein contemplated, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand according to its Proportionate Share of the Facilities for any out-of-pocket expenses (including counsel fees) incurred by the Agent in connection with the preservation of any rights of the Agent or the Lenders under, or the enforcement of, or legal advice in respect of rights or responsibilities under this Agreement or under the other Credit Documents, to the extent that the Agent is not promptly reimbursed for such expenses by the Borrower. The obligation of the Lenders to indemnify the Agent shall survive the termination of this Agreement.
- (d) Each of the Lenders acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the Agent to maintain the Facilities in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.
- (e) Each Lender acknowledges and agrees that its obligation to advance its Proportionate Share of Advances in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.
- (f) Each Lender hereby acknowledges receipt of a copy of this Agreement and the other Credit Documents (to the extent that such Credit Documents have been delivered) and acknowledges that it is satisfied with the form and content of such documents.
- (g) Except to the extent recovered by the Agent from the Borrower, promptly following demand therefor, each Lender shall pay to the Agent an amount equal to such Lender's Proportionate Share of the Facilities of any and all reasonable costs, expenses, claims, losses and liabilities incurred by the Agent in connection with this Agreement and the other Credit Documents (including, without limitation, the collection or enforcement thereof, which shall be based on each Lender's Proportionate Share of the Obligations) except for those incurred by reason of the Agent's gross negligence or wilful misconduct.
- (h) Each Lender shall respond promptly to each request by the Agent for the consent of such Lender required hereunder.

#### **11.12 Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, the remedies available to the Lenders under the Credit Agreement and the other Credit Documents are for the

benefit of the Lenders collectively and that its rights hereunder and under the Security are to be exercised by the Agent as required by this Agreement. Accordingly, except as otherwise expressly provided herein, each of the Lenders hereby covenants and agrees that it shall not take any action hereunder or under the Security, but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders or all of the Lenders, as required. Each of the Lenders hereby further covenants and agrees that upon any written agreement being given by the Majority Lenders or all of the Lenders, as required, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of the instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **11.13 Successor Agent**

Subject to the appointment and acceptance of a Successor Agent as provided in this Section 11.13, and subject to Section 11.9(d)(iv), the Agent may resign at any time by giving thirty (30) days' written notice thereof to the Lenders and the Borrower, and may be removed at any time by the Majority Lenders upon thirty (30) days' written notice if the Agent has been grossly negligent hereunder. Upon receipt of notice by the Lenders of the resignation of the Agent, or upon giving notice of termination to the Agent, the Majority Lenders may with the consent of the Borrower (provided that the Lenders shall only be obligated to obtain such consent if no Pending Event of Default or Event of Default exists), such consent not to be unreasonably withheld, within twenty-one (21) days, appoint a successor from among the Lenders or, if no Lender is willing to accept such an appointment, from among other banks to which the *Bank Act* (Canada) applies, which each have combined capital and reserves in excess of \$250,000,000, and which have offices in Calgary and Toronto (the "Successor Agent"). If no Successor Agent has been so appointed and has accepted such appointment within twenty-one (21) days after the retiring Agent's giving of notice of resignation or receiving of notice of termination, then the retiring Agent may, on behalf of the Lenders, appoint a Successor Agent. If neither the Majority Lenders nor the Agent appoint a Successor Agent within such twenty-one (21) days, then the Majority Lenders or the Agent may apply to a Justice of the Court of Queen's Bench of the Province of Alberta, on such notice as the Justice may direct, for the appointment of a Successor Agent, but any Successor Agent so appointed by the Court shall be subject to removal as aforesaid by the Majority Lenders. Upon the acceptance of any appointment as Agent hereunder by a Successor Agent, the Successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its further duties and obligations as Agent under this Agreement and the other Credit Documents. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article shall continue to enure to its benefit and be binding upon it as to any actions taken or omitted to be taken by it while it was Agent hereunder.

#### **11.14 Provisions Operative Between Lenders and Agent Only**

Except for the provisions of Sections 11.11(b) and 11.11(e), the provisions of this Article relating to the rights and obligations of the Lenders and the Agent inter se shall be operative as between the Lenders and the Agent only, and the Borrower shall not have any rights or obligations under or be entitled to rely for any purpose upon such provisions.

**ARTICLE XII**  
**ADDITIONAL LENDERS, SUCCESSORS AND ASSIGNS**

**12.1 Successors and Assigns**

(a) The Credit Documents shall be binding upon and enure to the benefit of the Agent, each Lender, the Borrower and their successors and assigns (including without limitation, any successor resulting from the amalgamation of the Borrower with one or more corporations or resulting from the winding-up of one or more corporations into the Borrower), except that, other than as provided herein, the Borrower shall not assign any rights or obligations with respect to this Agreement or any of the other Credit Documents without the prior written consent of the Lenders.

The collective rights and obligations of the Lenders under this Agreement are assignable in whole or in part and any Lender shall be entitled to assign in whole or in part its individual rights and obligations hereunder or to permit other financial institutions to participate in the Facilities, all in accordance with the provisions of Section 12.2 and the other terms of this Agreement. The Borrower hereby consents to the disclosure of any information and opinions relating to it to any potential Lender or participant provided that the potential Lender or participant agrees in writing to keep the information confidential and to return such information if it does not become a Lender or a participant.

Each assignment shall be of a uniform, and not a varying, percentage of all rights and obligations of the assignor(s) under or in respect of the Facilities. Prior to a declaration being made or deemed to be made pursuant to Section 10.2, no assignment may be in an amount less than Cdn. \$5,000,000 unless such assignment is of the entire Commitment of a Lender, or result in the Commitment of any Lender, determined as of the effective date of the Assignment Agreement with respect to such assignment, being less than Cdn. \$5,000,000.

Notwithstanding any other provisions of this Agreement, each Lender agrees that it shall not offer to assign or offer to sell or sell any portion of its rights and obligations under this Agreement including, without limitation, any portion of its Commitment without the prior written consent of and five (5) Business Days' prior notice to the Agent and the LC Fronting Lender, and except in the case of an assignment in accordance with Section 12.2 or an offer to sell or the sale of a Participation, without the prior consent of and notice to, the Borrower. The consent of the Borrower and the Agent shall not be unreasonably withheld, the consent of the LC Fronting Lender may be withheld in its sole credit discretion.

(b) A Participation by a Lender of its interest (or a part thereof) hereunder or a payment by a Participant to a Lender as a result of the Participation will not constitute a payment hereunder to the Lender or an Advance to the Borrower.

**12.2 Assignments**

(a) Subject to Section 12.1 and the other terms of this Agreement, the Lenders collectively or individually may assign to one or more assignees that is a bank or other financial institution resident in Canada all or a portion of their respective rights and obligations under this Agreement (including, without limitation, all or a portion of their respective Commitments) with the consent of the Agent, not to be unreasonably withheld and the consent of the LC Fronting Lender in its sole credit discretion; provided however, after a declaration is made or

is deemed to be made pursuant to Section 10.2, a Lender may assign any of its rights and obligations under this Agreement to any Person (provided that the assignor shall continue to be liable to the LC Fronting Lender for the obligations under Fronting LCs, issued before such assignment). The parties to each such assignment shall execute and deliver an Assignment Agreement to the Agent and the LC Fronting Lender for their respective consents and, unless a Pending Event of Default or an Event of Default has occurred and is continuing, to the Borrower, for their acknowledgement and recording by the Agent in the Register and, except in the case of an assignment by a Lender to an affiliate of that Lender, the assigning Lender shall pay a processing and recording fee of Cdn. \$3,500 to the Agent. After such execution, delivery, consent, acknowledgement and recording (i) the assignee thereunder shall be a party to this Agreement and, to the extent that rights and obligations hereunder have been assigned to it, have the rights and obligations of a Lender hereunder and (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights and be released from its obligations under this Agreement, other than obligations in respect of which it is then in default or which arose prior to its assignment, and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto.

- (b) The agreements of an assignee contained in an Assignment Agreement shall benefit the assigning Lender thereunder, the other Lenders, the Agent, the LC Fronting Lender and the Borrower in accordance with the terms of the Assignment Agreement.
- (c) The Agent shall maintain at its address referred to herein a copy of each Assignment Agreement delivered to and acknowledged by it and a register for recording the names and addresses of the Lenders and the Commitment under the Facilities of each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error. The Borrower, the Agent and each of the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement, and need not recognize any Person as a Lender unless it is recorded in the Register as a Lender. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.
- (d) Within five (5) Business Days after receipt by the Agent of (i) the processing and recording fee required pursuant to Section 12.2(a), and (ii) an Assignment Agreement executed by an assigning Lender and an assignee and approved by the Borrower (if applicable), the Agent and the LC Fronting Lender, the Agent shall, if the Assignment Agreement has been completed and is in the required form with such immaterial changes as are acceptable to the Agent:
  - (i) acknowledge the Assignment Agreement;
  - (ii) record the information contained therein in the Register; and
  - (iii) give prompt notice thereof to the Borrower and the other Lenders, and provide them with an updated list of the respective Commitments of each Lender.

### 12.3 Participation

Each Lender may sell an interest (other than by way of assignment pursuant to Section 12.2) to one or more banks, financial institutions or other Persons (a "Participant") in or to all or a portion of its rights and obligations (including, without limitation, all or a portion of its Commitment) under this Agreement, (such interest is referred to herein as a "Participation") but the Participant shall not become a Lender and:

- (a) the Lender's obligations under this Agreement (including, without limitation, its Commitment) shall remain unchanged;
- (b) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;
- (c) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement; and
- (d) no Participant shall have any right to approve any amendment or waiver of any provision of this Agreement, or any consent to any departure by any Person therefrom.

### 12.4 Replacement Lenders

The Borrower may at any time, upon at least 30 days notice to the Agent, request and designate an alternate lender (which may, but need not be, an existing Lender) (a "Replacement Lender") to purchase an assignment in accordance with Section 12.2 of any Lender's or Non-Agreeing Lender's (an "Affected Lender") Commitment and outstanding Advances (which Replacement Lender shall purchase such assignment prior to the expiry of such notice period), provided that no Lender shall be obligated to make any such assignment as a result of a demand by the Borrower pursuant to this Section 12.4 unless said assignment is done on a without warranty basis and unless and until such Affected Lender shall have received one or more payments from the Replacement Lender in an aggregate amount at least equal to the aggregate Outstanding Principal owing to such Affected Lender, together with accrued interest thereon to the date of payment of such Outstanding Principal and all other amounts payable to such Affected Lender under this Agreement (including, without limitation, all losses, costs and expenses suffered or incurred by the Affected Lender as a result of complying with this Section 12.4 and all amounts owing under Section 13.16) and provided that in respect of any outstanding Bankers' Acceptances or BA Equivalent Loans made by the Affected Lender, that the Obligations with respect thereto have been cash collateralized by the Borrower (to be held by the Affected Lender in one or more cash collateral accounts, which accounts shall be in the name of the Affected Lender and shall not be required to be interest bearing, and are to be released therefrom at upon maturity of the applicable Bankers' Acceptance or BA Equivalent Loan). Any such Replacement Lender is subject to:

- (a) the Agent's prior written approval, such approval not to be unreasonably withheld; and
- (b) the LC Fronting Lender's prior written approval, in its sole discretion.

Nothing contained herein shall be deemed to obligate any Lender, other than a Non-Agreeing Lender that is an Affected Lender (subject to the satisfaction of the assignment requirements set out in the immediately preceding paragraph), or the Agent to agree to any such request made by the Borrower.

## ARTICLE XIII MISCELLANEOUS PROVISIONS

### 13.1 Headings and Table of Contents

The headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### 13.2 Accounting Terms; IFRS; Changes in IFRS

Each accounting term used in this Agreement, unless otherwise defined herein, has the meaning assigned to it under IFRS. For greater certainty, all accounting terms and financial covenants and thresholds hereunder have been based upon IFRS in effect on the date hereof.

If there occurs a material change in generally accepted accounting principles and such change would require disclosure under IFRS in the Financial Statements of the Borrower and would cause any amount required to be determined hereunder (a "**Relevant Amount**") to be materially different than the amount that would be determined without giving effect to such change, the Borrower shall notify the Agent of such change (an "**Accounting Change**"). Such notice (an "**Accounting Change Notice**") shall describe the nature of the Accounting Change, its effect on the current and immediately prior year's Financial Statements in accordance with IFRS and state whether the Borrower desires to revise the method of calculating one or more of the Relevant Amounts (including the revision of any of the defined terms used in the determination of such Relevant Amount) in order that amounts determined after giving effect to such Accounting Change and the revised method of calculating such Relevant Amount will approximate the amount that would be determined without giving effect to such Accounting Change and without giving effect to the revised method of calculating such Relevant Amount. The Accounting Change Notice shall be delivered to the Agent within 45 days of the end of the Fiscal Quarter in which the Accounting Change is implemented or, if such Accounting Change is implemented in the fourth Fiscal Quarter or in respect of an entire Fiscal Year, within 90 days of the end of such period. Promptly after receipt from the Borrower of an Accounting Change Notice, the Agent shall deliver to each Lender a copy of such Accounting Change Notice.

If, pursuant to the Accounting Change Notice, the Borrower does not indicate that it desires to revise the method of calculating one or more of the Relevant Amounts, the Lenders may, within 30 days of their receipt of the Accounting Change Notice, notify the Agent that they wish to revise the method of calculating one or more of the Relevant Amounts in the manner described above. If the Majority Lenders so notify the Agent, the Agent shall promptly notify the Borrower.

If either the Borrower or the Majority Lenders so indicate that they wish to revise the method of calculating one or more of the Relevant Amounts, the Borrower, the Agent and the Majority Lenders shall in good faith attempt to agree on a revised method of calculating such Relevant Amounts. If, however, within 30 days of the foregoing notice by the Borrower or the Agent (on behalf of the Majority Lenders) of the desire to revise the method of calculating one or more of the Relevant Amounts, the Borrower, the Agent and the Majority Lenders have not reached agreement in writing on such revised method of calculation, such method of calculation shall not be revised and all amounts to be determined hereunder shall be determined without giving effect to the Accounting Change. For greater certainty, if no notice of a desire to revise the method of calculating the Relevant Amounts in respect of an Accounting Change is given by either the Borrower or the Majority Lenders within the applicable time period described above, the method of calculating a Relevant Amount shall not be revised in response to such Accounting Change and all amounts to be determined pursuant to such Relevant Amounts shall be determined after giving effect to such Accounting Change.

If a Compliance Certificate is delivered in respect of a Fiscal Quarter or Fiscal Year in which an Accounting Change is implemented without giving effect to any revised method of calculating any Relevant Amount, and subsequently, as provided above, the method of calculating one or more of the Relevant Amounts is revised in response to such Accounting Change, or the amounts to be determined pursuant to any Relevant Amount are to be determined without giving effect to such Accounting Change, the Borrower shall deliver a revised Compliance Certificate. Any Event of Default arising as a result of the Accounting Change and which is cured by this Section 13.2 shall be deemed to be of no effect *ab initio*.

### **13.3 Capitalized Terms**

All capitalized terms used in any of the Credit Documents (other than this Agreement) which are defined in this Agreement shall have the meaning defined herein unless otherwise defined in the other document.

### **13.4 Severability**

Any provision of this Agreement which is or becomes prohibited or unenforceable in any Relevant Jurisdiction shall not invalidate or impair the remaining provisions hereof which shall be deemed severable from such prohibited or unenforceable provision and any such prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Should this Agreement fail to provide for any relevant matter, the validity, legality or enforceability of this Agreement shall not hereby be affected.

### **13.5 Number and Gender**

Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, words importing any gender include all genders and references to agreements and other contractual instruments shall be deemed to include all present or future amendments, supplements, restatements or replacements thereof or thereto.

### **13.6 Amendment, Supplement or Waiver**

No amendment, supplement or waiver of any provision of the Credit Documents, nor any consent to any departure by a Loan Party therefrom, shall in any event be effective unless it is in writing, makes express reference to the provision affected thereby and is signed by the Borrower and by the Agent for and on behalf of the Lenders or the Majority Lenders, as the case may be as required under Subsections 11.9(b) or 11.9(c) and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver or act or omission of the Lender shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or breach by the Borrower or a Guarantor Subsidiary of any provision of the Credit Documents or the rights resulting therefrom.

### **13.7 Governing Law**

Each of the Credit Documents shall be conclusively deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in Alberta; provided that each general security agreement made by a Guarantor Subsidiary that is to provide the Agent with an Encumbrance over Property located in the United States, shall be conclusively deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with, the laws of the State of New York, United States of America. Each party to this Agreement hereby irrevocably and unconditionally attorns to the non-exclusive jurisdiction of the courts of Alberta and all courts competent to hear appeals therefrom.

### **13.8 This Agreement to Govern**

In the event of any conflict between the terms of this Agreement and the terms of any other Credit Document, the provisions of this Agreement shall govern to the extent necessary to remove the conflict. Provided however, a conflict or inconsistency shall not be deemed to occur if one Credit Document provides for a matter and another Credit Document does not.

### **13.9 Permitted Encumbrances**

The designation of an Encumbrance as a Permitted Encumbrance is not, and shall not be deemed to be, an acknowledgment by the Lenders that the Encumbrance shall have priority over the Security.

### **13.10 Currency**

All payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose. Unless the context otherwise requires, all amounts expressed in this Agreement in terms of money shall refer to Canadian Dollars.

Except as otherwise expressly provided in this Agreement, wherever this Agreement contemplates or requires the calculation of the equivalent in Canadian Dollars or U.S. Dollars of an amount expressed in the other of those currencies, the calculation shall be made on the basis of the Exchange Rate at the effective date of the calculation.

### **13.11 Liability of Lenders**

The liability of the Lenders in respect of all matters relating to this Agreement and the other Credit Documents is several and not joint or joint and several. Without limiting that statement, the obligations of the Lenders to make Advances is limited to their respective Proportionate Shares of any Advance that is requested, and, in the aggregate, to their respective Proportionate Shares of the total amount of the Facilities.

### **13.12 Expenses and Indemnity**

All statements, reports, certificates, opinions, appraisals and other documents or information required to be furnished to the Agent, or the Lenders, or any of them, by a Loan Party under this Agreement shall be supplied without cost to the Lenders, the Agent, or any of them. The Borrower shall pay on demand all reasonable out of pocket costs and expenses of the Agent (including, without limitation, long distance telephone and courier charges and the reasonable fees and expenses of counsel for the Agent) and the reasonable out of pocket expenses of the Lenders, incurred in connection with (i) the preparation, execution, delivery, administration, periodic review, modification or amendment of the Credit Documents; (ii) any enforcement of the Credit Documents; (iii) obtaining advice as to their rights and responsibilities in connection with the Facilities and the Credit Documents; (iv) reviewing, inspecting and appraising the collateral that is the subject of the Security at reasonable intervals; and (v) other matters relating to the Facilities. Such costs and expenses shall be payable whether or not an Advance is made under this Agreement.

The Borrower shall indemnify the Lenders and the Agent against any liability, obligation, loss or expense which they may sustain or incur as a consequence of (i) any representation or warranty made by a Loan Party which was incorrect at the time it was made or deemed to have been made, (ii) a default by a Loan Party in the payment of any sum due from it (irrespective of whether an Advance is deemed to be made to the Borrower to pay the amount that the Borrower has failed to pay), including, but not limited to, all sums (whether in respect of principal, interest or any other amount) paid or payable to lenders of funds borrowed by the Lenders in order to fund the amount of any such unpaid amount to the extent the Lender is not reimbursed

pursuant to any other provisions of this Agreement, (iii) the failure of the Borrower to complete any Advance or make any payment after notice therefor has been given under this Agreement, and (iv) any other default by a Loan Party under any Credit Document. A certificate of the Lender as to the amount of any such loss or expense shall be *prima facie* evidence as to the amount thereof, in the absence of manifest error.

In addition, the Borrower shall indemnify the Lenders, the Agent and their directors, officers, employees and representatives (the "**Indemnified Parties**") from and against any and all actions, proceedings, claims, losses, damages, liabilities, expenses and obligations of any kind that may be incurred by or asserted against any of them as a result of or in connection with the making of any Advance hereunder and the Agent taking, holding and enforcing the Security, other than arising from the gross negligence or wilful misconduct of the Agent or any other Indemnified Party. Whenever any such claim shall arise, the Indemnified Party shall promptly notify the Borrower of the claim and, when known, the facts constituting the basis for such claim, and if known, the amount or an estimate of the amount of the claim. The failure of an Indemnified Party to give notice of a claim promptly shall not adversely affect the Indemnified Party's rights to indemnity hereunder.

The agreements in this Section shall survive the termination of this Agreement and repayment of the Obligations.

### **13.13 Environmental Indemnity**

Without limiting the generality of the provisions of Section 13.12, the Borrower hereby agrees to indemnify, defend and hold harmless the Lenders, the Agent and each of them from and against any and all administrative, regulatory or judicial actions, suits, demands, claims, liens, notices of non-compliance or violation, investigations, inspections, inquiries, proceedings, losses, costs, expenses, damages, claims and liabilities incurred by the Lenders, the Agent and any of them relating in any way to any Environmental Laws or to any permit issued under such Environmental Laws in respect of any Loan Party or any of its or their Property, including without limitation, as a result of:

- (a) any breach of Environmental Laws which relates to the property or operations of a Loan Party;
- (b) any Release, presence, use, creation, transportation, storage or disposal of Hazardous Materials which relate to the property or operations of a Loan Party; or
- (c) any claim or order for any clean-up, restoration, detoxification, reclamation, repair or other securing or remedial action which relates to the property or operations of a Loan Party.

This indemnity shall extend to the officers, directors, employees, agents and assignees of the Lenders, the Agent, and each of them as well as to the Lenders, the Agent and each of them itself, and the Lenders, the Agent and each of them will hold the benefit of this indemnity in trust for such other indemnified Persons to the extent necessary to give effect thereto.

The agreements in this Section shall survive the termination of this Agreement and repayment of the Obligations.

### **13.14 Manner of Payment and Taxes**

All payments to be made by a Loan Party pursuant to the Credit Documents are to be made without set-off, compensation or counterclaim, free and clear of and without deduction for or on account of any Tax, including but not limited to withholding taxes, except for Taxes on the overall net income of a Lender (such taxes applicable to the overall net income of a Lender are herein referred to as "**Excluded Taxes**"). If any Tax,

other than Excluded Taxes, is deducted or withheld from any payments under the Credit Documents, the applicable Loan Party shall promptly remit to the Lender in the currency in which such payment was made, the equivalent of the amount of Tax so deducted or withheld together with the relevant receipt addressed to the Agent. If a Loan Party is prevented by operation of law or otherwise from paying, causing to be paid or remitting such Tax, the interest or other amount payable under the Credit Documents will be increased to such rates as are necessary to yield and remit to the Lenders the principal sum advanced or made available together with interest at the rates specified in the Credit Documents after provision for payment of such Tax. If following the making of any payment by a Loan Party under this Section 13.14, a Lender is granted a credit against or refund in respect of any Tax payable by it in respect of such Taxes to which such payment by such Loan Party relates that such Lender would not have received had such Loan Party not made the payment, such Lender shall (subject to such Loan Party having paid the relevant amount) to the extent that it is satisfied that it can do so without prejudice to the retention of the amount of such credit or refund, reimburse such Loan Party such amount as such Lender shall certify to be the proportion of such credit or refund as will leave such Lender, after such reimbursement in no worse or better position than it would have been in if the relevant Taxes had not been imposed, or the relevant Taxes had not been deducted or withheld in respect of the payment by such Loan Party as aforesaid. Such Lender shall, at such Loan Party's request and cost, file such documentation and do such commercially reasonable things as may be necessary to obtain such credit or refund, but such Lender shall not be obligated to disclose any information to a Loan Party or any other Person concerning its income or taxes that is not otherwise publicly available.

If a Loan Party makes any payment under this Section for the account of a Lender, such Lender shall take reasonable steps to minimize the net amount payable by such Loan Party under this Section, but such Lender shall not be obliged to disclose any information to such Loan Party concerning its income or taxes that is not otherwise publicly available.

### 13.15 GST

- (a) The consideration payable for any supply made by or through the Lenders under or in connection with any Credit Document does not include GST.
- (b) If GST is payable in respect of any supply made by or through the Lenders under or in connection with any Credit Document ("GST Liability") then:
  - (i) where consideration is provided by the Borrower in relation to that supply, that Borrower will pay an additional amount to the Lenders equal to the full amount of the GST Liability; and
  - (ii) except where Section 13.15(b)(i) applies, the Borrower will indemnify and keep the Lenders indemnified for the full amount of the GST Liability.

If required by law, the Lenders will provide to the relevant Borrower a tax invoice complying with the relevant law relating to any payment made to it in accordance with this Section 13.15(b).

- (c) Any payment or reimbursement required to be made to the Lenders under any Credit Document that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or other amount less the amount of any input tax credit or other credit to which the Lenders are entitled for the acquisition to which the Cost or other amount relates.

### **13.16 Increased Costs**

If the introduction of or any change in or in the interpretation of, or any change in its application to a Loan Party of, any law or any regulation or guideline from any central bank or other governmental authority (whether or not having the force of law), including but not limited to the implementation of the international bank capital adequacy rules and rules for minimum and appropriate forms of bank liquidity issued by the Basel Committee on Banking Supervision in December, 2010 ("Basel III") and any other reserve or special deposit requirement or any Tax (other than Excluded Taxes) or exemption from any tax or any capital requirement, has due to the compliance by any Lender therewith the effect, directly or indirectly, of (i) increasing the cost to the Lenders (or any of them) of performing its obligations hereunder; (ii) reducing any amount receiving or receivable by the Lenders (or any of them) hereunder or its effective return hereunder or on its capital; or (iii) causing the Lenders (or any of them) to make any payment or to forego any return based on any amount received or receivable by the Lenders (or any of them) hereunder, then upon demand from time to time such Loan Party shall pay such amount as shall compensate the Lenders (or any of them) for any such cost, reduction, payment or foregone return that is not fully offset by an increase in the applicable interest rate or rates or fees hereunder. Any certificate of such affected Lender in respect of the foregoing will be *prima facie* evidence of the foregoing, except for manifest error, provided that such Lender determines the amounts owing to it in good faith using any reasonable averaging and attribution methods and provides a reasonably detailed description of its calculation of the amounts owing to it.

### **13.17 Interest on Miscellaneous Amounts**

If the Borrower fails to pay any amount payable hereunder (other than principal, interest thereon or interest upon interest which is payable as otherwise provided in this Agreement) on the due date, the Borrower shall, on demand, pay interest on such overdue amount to the Agent from and including such due date up to but excluding the date of actual payment, both before and after demand, default or judgment, at a rate of interest per annum equal to the rate applicable to "Prime Rate Advances", plus 2% per annum, calculated daily and compounded monthly.

### **13.18 Address for Notice**

Notice to be given under the Credit Documents to any of the Borrower, the Swingline Lender or the Agent shall, except as otherwise specifically provided, be in writing addressed to the party for whom it is intended and, unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt by the other party of an original of such notice or a facsimile thereof if sent by facsimile transmission. The addresses of the Borrower, the Swingline Lender and the Agent for the purposes hereof shall be the addresses specified beside their respective signatures to this Agreement or such other mailing or facsimile addresses as each party from time to time may notify the other as aforesaid. The address of each Syndicated Lender shall be as advised by such Syndicated Lender to the Agent from time to time.

### **13.19 Time of the Essence**

Time shall be of the essence in this Agreement.

### **13.20 Further Assurances**

The Borrower shall cause each other Loan Party to, at the request of the Agent acting on the instructions of the Lenders, do all such further acts and execute and deliver all such further documents as may, in the reasonable opinion of the Lenders, be necessary or desirable in order to fully perform and carry out the purpose and intent of the Credit Documents.

### **13.21 Term of Agreement**

Except as otherwise provided herein, this Agreement shall remain in full force and effect until the payment and performance in full of all of the Obligations and the termination of this Agreement.

### **13.22 Payments on Business Day**

Whenever any payment or performance under the Credit Documents would otherwise be due on a day other than a Business Day, such payment shall be made on the following Business Day.

### **13.23 Break Costs**

If a Lender receives or recovers all or part (the "Received Amount") of the Syndicated Facility or overdue amount before the last day of a LIBOR Period, as applicable, within three Business Days of a demand by the Agent, the Borrower shall pay such Lender the amount (if any) by which:

- (a) the interest which such Lender should have received on the Received Amount for the period from the date of receipt or recovery of the Received Amount to the last day of the applicable LIBOR Period, as applicable, had it not been paid until that last day; exceeds
- (b) the interest which such Lender determines that it would obtain by placing an amount equal to the Received Amount on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on such last day of the applicable LIBOR Period, as applicable.

### **13.24 Illegality**

If a Lender determines, in good faith, that (i) the introduction of or any change in any Applicable Laws or in the interpretation or application thereof by any court or by any judicial or governmental authority charged with the interpretation or administration thereof that has occurred after the date hereof or (ii) compliance by such Lender with any request or directive from any central bank or other fiscal, monetary or other authority (whether or not having the force of law) issued after the date hereof has made it unlawful for such Lender to make, maintain or fund all or any portion of its Commitment or to perform its obligations in respect of the Credit hereunder or any relevant portions thereof as contemplated hereby, such Lender may, by notice in writing to the Borrower, declare that its obligations hereunder in respect of its Commitment or the Credit so affected shall be terminated forthwith, whereupon such obligations shall be so terminated and the Borrower shall:

- (a) request a conversion of such Advances to other types of Advances not affected by this Section 13.24 (subject always to the provisions of this Agreement); or
- (b) provided no Pending Event of Default or Event of Default shall have occurred and is continuing, provide irrevocable written notice to such Lender requiring such Lender to sell and assign to a bank or other financial institution chosen by the Borrower and acceptable to the Agent, acting reasonably, all of such Lender's rights and obligations hereunder in the same manner described in Section 12.2 upon receipt by such Lender from such bank or financial institution of all amounts owing to such Lender under the Credit Documents, including without limitation, all unpaid interest accrued thereon to the date of payment and all other amounts, if any, payable for the account of such Lender hereunder in respect of any Advances made by it and in respect of all losses, costs and expenses suffered or incurred by such Lender hereunder as a result of such Lender complying with this Subsection 13.24(b).

### **13.25 Interest Act Equivalent**

In this Agreement, each rate of interest which is calculated with reference to a period (the "**deemed interest period**") that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to a rate based on a calendar year calculated by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing by the number of days in the deemed interest period.

### **13.26 Currency Indemnity**

In the event of a judgment or order being rendered by any court or tribunal for the payment of any amounts owing under this Agreement or for the payment of damages in respect of any breach of this Agreement or under or in respect of a judgment or order of another court or tribunal for the payment of such amounts or damages, such judgment or order being expressed in a currency (the "**Judgment Currency**") other than the currency payable hereunder or thereunder (the "**Agreed Currency**"), each party against whom the judgment or order is made shall indemnify and hold each party in whose favour the judgment or order is made harmless against any deficiency in terms of the Agreed Currency in the amounts received by such party arising or resulting from any variation as between (i) the Exchange Rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of such judgment or order, and (ii) the Exchange Rate at which such party is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by such party on the date of such receipt. The indemnity in this Section shall constitute a separate and independent obligation from the other obligations of the parties hereunder, shall apply irrespective of any indulgence granted hereunder.

### **13.27 Non-Merger**

The Borrower covenants and agrees with the Agent and the Lenders that, in the case of any judicial or other proceeding to enforce the rights and remedies of the Agent or the Lenders under the Credit Documents (or any part thereof), judgment may be rendered against any Loan Party in favour of the Lenders, or any of them, for any amount owing by them under the Credit Documents (or for which any Loan Party may be liable thereunder after the application to the payment thereof of the proceeds of any sale of any of the property, assets or undertaking of such Loan Party). The covenants of the Borrower to pay interest at the rate provided for in this Agreement shall not merge in any such judgment and such judgment shall bear interest at the rate applicable to Prime Rate Advances plus 2.0% per annum until such judgment and all Obligations of the Borrower to the Lenders under the Credit Documents have been paid in full. The Borrower waives the provisions of the *Judgment Interest Act* (Alberta) to the fullest extent permitted by law.

### **13.28 Confidentiality**

The Agent and the Lenders acknowledge the confidential nature of the financial, operational, technological (including, without limitation, all information related to intellectual property rights) and other information provided to them by the Borrower pursuant hereto and agree to prevent the disclosure thereof, provided, however, that the Agent or any Lender may in their sole discretion, deliver copies of any financial statements and other documents delivered to the Agent or the Lenders, and disclose any other information disclosed to the Agent or the Lenders, by or on behalf of the Borrower in connection with or pursuant to the Credit Documents to:

- (a) each of the Agent's and the Lenders' directors, officers, affiliates, employees, agents and professional consultants, provided that the Agent and each Lender shall not disclose such

information to any Person, division, department or Parent of a Lender that does not have a direct relationship to the Credit Documents;

- (b) any regulatory authority having jurisdiction over the Agent or Lenders; or
- (c) any other Person to whom such delivery or disclosure may be necessary or appropriate (i) in connection with any assignment or proposed assignment by the Agent or a Lender of any of its interests under the Credit Documents, (ii) in compliance with any Applicable Laws applicable to a Lender, (iii) in response to any subpoena or other legal process, or (iv) in connection with any litigation to which a Lender is a party in any way relating to any Loan Party or the Credit Documents and the transactions contemplated therein.

Any of the financial statements, other documents or other information to be sent to any of the Persons described above, may be sent by e-mail or other electronic means and none of the Agent or any of the Lenders shall be liable for any losses, costs, expenses, damages, claims or liabilities that any Loan Party may suffer if such financial statements, other documents or other information is disclosed to any other Persons inadvertently as a result of the Agent sending the same by e-mail or other electronic means.

### **13.29 Anti-Money Laundering Legislation**

- (a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Applicable Laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders and the Agent may be required to obtain, verify and record information regarding the Loan Parties, and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (b) If the Agent has ascertained the identity of the Loan Parties or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Agent:
  - (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
  - (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

### **13.30 Counterparts and Facsimile**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same

agreement. For the purposes of this Section, the delivery of a facsimile copy or PDF of an executed counterpart of this Agreement shall be deemed to be valid execution and delivery of this Agreement, but the party delivering a facsimile copy or PDF shall deliver an original copy of this Agreement as soon as possible after delivering the facsimile copy or PDF.

### **13.31 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto concerning the matters addressed in this Agreement, and cancel and supersede any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof.

[signature pages follow]

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

Address For Notice

Poseidon Concepts Corp.  
1200, 645-7th Avenue SW  
Calgary, Alberta T2P 4G8

Attention: President  
Facsimile: (403) 206-4995

**POSEIDON CONCEPTS CORP.,**  
as Borrower

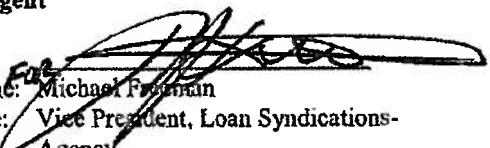
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
By: \_\_\_\_\_  
Name: DAVID BECHTEL  
Title: VP FINANCE

Address For Notice

The Toronto-Dominion Bank, as Agent  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5K 1A2

Attention: Vice President  
Loan Syndications-Agency  
Facsimile: (416) 982-5535

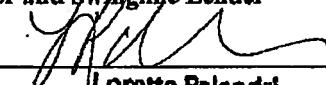
**THE TORONTO-DOMINION BANK,  
as Agent**

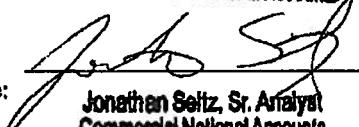
By:   
Name: Michael Freeman  
Title: Vice President, Loan Syndications-  
Agency

The Toronto-Dominion Bank  
Commercial National Accounts - West  
Suite 910, 333-7<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 2Z1

Attention: Senior Manager  
Facsimile: (403) 292-1317

THE TORONTO-DOMINION BANK,  
as Lender and Swingline Lender

By:   
Name: Loretta Palandri  
Title: Associate Vice President  
Commercial National Accounts

By:   
Name: Jonathan Seitz, Sr. Analyst  
Title: Commercial National Accounts

HSBC Bank Canada  
407-8<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 1E5

Attention: Wade Schuler  
Facsimile: (403) 693-8561

HSBC BANK CANADA, as Lender  
WADE SCHULER  
ASSISTANT VICE PRESIDENT  
ENERGY FINANCING

By:  
Name:  
Title:

By:  
Name:  
Title:

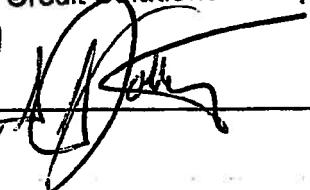
KEVIN BALE  
Assistant Vice President  
Energy Financing

**THE BANK OF NOVA SCOTIA, as Lender**

The Bank of Nova Scotia, as Lender  
Suite 3950, 700 – 2<sup>nd</sup> Street SW  
Calgary, Alberta  
T2P 2W2

Attention: Wade Talbott  
Facsimile: (403) 221-6450

By:   
Name: **Wade Talbott**  
Title: **Director, Credit Solutions Group**

By:   
Name: **R. Andrew Roberts**  
Title: **Director, Commercial Banking**

National Bank Financial  
1155 Metcalfe 5th  
Montreal, Quebec H3B 4S9  
  
Attention: Luc Bernier  
Facsimile: (514) 390-7860

**NATIONAL BANK OF CANADA, as  
Lender**

By:   
Name: **Luc Bernier**  
Title: **Directeur - Director**

By:   
Name: **André Marenger**  
Title: **Director**

**SCHEDULE "A" attached to and forming part of the Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent**

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**COMMITMENTS UNDER THE FACILITIES**

**COMMITMENTS OF LENDERS**

<b>Lender</b>	<b>Swingline Commitment</b>	<b>Syndicated Facility Commitment</b>
The Toronto-Dominion Bank	Cdn.\$10,000,000	Cdn.\$27,000,000
HSBC Bank Canada	Nil	Cdn.\$23,000,000
The Bank of Nova Scotia	Nil	Cdn.\$23,000,000
National Bank of Canada	Nil	Cdn.\$17,000,000
<b>TOTAL</b>	<b>Cdn.\$10,000,000</b>	<b>Cdn.\$90,000,000</b>

**Fronted LC Commitment**

<b>Lender</b>	<b>Fronted LC Commitment</b>
The Toronto-Dominion Bank	Cdn.\$10,000,000

**SCHEDULE "B" attached to and forming part of the Credit Agreement made as of June 29, 2012 Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent**

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**COMPLIANCE CERTIFICATE**

TO: The Toronto-Dominion Bank, as Agent  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
MSK 1A2

Attention: Vice President  
Loan Syndications-Agency

Ladies and Gentlemen:

1. Reference is made to the credit agreement made as of June 29, 2012 among Poseidon Concepts Corp. as Borrower, The Toronto-Dominion Bank and the other financial institutions from time to time party thereto, as lenders (the "Lenders") and The Toronto-Dominion Bank, as Agent, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as are ascribed thereto in the Credit Agreement.
2. I/We, [names], in [my/our] capacity as [title and title] of the Borrower and not in any Personal capacity, hereby certify that as of the date hereof:

- (a) the representations and warranties set forth in the Credit Agreement are true and correct on the date hereof;
- (b) the Borrower has performed or observed or caused to be performed or observed the covenants set forth in the Credit Agreement to be performed or observed by it to the date hereof; and
- (c) there has not occurred any unremedied Pending Event of Default or Event of Default;

**[or insert a description of unremedied Pending Events of Default and remedial action proposed to be taken and taken]**

3. As at [insert March 31, June 30, September 30 or December 31, as applicable], 20\_\_\_\_:
  - (a) the Total Funded Debt to EBITDA Ratio is ::;
  - (b) the Fixed Charge Coverage Ratio is ::;
  - (c) the aggregate EBITDA of the Borrower and the Guarantor Subsidiaries determined on an unconsolidated basis is equal to \_\_\_\_% of the EBITDA of the Borrower determined on a consolidated basis; and

(d) the book value of the total assets of the Borrower and the Guarantor Subsidiaries determined on an unconsolidated basis is equal to \_\_\_\_% of the book value of the total assets of the Borrower determined on a consolidated basis.

4. The calculation of each of 3(a), (b), (c) and (d) above are as set out on Exhibit "I" attached hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**POSEIDON CONCEPTS CORP.**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE "C" attached to and forming part of the Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent**

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**DRAWDOWN NOTICE**

TO: The Toronto-Dominion Bank, as Agent  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5K 1A2

Attention: Vice President  
Loan Syndications-Agency  
Facsimile: (416) 982-5535

[or]

TO: The Toronto-Dominion Bank, as Swingline Lender  
Commercial National Accounts - West  
Suite 910, 333-7<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 2Z1

Attention: Senior Manager  
Facsimile: (403) 292-1317

Ladies and Gentlemen:

1. Reference is made to credit agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank and the other financial institutions from time to time party thereto, as lenders (the "Lenders") and The Toronto-Dominion Bank, as Agent, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. Pursuant to [Section 2.1, Section • or Section •] of the Credit Agreement, the Borrower hereby requests the following Drawdown:

- (a) Drawdown Date/Conversion Date/Rollover Date:
- (b) Total Amount of Drawdown/Conversion/Rollover:
- (c) Type of Advance:
- (d) Maturity Date (if applicable):

- (e) Account(s) to be credited
- (f) (if applicable):
- (g) Special Instructions (if any):

3. The representations and warranties set forth in the Credit Agreement are true and correct on the date hereof.

4. The Borrower has performed or observed or caused to be performed or observed the covenants set forth in the Credit Agreement to be performed or observed by it to the date hereof.

5. There has not occurred any unremedied Pending Event of Default or Event of Default and after giving effect to the Advance requested hereby, no Pending Event of Default or Event of Default shall occur.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

**POSEIDON CONCEPTS CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "D" attached to and forming part of the Credit  
Agreement made as of June 29, 2012 among Poseidon Concepts Corp.,  
as Borrower, The Toronto-Dominion Bank, and the other financial  
institutions from time to time party thereto, as Lenders, and The  
Toronto-Dominion Bank, as Agent**

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**REQUEST FOR OFFER OF EXTENSION**

TO: The Toronto-Dominion Bank, as Agent  
77 King Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5K 1A2

Attention: Vice President  
Loan Syndications-Agency  
Facsimile: (416) 982-5535

Ladies and Gentlemen:

We refer you to the credit agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank and the other financial institutions from time to time party thereto, as lenders (the "Lenders") and The Toronto-Dominion Bank, as Agent, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as ascribed thereto in the Credit Agreement.

We hereby give notice of our request for an offer of extension of the Maturity Date for a further period of 364 days pursuant to Section 3.2 of the Credit Agreement.

As of the date hereof, there exists no Event of Default or Pending Event of Default under the Credit Agreement.

Yours very truly,

**POSEIDON CONCEPTS CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "E" attached to and forming part of the Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent**

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**DISCLOSURE SCHEDULE**

**Section 8.1(n)**

**Direct and Indirect Subsidiaries of Poseidon Concepts Corp.**

1. Poseidon Concepts Inc.
2. Poseidon Concepts Ltd.
3. Poseidon Concepts Limited Partnership

**Section 8.1(o)**

**Legal Names and Capital Structures**

1. Poseidon Concepts Inc.(US)	100 issued and outstanding common shares in the capital of Poseidon Concepts Inc. are held by Poseidon Concepts Ltd. (under former name Poseidon Concepts Corp.) as registered and beneficial owner.
2. Poseidon Concepts Ltd.	100 issued and outstanding common shares in the capital of Poseidon Concepts Ltd. are held by the Borrower as registered and beneficial owner.
3. Poseidon Concepts Limited Partnership	5,652,100 Units owned by the Borrower (under former name Open Range Energy Corp.) as the limited partner, 4,900 Units owned by Poseidon Concepts Ltd. (under former name Poseidon Concepts Corp.) as the general partner.

**Section 8.1(p)**

**Principal Places of Business and Chief Executive Offices**

Name of Entity	Jurisdiction of Chief Executive Office	Jurisdiction of Organization	Other jurisdictions where business carried on
Poseidon Concepts Corp.	Alberta	Alberta	
Poseidon Concepts Ltd.	Alberta	Alberta	
Poseidon Concepts Limited Partnership	Alberta	Alberta	

Poseidon Concepts Inc. (US Guarantor)	Colorado	Delaware	(a) Colorado; (b) New Mexico; (c) North Dakota; (d) Ohio; (e) Oklahoma; (f) Montana; (g) Wyoming; (h) Texas; and (i) Pennsylvania
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**SCHEDULE "F" attached to and forming part of the Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent**

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## **ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between *[Insert name of Assignor]* (the "Assignor") and *[Insert name of Assignee]* (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of *[identify Lender]*<sup>1</sup>]
3. Borrower(s): \_\_\_\_\_
4. Administration Agent: \_\_\_\_\_, as the administration agent under the Credit Agreement

---

<sup>1</sup>

Select as applicable.

5. Credit Agreement: Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

6. Assigned Interest:

Facility Assigned <sup>2</sup>	Aggregate Amount of Commitment/Loans for all Lenders <sup>3</sup>	Amount of Commitment/Loans Assigned <sup>3</sup>	Percentage Assigned of Commitment/Loans <sup>4</sup>	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$ -	%	

[7. Trade Date: \_\_\_\_\_]<sup>5</sup>

<sup>2</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Syndicated Facility", "Swingline Facility", etc.)

<sup>3</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>4</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>5</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATION AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

Consented to and Accepted:

THE TORONTO-DOMINION BANK, as  
Administration Agent

By \_\_\_\_\_  
Title:

THE TORONTO-DOMINION BANK, as  
LC Fronting Lender

By \_\_\_\_\_  
Title:

If no Pending Event of Default or Event of Default has occurred:

The Borrower hereby confirms that the representations and warranties set forth in Article VIII of the Credit Agreement are true and correct on the date hereof and that no Pending Event of Default or Event of Default has occurred, which is continuing. The Borrower hereby consent to the foregoing as of this • day of •.

**POSEIDON CONCEPTS CORP.**

By: \_\_\_\_\_

## ANNEX 1 to Assignment and Assumption

Credit Agreement made as of June 29, 2012 among Poseidon Concepts Corp., as Borrower, The Toronto-Dominion Bank, and the other financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

**1. Representations and Warranties.**

1.1 **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2 **Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 9.2 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, [and (v) if it is a Foreign Lender], attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be

executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.