

EXHIBIT 10:

**SECOND AMENDED AND RESTATED CREDIT
AGREEMENT DATED AS OF OCTOBER 19, 2018**

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

among

INNOVA GLOBAL LTD.
as Borrower

- and -

**ATB FINANCIAL AND EACH OF THE OTHER FINANCIAL INSTITUTIONS NAMED AS LENDERS
HEREUNDER FROM TIME TO TIME**
as Lenders

- and -

ATB FINANCIAL
as Administrative Agent

Dated as of October 19, 2018

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THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT is dated as of October 19, 2018

AMONG:

INNOVA GLOBAL LTD., a corporation duly amalgamated under the laws of Alberta, as Borrower

AND:

ATB FINANCIAL AND EACH OF THE OTHER FINANCIAL INSTITUTIONS SIGNATORIES HERETO AS LENDERS, OR AS FROM TIME TO TIME BECOME LENDERS HEREUNDER, in their capacities as Lenders

AND:

ATB FINANCIAL, in its capacity as Agent

RECITALS:

- A.** The Borrower, the Lenders and the Agent entered into a credit agreement dated as of January 1, 2016, as amended by a first amending agreement dated as of January 23, 2017 (as amended, the "**2016 Credit Agreement**"), pursuant to which the Lenders made certain credit facilities available to the Borrower on the terms and subject to the conditions set forth in the 2016 Credit Agreement.
- B.** The Borrower, the Lenders and the Agent amended and restated the 2016 Credit Agreement pursuant to an amended and restated credit agreement dated as of July 21, 2017, as amended by a first amending agreement dated as of October 11, 2017 and a second amending agreement dated as of December 13, 2017 (as amended, the "**Original Credit Agreement**"), pursuant to which the Lenders continued to make certain credit facilities available to the Borrower on the terms and subject to the conditions set forth in the Original Credit Agreement.
- C.** The Borrower, the Lenders and the Agent have agreed to amend and restate the Original Credit Agreement on the terms and subject to the conditions set forth in this Agreement.
- D.** The Lenders wish the Agent to continue to act on their behalf with regard to the matters contemplated by this Agreement.

NOW THEREFORE, in consideration of the premises, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement, including the recitals and the Schedules hereto and in all notices pursuant to this Agreement, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the following meanings:

"1938247" means 1938247 Alberta Ltd.

"ABN Facility" means the Euro letter of credit and overdraft facility provided by ABN Amro Bank N.V. to Braden-Europe B.V.

"Acceleration Notice" has the meaning given to it in Section 10.2(b).

"Accommodations" means:

- (a) the advance of Loans by the Term Lenders by way of U.S. Base Rate Loans and Libor Loans by the Term Lenders (the **"Term Accommodations"**);
- (b) the advance of Loans by the WIP Lenders by way of Prime Loans, U.S. Base Rate Loans, Libor Loans and the acceptance and purchase of Bankers' Acceptances (or if applicable, the advance of BA Equivalent Advances) by the WIP Lenders (the **"WIP Accommodations"**);
- (c) the advance of Loans by the Operating Lenders by way of Prime Loans, U.S. Base Rate Loans and Libor Loans and the acceptance and purchase of Bankers' Acceptances (or, if applicable, the advance of BA Equivalent Advances) by the Operating Lenders, and the advance of Swingline Loans by the Swingline Lender by way of Prime Loans and U.S. Base Rate Loans (collectively, the **"Operating Accommodations"**); and
- (d) the issuance of Fronted Letters of Credit by a Fronting Lender (the **"LC Accommodations"**).

"Account Debtor" means any Person who is obligated to pay an Account Receivable to a Loan Party.

"Account Receivable" means any right of a Loan Party to payment for services rendered or goods sold in the ordinary course of business classified as an account receivable in accordance with GAAP.

"Acquisition" means, with respect to any Loan Party, any purchase or other acquisition, including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization, or by way of purchase, lease or other acquisition arrangements, of (a) 100% of the issued and outstanding equity securities of any other Person (including by acquisition of equity securities of such other Person), (b) all or any substantial part of the property of any other Person, or (c) all or substantially all of any division, business, operations or undertaking of any other Person.

"Additional Compensation" has the meaning given to it in Section 11.2.

"Adjustment Time" means the time of occurrence of the last event necessary (being either the delivery of a Demand for Repayment or the occurrence of a Termination Event) to ensure that all Lender Outstandings are thereafter due and payable and such time shall conclusively be:

- (a) in the case where such last event is the delivery of a Demand for Repayment, the time of delivery for such Demand for Repayment or, where not delivered as required within a time period specified in Section 10.3, then the last day of such time period; and
- (b) in the case where such last event is the occurrence of a Termination Event, the time of occurrence of such Termination Event determined pursuant to the provisions of the agreement giving rise to such Termination Event.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Agent.

“Affiliate” means any Person which, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with another Person.

“Agent” means ATB and includes any successor agent appointed pursuant to Section 12.17.

“Agent Parties” has the meaning given to it in Section 14.13(b).

“Agent’s Account for Payments” means:

- (a) for all payments in Canadian Dollars, the following account maintained by the Agent to which payments and transfers are to be effected as follows:

ATB Financial
102 – 8th Avenue S.W.
Calgary, Alberta
T2P 1B3
Swift Code: ATBRCA6EXXX
Bank Code and Transit No.: 021907609
Beneficiary Account No.: 00127091500
Beneficiary/for account of: CAD Syndication Agency Suspense
Address/Branch: 239 – 8th Avenue S.W., Calgary, Alberta, T2P 1B9
Reference: Innova Global Ltd. – ATB Loan Syndications

- (b) for all payments in U.S. Dollars, the following account maintained by the Agent to which payments and transfers are to be effected as follows:

Bank of America N.A. New York
100 W 33rd Street,
New York, New York, USA 10001
Swift Code/ABA No.: BOFAUS3NXXX or ABA (Fedwire) 026009593
Beneficiary Account No.: 1233235276
Beneficiary/for the account of: ATB Financial
Address/Branch: 102 – 8th Avenue S.W., Calgary, Alberta T2P 1B3
Reference: Innova Global Ltd. – ATB Loan Syndications
FFC: 021907609 00127092300
USD Syndication Agency Suspense

or such other places or accounts as may be agreed upon by the Agent and the Borrower from time to time and notified in writing to the Lenders.

“Agent’s Branch of Account” means the office of the Agent located at the address set forth under ATB Financial on Schedule A or such other office or branch of the Agent in Canada as the Agent may from time to time advise the Borrower and the Lenders in writing.

“Agreement” means this credit agreement, all Schedules attached hereto and any future amendments, restatements, replacements or supplements hereto.

“AML Legislation” has the meaning given to it in Section 14.12(a).

“Anti-Money Laundering Laws” has the meaning given to it in Section 2.1(y)(i)(A).

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable provisions (or mandatory applicable provisions, if so specified) of federal, provincial, state, municipal or local laws, statutes, rules, regulations, by-laws, official directives and orders of all Governmental

Authorities and all Governmental Actions in which the Person in question is a party or by which it is bound or having application to the Person, property, transaction or event, and includes Environmental Laws.

“Applicable Lenders” means (a) in the case of the Term Facility and in respect of a Borrowing Notice, Conversion Notice or Rollover Notice given under the Term Facility, all of the Term Lenders, (b) in the case of the WIP Facility and in respect of a Borrowing Notice, Conversion Notice or Rollover Notice given under the WIP Facility, means all of the WIP Lenders, (c) in the case of the Operating Facility and in respect of a Borrowing Notice, Conversion Notice or Rollover Notice given under the Operating Facility, means all of the Operating Lenders, (d) in the case of the Swingline Facility and in respect of a Conversion Notice or Rollover Notice given under the Swingline Facility, means the Swingline Lender, and (e) in the case of the LC Facility, and in respect of a Borrowing Notice or Rollover Notice given under the LC Facility, means all of the Fronting Lenders.

“Applicable Margin” means a margin, expressed as a rate per annum, payable (a) in the case of the Term Facility, to the Agent on behalf of all of the Term Lenders, (b) in the case of the WIP Facility, to the Agent on behalf of all of the WIP Lenders, (c) in the case of the Operating Facility, to the Agent on behalf of all of the Operating Lenders, (d) in the case of the Swingline Facility, to the Swingline Lender for its own account, in each case with respect to Borrowings, and (e) in the case of the LC Facility, to the Agent on behalf of all of the Fronting Lenders, as set forth in the following table:

| Period | Prime Loans and U.S. Base Rate Loans (bps) | Libor Loans, Bankers’ Acceptances and Financial Letters of Credit (bps) | Non-Financial Letters of Credit (bps) | Standby Fees (bps) |
|--|--|--|---|--------------------------|
| Until the earlier of February 28, 2019 or the cancellation of the Unmargined Contribution | 450 | 550 | 366.67 | 125 |
| After the earlier of February 28, 2019 or the cancellation of the Unmargined Contribution | 350 | 450 | 300 | 100 |

For the purposes of calculating the Applicable Margins for Prime Loans, U.S. Base Rate Loans and Bankers’ Acceptances, the per annum rate is expressed on the basis of a 365-day year, as applicable, and the Applicable Margin for Libor Loans is calculated as a per annum rate expressed on the basis of a 360-day year. Without duplication of interest on overdue amounts as provided in Section 5.7, upon the occurrence and during the continuance of any Event of Default, each of the above Applicable Margins will increase by 200 bps upon written notice from the Agent.

“Approved Foreign Account Debtor” means an Account Debtor that is a utility company, engineering, procurement, construction and management company or facilities owner: (a) whose principal place of business is located in Australia, Chile, the United Kingdom, Columbia, Mexico, Peru, the Netherlands, Germany, France, Switzerland or Japan and (b) that has a credit rating of at least Baa1 by Moody’s, BBB+ by S&P or an equivalent rating of a rating agency satisfactory to the Agent and the Lenders, acting reasonably.

“Approved Fund” means any Fund that is administered or managed by:

- (a) a Lender,

- (b) an Affiliate of a Lender, or
- (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Lender" has the meaning given to it in Section 3.24.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee, with the consent of any party whose consent is required by Section 13.1, and accepted by the Agent, substantially in the form attached hereto as Schedule F.

"ATB" means ATB Financial and its successors and permitted assigns.

"Australian Loan Party" means Innova Global Australia Pty Limited.

"Authorizations" means all authorizations, permits, decisions, determinations, judgments, directions, entitlements, licenses, orders, consents, approvals, notices, correspondence, directives, exemptions, registrations, rulings, advance rulings, rights and certifications, whether now existing or hereafter issued or obtained or required to be issued or obtained and which are or may be given or issued by any Governmental Authority pursuant to Applicable Law.

"BA Acceptance Fee" means, with respect to Bankers' Acceptances, the fee, expressed as a rate per annum, payable to each Lender or retained by each Lender, in each case with respect to Bankers' Acceptances to be accepted and purchased by such Lender as set forth in the table in the definition of Applicable Margin for Bankers' Acceptances.

"BA Equivalent Advance" means an advance made in Canadian Dollars by a Non-Acceptance Lender as part of an Accommodation by way of Bankers' Acceptances.

"BA Purchasing Lender" means each Applicable Lender that purchases a Bankers' Acceptance accepted by such Applicable Lender and to the extent applicable, includes Non-Acceptance Lenders providing BA Equivalent Advances.

"Bankers' Acceptances" means bankers' acceptances denominated in Cdn. Dollars which are issued by the Borrower pursuant to Sections 3.5, 3.17 or 3.18 and accepted and purchased by the Applicable Lender pursuant to Section 3.7; all references herein to **"Bankers' Acceptances"** shall, unless otherwise expressly provided herein or unless the context otherwise requires, be deemed to include BA Equivalent Advances made by a Non-Acceptance Lender as part of a Borrowing by way of Bankers' Acceptances.

"Basel III" means the agreements on capital requirements, leverage ratios and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, modified, supplemented, reissued or replaced from time to time.

"Bilateral Financial Services Agreements" means each present and future agreement between a Creditcard Lender and a Loan Party with respect to Creditcard Facilities, and each present and future agreement between a Cash Management Lender and a Loan Party with respect to Cash Management Services, as such agreements may be amended, restated or otherwise in effect from time to time.

"Borrower" means Innova Global Ltd., a corporation duly amalgamated under the laws of the laws of the Province of Alberta, and its successors and permitted assigns.

"Borrowing Base Certificate" means a certificate in the form of Schedule E executed by an officer of the Borrower.

"Borrowing Notice" means a notice to effect an Accommodation delivered under Section 3.5 and substantially in the form of Schedule B with all applicable blanks completed.

"Borrowings" means, at any time:

- (a) the principal amount outstanding by way of Loans made by the Term Lenders under the Term Facility (collectively, the **"Term Borrowings"**);
- (b) the principal amount outstanding by way of Loans made by the WIP Lenders and the face amount of Bankers' Acceptances outstanding (and, if applicable, any related BA Equivalent Advances) issued and purchased by the WIP Lenders under the WIP Facility (collectively, the **"WIP Borrowings"**);
- (c) the principal amount outstanding by way of Loans made by the Operating Lenders and the face amount of Bankers' Acceptances outstanding (and, if applicable, any related BA Equivalent Advances) issued and purchased by the Operating Lenders under the Operating Facility, together with the principal amount outstanding by way of Swingline Loans made by the Swingline Lender under the Swingline Facility (collectively, the **"Operating Borrowings"**); and
- (d) the undrawn amount of all outstanding Fronted Letters of Credit issued by the Fronting Lenders under the LC Facility (collectively, the **"LC Borrowings"**).

"bps" means 1/100 of 1%.

"Braden Permanent Notes" means, collectively: (i) the amended and restated subordinated promissory note dated October 19, 2018 in the amount of U.S.\$10,822,892.90 issued jointly by the Borrower and Innova LP in favour of Export Development Canada, and (ii) the subordinated promissory note dated October 11, 2017 in the amount of U.S.\$1,181,686 issued by the Borrower in favour of TriEmissions US LP, provided such Debt is unsecured, has an interest rate not exceeding 18% per annum and is otherwise on terms acceptable to the Agent.

"Braden Short Term Notes" means, collectively:

- (a) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$23,526,600 issued by Innova LP in favour of TriEmissions LP;
- (b) the second amended and restated subordinated promissory note dated October 19, 2018 in the amount of U.S.\$3,076,480 issued by the Borrower in favour of TriEmissions US LP;
- (c) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$4,723,400 issued by Innova LP in favour of the Borrower (which note, for greater certainty, includes the funds represented by the note described immediately above in (ii));
- (d) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$5,000,000 issued jointly by the Borrower and Innova LP in favour of Export Development Canada;
- (e) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$2,498,400 issued by Innova LP in favour of TriEmissions LP;
- (f) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$501,600 issued by Innova LP in favour of the Borrower; and

- (g) the subordinated convertible promissory note dated October 19, 2018 in the amount of C\$718,960 issued by Innova LP in favour of the Borrower,

provided such Debt is unsecured, has an interest rate not exceeding 18% per annum and is otherwise acceptable to the Agent.

"Braden Subordinated Debt" means all amounts owing under the Braden Short Term Notes and the Braden Permanent Notes, including all principal and accrued and unpaid interest thereon.

"Branch of Account" means, with respect to each Lender, the branch or office of such Lender located at the address set forth under such Lender's name on Schedule A or in its Assignment and Assumption or such other branch or office in Canada as such Lender may from time to time advise the Borrower and the Agent in writing; provided that, for purposes of delivering any notice required to be delivered by the Agent to a Lender pursuant to Section 12.7 and for purposes of effecting any payments to a Lender in connection with this Agreement, a Lender may specify in writing to the Agent any other branch or office of such Lender in Canada and such branch or office shall thereafter be the Branch of Account of such Lender for such purpose.

"Business" means the business carried on by the Loan Parties which involves engineering, procurement, manufacturing and construction management services relating specifically to the provision of gas turbine system-related products, air emissions control systems, waste heat recovery boilers, heat recovery steam generators, gas compression processing systems and noise and/or emission management solutions for the petroleum and natural gas, power, distributed generation and electricity generation and industrial sectors.

"Business Day" means a day, excluding Saturday and Sunday, on which banking institutions are open for the transaction of commercial business in Calgary, Alberta, Montreal, Quebec, and Toronto, Ontario; also, if such term is considered in the context of a U.S. Base Rate Loan, New York, New York and also, if such term is considered in the context of a Libor Loan or determination of Libor, London, England.

"Canadian Dollars", "Cdn. Dollars" and the symbols **"Cdn.\$"** and **"\$"** each means the lawful money of Canada.

"Canadian Loan Parties" means the Borrower, Innova Operating, Innova LP, 1938247 and Innova Global Holdings Limited Partnership, and **"Canadian Loan Party"** shall mean any one of them.

"Canadian Sanctions Designated Person" has the meaning given to it in Section 2.1(y)(iii).

"Capital Expenditures" means expenditures made by the Borrower on a combined consolidated basis for the purchase or acquisition, repair or replacement of capital assets, net of proceeds of disposition of capital assets (other than proceeds received on a sale-leaseback transaction), and any expenditure related to a capital lease or an operating lease in respect of which the Borrower on a combined consolidated basis has furnished a residual value guarantee to the lessor, but excluding the amount expended on repair or replacement of Property to the extent of insurance proceeds or third party funding received on account of damage or destruction, all as determined in accordance with GAAP.

"Cash Collateral Account" means an account with the Agent, or such other financial institution as designated by the Agent, from which the Loan Parties do not have any withdrawal rights or privileges except as contemplated in this Agreement, which account and all funds credited thereto and interest earned thereon (which interest shall be at the prevailing rate of the Agent or such other financial institution, as the case may be, for demand deposits of comparable amounts) shall be the subject of a Security Interest in favour of the Agent on behalf of the Lenders.

"Cash Equivalents" means, as of the date of any determination thereof, the following:

- (a) marketable direct obligations issued or unconditionally guaranteed by the Government of Canada, the United States of America, or any agency or instrumentality thereof, a government of a province of Canada or of a state of the United States of America or, in each case, any agency thereof, maturing no more than one year after the date of acquisition thereof;
- (b) commercial paper maturing no more than one year after the date of acquisition thereof and having, at the time of acquisition, a rating of at least A1 by Standard & Poor's Ratings Services or at least Prime 1 by Moody's Investors Service, Inc. or at least R1 (low) by DBRS Ltd.;
- (c) certificates of deposit, deposit notes, term deposit receipts, or time deposits or bankers' acceptances, maturing no more than one year after the date of acquisition thereof, issued by the Lender or by commercial banks incorporated under the laws of Canada or the United States of America or a state thereof, each having a rating of at least A1 by Standard & Poor's Ratings Services or at least Prime 1 by Moody's Investors Service, Inc. or at least R1 (low) by DBRS Ltd.; and
- (d) investments in any investment company, money market or fund which invests substantially all of their assets in Cash Equivalents of a kind described in (a) through (c) of this definition.

"Cash Management Lender" means a Lender or an Affiliate of a Lender which is providing or has provided Cash Management Services to a Loan Party.

"Cash Management Obligations" mean, collectively, any and all direct and indirect, contingent and absolute obligations and liabilities, and any indemnity given in connection with any of the foregoing, of the Borrower and each other Loan Party to a Cash Management Lender in respect of any Cash Management Services as the Loan Parties may from time to time receive from a Cash Management Lender; provided, that a liability shall constitute a "Cash Management Obligation" if the arrangement or agreement under which it arose was entered into with the Person who was a Cash Management Lender at the time such arrangement or agreement was entered into, regardless of whether such Cash Management Lender ceased to be a Cash Management Lender hereunder.

"Cash Management Services" means cash or treasury management services, which may include daylight credit, controlled disbursement, automated clearinghouse transactions, return items, overdrafts, interstate depository network services, wire payments, account netting and pooling services and foreign exchange settlement or any similar services arrangements.

"CDOR Rate" means on any day:

- (a) with respect to Bankers' Acceptances having a Standard Term which are accepted and, if applicable, purchased on any day, the arithmetical average of the percentage discount rates for Canadian Dollar bankers' acceptances (calculated on the basis of a year of 365 days) in comparable amounts having an identical issue and maturity date which are quoted on the "Reuters Screen CDOR CAD-BA Page" (as defined in the International Swaps and Derivatives Association, Inc. definitions, as modified and amended from time to time) (or if such screen shall not be available any successor or similar service selected by the Agent) as at approximately 8:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Agent in good faith after 8:00 a.m. or as soon thereafter as practicable to reflect any error in a posted rate of interest or in the posted average annual rate of interest); and

- (b) with respect to Bankers' Acceptances which do not have a Standard Term or if the rate referred to in paragraph (a) of this definition does not appear on such "Reuters Screen CDOR Page" (or a successor service as referred to in paragraph (a) of this definition), then the CDOR Rate, on any day, shall be the arithmetic average of the percentage discount rate quoted by each Schedule I Reference Lender (determined by the Agent as of 8:00 a.m. on such day), which would be applicable in respect of an issue of bankers' acceptances in a comparable amount and with identical maturity dates to the Bankers' Acceptances proposed to be issued by the Borrower on such day or if such day is not a Business Day, then on the immediately preceding Business Day.

If any Lender does not furnish a timely quotation, the Agent shall determine the relevant discount rate on the basis of the quotation or quotations furnished by the remaining Lenders. Each determination of the CDOR Rate shall be conclusive and binding, absent manifest error, and be computed using any reasonable averaging and attribution method. For greater certainty, if the CDOR Rate determined pursuant to the above is less than zero, it shall be deemed to be zero.

"Change in Working Capital" means, as at any date of determination, the amount of the difference (expressed as a positive or negative number, as applicable) in working capital from the prior Fiscal Year to the current Fiscal Year, calculated as follows:

- (a) for the current Fiscal Year:
 - (i) all Current Assets on the date of determination, but excluding therefrom all Tax assets and cash and excluding such decreases or increases, as applicable; minus
 - (ii) all Current Liabilities on the date of determination, but excluding therefrom all Tax liabilities and accrued interest and excluding such decreases or increases, as applicable;

minus:

- (b) for the prior Fiscal Year:
 - (iii) all Current Assets on the date that is one calendar year prior to the date of determination, but excluding therefrom all Tax assets and cash and excluding such decreases or increases, as applicable; minus
 - (iv) all Current Liabilities on the date that is one calendar year prior to the date of determination, but excluding therefrom all Tax liabilities and accrued interest and excluding such decreases or increases, as applicable;

"Change of Control" shall be deemed to have occurred if (a) the Sponsor or its Affiliates directly or indirectly, shall no longer have the right, contractually or otherwise, to elect a majority of the board of directors of the Borrower, or (b) the Sponsor or its Affiliates shall cease to own, directly or indirectly, beneficially and of record, at least 75% of all outstanding Voting Securities of the Borrower.

"Circumstance" has the meaning given to it in Section 11.2.

"Claim" has the meaning given to it in Section 11.7(b).

"Commitment" means each Lender's Term Facility Commitment, WIP Facility Commitment, Operating Facility Commitment, Swingline Facility Commitment or LC Facility Commitment, as the case may be, or if the context so requires, the aggregate thereof.

"Communications" has the meaning given to it in Section 14.13(b).

"Compliance Certificate" means a compliance certificate substantially in the form attached hereto as Schedule D executed by any senior officer of the Borrower.

"Consenting Lender" has the meaning given to it in Section 3.24.

"Control" (including with correlative meanings, the terms **"Controlled by"** or **"under common Control with"**) means, with respect to a Person, possession by another Person, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of Voting Securities, by contract or otherwise.

"Conversion" means a conversion of a Borrowing (other than a Letter of Credit) or part thereof from one basis of Borrowing to another (other than a Letter of Credit) and, where applicable, such term shall include the issuance of new Bankers' Acceptances in respect of converted or unconverted portions of such Borrowing.

"Conversion Date" means each Business Day in respect of which the Borrower has notified the Agent as the date on which the conversion of a Borrowing or a portion thereof is to be made pursuant to a request from the Borrower under Section 3.17.

"Conversion Notice" means a notice to effect a Conversion delivered under Section 3.17 and substantially in the form of Schedule C with all applicable blanks completed.

"Convertible Debt" means, collectively:

- (a) the EDC 2018 Debt;
- (b) the TriEmissions LP 2018 Debt;
- (c) the TriEmissions LP Mezz Debt;
- (d) the TriEmissions US LP Mezz Debt;
- (e) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$23,526,600 issued by Innova LP in favour of TriEmissions LP;
- (f) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$4,723,400 issued by Innova LP in favour of the Borrower;
- (g) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$5,000,000 issued jointly by the Borrower and Innova LP in favour of Export Development Canada;
- (h) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$2,498,400 issued by Innova LP in favour of TriEmissions LP;
- (i) the amended and restated subordinated convertible promissory note dated October 19, 2018 in the amount of U.S.\$501,600 issued by Innova LP in favour of the Borrower; and
- (j) the subordinated convertible promissory note dated October 19, 2018 in the amount of C\$718,960 issued by Innova LP in favour of the Borrower.

“Credit Documents” mean, collectively, this Agreement, all Lender Swaps, and all Bilateral Financial Services Agreements and **“Credit Documents”** means any of them.

“Creditcard Facilities” means any corporate credit card facilities for commercial purposes (including “commercial credit cards” and “purchasing cards”).

“Creditcard Lender” means a Lender or an Affiliate of a Lender which has provided Creditcard Facilities to a Loan Party (including, for certainty, ATB in its capacity as a creditcard provider to the Borrower).

“Creditcard Obligations” means indebtedness, liabilities and obligations of any Loan Party to a Creditcard Lender arising under any Creditcard Facilities.

“Curable Covenants” has the meaning given to it in Section 9.1(f).

“Cure Action” has the meaning given to it in Section 9.1(f).

“Currency Swap” means a transaction entered into between a Person and a counterparty pursuant to an ISDA Master Agreement that is a forward rate, currency swap or currency exchange or other similar currency related transaction, the purpose of which is to manage such Person’s exposure to fluctuations in exchange rates.

“Current Assets” means, as at any date of determination, the amount which would, in accordance with GAAP, be classified on a combined consolidated balance sheet of the Borrower at such time as current assets, but excluding any amounts arising as a result of the Mark-to-Market of Swaps.

“Current Liabilities” means, as at any date of determination, the amount which would, in accordance with GAAP, be classified on a combined consolidated balance sheet of the Borrower at such time as current liabilities, but excluding (i) any amounts arising as a result of the Mark-to-Market of Swaps, (ii) the current portion of any long-term Debt (including the current portion of the Borrowings and Financial Leases); and (iii) Convertible Debt and accrued interest on Convertible Debt.

“Current Maturity Date” shall have the meaning given to it in Section 3.24.

“DBNA” has the meaning given to it in Section 3.7(d).

“Debt” means, with respect to a Person at any time but without duplication, all obligations, indebtedness and liabilities:

- (a) for borrowed money;
- (b) arising pursuant to bankers’ acceptance facilities, note purchase facilities and commercial paper programs, or the stated amount of letters of credit, letters of guarantee and surety bonds supporting obligations which would otherwise constitute Debt within the meaning of this definition or indemnities issued in connection therewith;
- (c) that are evidenced by bonds, debentures, notes or other similar instruments (whether or not with respect to the borrowing of money, and whether or not payable by, or convertible into, equity);
- (d) arising pursuant to surety and performance bonds to the extent that a Security Interest has been granted by such Person to secure obligations related to the same;
- (e) arising under Guarantees, indemnities, assurances, legally binding comfort letters or other contingent obligations relating to the indebtedness or other obligations of any other Person which would otherwise constitute Debt within the meaning of this definition and all

other obligations incurred for the purpose of or having the effect of providing Financial Assistance;

- (f) arising in respect of the deferred purchase or acquisition price of property in excess of 120 days, and excluding, for certainty, accounts payable arising in the ordinary course of business;
- (g) arising under a Purchase Money Security Interest, a Sale/Leaseback or a Financial Lease;
- (h) arising in respect of the purchase by another Person of any of a Loan Party's property, assets or undertaking, the purchase price in respect of which has been prepaid by the purchaser;
- (i) arising in respect of redemption obligations of any Loan Party with respect to any shares issued by such Loan Party (excluding shares of a Loan Party that may be redeemed in whole or in part in specie) which are not held by another Loan Party and which are by their terms or pursuant to any contract, agreement or arrangement:
 - (i) redeemable, retractable, payable or required to be purchased or otherwise retired or extinguished, or convertible into Debt of a Loan Party, in any case, prior to the latest Maturity Date of any Lender (A) at a fixed or determinable date, (B) at the option of any holder thereof, or (C) upon the occurrence of a condition not solely within the control and discretion of the Loan Parties, or
 - (ii) convertible into any other shares described in (i) above; and
- (j) indebtedness under Swaps (but excluding for certainty any Mark-to-Market obligations).

"Default" shall mean the occurrence of any of the events specified in Section 10.1, whether or not any requirement for notice or lapse of time or other condition precedent has been satisfied.

"Default Rate" means, at any time, the greater of (i) the Applicable Margin; and (ii) the Prime Rate, in each case plus 200 bps per annum, up to the maximum rate permitted by law.

"Defaulting Lender" means any Lender:

- (a) that has failed to fund any payment or its portion of any Accommodations required to be made by it hereunder or to purchase any participation required to be purchased by it hereunder or under the other Loan Documents;
- (b) that has notified the Borrower, the Agent or any Lender (verbally or in writing) that it does not intend to or is unable to comply with any of its funding obligations under this Agreement or has made a public statement to that effect or to the effect that it does not intend to or is unable to fund advances generally under credit arrangements to which it is a party;
- (c) that has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and the Borrower that it will comply with the terms of this Agreement relating to its obligations to fund prospective Accommodations;
- (d) that has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute;

- (e) in respect of which a Lender Insolvency Event or a Lender Distress Event has occurred in respect of such Lender or its Lender Parent; or
- (f) that is generally in default of its obligations under other credit or loan documents under which it has commitments to extend credit.

"Demand for Repayment" means delivery of an Acceleration Notice or a Swap Demand for Repayment.

"Discount Proceeds" means, in respect of any Bankers' Acceptance purchased by a Lender hereunder, the net cash proceeds payable to the Borrower from the sale of a Bankers' Acceptance hereunder (rounded to the nearest whole cent with one-half of one cent being rounded-up) determined as of the applicable Drawdown Date, Conversion Date or Rollover Date which is equal to:

$$\text{Face Amount} \times \text{Price}$$

where **"Face Amount"** is the face amount of such bankers' acceptance and **"Price"** is equal to:

$$\frac{1}{1 + (\text{Rate} \times \frac{\text{Term}}{365})}$$

where the **"Rate"** is the applicable Discount Rate expressed as a decimal on the day of purchase; the **"Term"** is the term of such Bankers' Acceptance expressed as a number of days; and the Price as so determined is rounded up or down to the fifth decimal place with .000005 being rounded-up.

"Discount Rate" means:

- (a) with respect to an issue of Bankers' Acceptances having the same maturity date accepted by a Lender that is a bank under Schedule I of the *Bank Act* (Canada), the CDOR Rate; and
- (b) with respect to an issue of Bankers' Acceptances having the same maturity date accepted by a Lender that is not a bank under Schedule I to the *Bank Act* (Canada), the CDOR Rate plus 10 bps.

"Disposition" means, with respect to any Loan Party, any sale, transfer or disposition of (a) any other Person (including by disposition of equity securities of such other Person), (b) all or any substantial part of the property of any such Loan Party, or (c) all or substantially all of any division, business, operations or undertaking of such Loan Party.

"Dissenting Lender" has the meaning given to it in Section 14.2.

"Distribution" by a Person means:

- (a) any declaration, payment or setting aside for payment of any dividend, return of capital or other distribution on or in respect of any of the share, partnership or trust capital of such Person;
- (b) any redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any of the share, partnership or trust capital of such Person or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for share, partnership or trust capital of such Person, including options, warrants, conversion or exchange privileges and similar rights;

- (c) the payment of any principal, interest, fees, redemption amounts or other amounts on or in respect of any loans, advances or other indebtedness owing at any time by such Person to a holder of shares, partnership interests or trust units of such Person or to an Affiliate of such holder;
- (d) any loan, advance, payment of management or consulting fees or reimbursement of costs which is made by the Person to or in favour of a holder of shares, partnership interests or trust units of such Person or an Affiliate of such holder (including for certainty, and whether or not an Affiliate of such holder or the Sponsor or an Affiliate thereof) except where any such payment is made to any such holder in such holder's capacity as an officer, director or employee of such Person in the ordinary course of business; or
- (e) the transfer by the Person of any property or assets for consideration of less than its or their fair market value or on non-arms' length terms and conditions to a holder of shares, partnership interests or trust units of such Person or an Affiliate of such holder;

whether any of the foregoing is made, paid or satisfied in or for cash, property or both.

"Drawdown" means the advance under a Facility other than as a result of a Conversion, Rollover or a drawing under a Letter of Credit.

"Drawdown Date" means each Business Day on which Drawdowns are to be made pursuant to a request from the Borrower under Section 3.5.

"Dutch Loan Parties" means Innova Global Europe BV, Global Power Netherlands BV, Global Power Professional Services Netherlands BV and Braden-Europe B.V. and their respective successors and permitted assigns, and **"Dutch Loan Party"** means any one of them.

"EBITDA" means, without duplication, in respect of the period ending on the last day of a Fiscal Quarter and as determined on a combined consolidated basis in respect of the Borrower and Innova LP, Net Income for such period, plus:

- (a) Financing Charges to the extent deducted in the calculation of Net Income;
- (b) all amounts deducted in the calculation of Net Income in respect of the provision for income taxes (in accordance with GAAP);
- (c) all amounts deducted in the calculation of Net Income in respect of non-cash items, including (to the extent non-cash) depletion, accretion (to the extent not included in clause (a) above), depreciation, amortization and future income tax liabilities;
- (d) any non-capitalized transaction costs and expenses associated with the closing of the Facilities;
- (e) all customary out-of-pocket costs, fees and expenses paid or required to be paid in connection with an Acquisition, whether or not it closes, to the extent deducted in the calculation of Net Income;
- (f) all amounts deducted in the calculation of Net Income in respect of minority equity losses, non-cash impairment charges and any other non-cash charges;
- (g) all amounts deducted in the calculation of Net Income in respect of extraordinary, non-recurring losses, including for greater certainty one-time financing costs, one-time severance, recruitment and search expenses, as agreed to by the Agent and Majority Lenders;

- (h) to the extent deducted from Net Income, non-cash losses resulting from Marking-to-Market the outstanding Swaps of the Loan Parties for such period in accordance with GAAP;
- (i) all amounts deducted in the calculation of Net Income in respect of share based compensation;
- (j) management fees and expenses to the extent constituting Permitted Distributions under clause (c) of such definition paid by the Loan Parties to the Sponsor or its Affiliates; and
- (k) Distributions by the Borrower or Innova LP to its shareholders or partners to the extent constituting Permitted Distributions under clause (b) or (e) of such definition,

less:

- (l) earnings attributable to minority interests and extraordinary and non-recurring earnings and gains of the Borrower on a combined consolidated basis, in each case, to the extent included in the calculation of Net Income; and
- (m) to the extent included in Net Income, non-cash gains resulting from Marking-to-Market the outstanding Swaps of the Loan Parties for such period in accordance with GAAP.

“EDC 2018 Debt” means all amounts owing under the subordinated convertible promissory note dated October 19, 2018 in the principal amount of Cdn.\$700,000 issued jointly by the Borrower and Innova LP in favour of Export Development Canada, including all principal and accrued and unpaid interest thereon.

“EDC Guarantee” means the guarantee in the principal amount of at least US\$5,400,000 guaranteeing the obligations of the Loan Parties owing to the Fronting Lenders under the LC Facility.

“Effective Date” means the date on which all of the conditions precedent under Section 8.1 have been satisfied.

“Eligible Accounts Receivable” means at any time, any Account Receivable (not including any Insured Receivables) of the Loan Parties (net of any credit balance, returns, trade discounts, or unbilled amounts or retention) that meets and at all times continues to meet all of the standards of eligibility (and the Borrower by including such account in any computation of the Operating Facility Borrowing Base shall be deemed to represent and warrant to the Agent and the Lenders that to the knowledge of the Borrower all of the following statements are accurate and complete with respect to such account):

- (a) it is a valid and legally enforceable obligation of the applicable Account Debtor;
- (b) such account is genuine as appearing on its face or as represented in the books and records of the Borrower on a combined consolidated basis;
- (c) such account is free from valid claims regarding rescission, cancellation or avoidance, whether by operation of Applicable Law or otherwise, and, except to the extent of any reduction made pursuant to paragraph (e) of this definition, is net of all then applicable holdbacks and prepayment credits, provided however, if the Account Debtor has agreed that it will pay such portion of the account that is not being claimed to be rescinded, cancelled or avoided, such portion of the Accounts Receivable shall be allowed;
- (d) such account does not relate to services not completed as of the date of such account (which for greater certainty, shall not include a progress billing account when such account becomes due and owing in the ordinary course of business);

- (e) without limiting the generality of paragraph (c) of this definition, is not subject to any offset, counterclaim or other defence on the part of the Account Debtor or any claim by the Account Debtor that denies liability in whole or in part; and, if the Account Debtor denies liability only in part, the undisputed portion of the Account Receivable shall be allowed so long as the Account Debtor has agreed that it will pay such portion not in dispute in accordance with its terms;
- (f) it is not unpaid (i) 90 days after the invoice date of the relevant invoice, purchase order or other similar written statement owing by a Non-Investment Grade Debtor or (ii) 120 days after the invoice date of the relevant invoice, purchase order or other similar written statement owing by an Investment Grade Debtor;
- (g) such Account Receivable is not owing by an Account Debtor whose and whose Affiliates' aggregate Accounts Receivable outstanding more than:
 - (A) 90 days in the case of a Non-Investment Grade Debtor,
 - (B) 120 days in the case of an Investment Grade Debtor, or
 - (C) 150 days in the case of each of GE, Mitsubishi, Solar or Siemens, provided it has a global credit rating of at least Baa1 by Moody's, BBB+ by S&P or an equivalent rating of a rating agency satisfactory to the Agent and the Lenders, acting reasonably,

after the due date of the relevant invoice, purchase order therefor, or similar written statement, are greater than 10% of all Accounts Receivable of such Account Debtor and its Affiliates at such time;

- (h) it is (A) owed by an Account Debtor whose principal place of business is located in Canada or the United States, or (B) at the discretion of the Agent and the Lenders, owed by an Approved Foreign Account Debtor, provided that the aggregate amount of Accounts Receivable from such Approved Foreign Account Debtors shall not at any time exceed the lesser of (i) US\$3,500,000, and (ii) an amount equal to 18% of the amount of the Borrowing Base at such date of determination, or (C) supported by a letter of credit acceptable to the Agent in its discretion;
- (i) it is denominated in either Canadian Dollars, United States Dollars, Euros or Pounds Sterling;
- (j) it is subject to a first priority (other than Priority Payables to the extent deducted in calculating the Operating Facility Borrowing Base) Security Interest in favour of the Agent that has been perfected under Applicable Law governing the perfection of such Security Interest created under the applicable Security;
- (k) such account is, and at all times will be, free and clear of all Security Interests (except Priority Payables to the extent deducted in calculating the Operating Facility Borrowing Base) and any other Permitted Encumbrances;
- (l) such account is not in respect of a builders' lien or similar holdbacks;
- (m) the Account Receivable does not arise from a sale or lease to or rendering of services to an Affiliate of any Loan Party or to an employee, agent, shareholder, director or other representative of any Loan Party, or, in each case, to their respective Affiliates;

- (n) in the case of the sale of goods, the subject goods have been sold to an Account Debtor on a true sale basis on open account, or subject to contract, and not on consignment, on approval or on a "sale or return" basis or subject to any other repurchase or return agreement, no material part of the subject goods has been returned, rejected, lost or damaged, and such account is not evidenced by chattel paper or an instrument of any kind unless possession or control of such chattel paper or instrument has been delivered to the Agent on terms acceptable to the Agent;
- (o) the Account Debtor of the Account Receivable is not a Governmental Authority except to the extent the Account Receivable is assignable without consent or all necessary consents to assignment have been obtained and all applicable statutory requirements for consent have been obtained; and
- (p) the Account Debtor obligated on the Account Receivable has not ceased to carry on business or become insolvent, admitted its inability to pay its debts as they come due or that it is otherwise insolvent, made a general assignment for the benefit of its creditors, or consented to or applied for the appointment of a receiver, trustee, custodian, liquidator for itself or any material part of its property, and no petition has been filed by or against the Account Debtor under any bankruptcy or reorganization law which is outstanding at such date.

Any Eligible Accounts Receivable which are at any time Eligible Accounts Receivable but which subsequently fail to meet any of the foregoing requirements shall immediately cease to be Eligible Accounts Receivable. Effective March 31, 2020, paragraph (h) of the above definition shall be deleted and replaced with the following:

- (h) it is owed by an Account Debtor whose principal place of business is located in Canada or the United States;

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Sections 13.1(b)(v) and 13.1(b)(vi) (subject to such consents, if any, as may be required under Section 13.1(b)(iii)).

"Eligible Inventory" means, at any time, all inventory of the Canadian Loan Parties, US Loan Parties, Dutch Loan Parties and the Mexican Loan Parties, valued in Canadian Dollars or U.S. Dollars on a net realizable value basis in accordance with GAAP; provided that, in any event, no inventory shall be deemed Eligible Inventory unless each of the following statements is accurate and complete (unless all of the Lenders in their sole discretion elect to otherwise include such inventory) (the Borrower will be deemed to have made each of these statements in respect of any inventory included as Eligible Inventory in the Operating Facility Borrowing Base):

- (a) such inventory is in good condition, merchantable, meets all material standards imposed by any Governmental Authority having regulatory authority over it or its use and/or sale and is not obsolete and is either currently usable or currently saleable in the normal course of business of the applicable Loan Party;
- (b) such inventory is:
 - (i) in possession of a Loan Party and (1) located on real property owned or leased by such Loan Party, and (2) within Canada, the U.S., Mexico or the Netherlands, provided, that if such inventory is located on real property leased by such Loan Party and if required by Section 9.2(p), the landlord of such real property shall have executed and delivered to the Agent a landlord consent or at the request of the Borrower or in lieu of such an agreement, the Lenders may in their reasonable discretion take a reserve against Eligible Inventory equal to up to three month's rent in respect of the applicable location;

- (ii) in the possession of a bailee and such bailee shall have executed and delivered to the Agent, a bailee letter in form and substance satisfactory to the Agent or at the request of the Borrower, the Lenders shall be permitted to take a reasonable reserve against Eligible Inventory related to the applicable Loan Party's economic exposure to such bailee; or
 - (iii) in transit in Canada, the U.S., Mexico or the Netherlands (provided that the jurisdictions through which such inventory is in transit are jurisdictions where the Security Interests in such inventory under the Security are validly perfected first priority Security Interests as required by Applicable Law) and between owned or leased locations of the bailee or the Loan Parties, and upon arrival at its destination, will comply with either clause (i) or (ii) above;
- (c) the Agent on behalf of the Lenders, has a first priority perfected Security Interest covering such inventory, and such inventory is, and at all times will be, free and clear of all Security Interests other than Permitted Encumbrances and unregistered Security Interests in respect of Priority Payables that are not yet due and payable;
- (d) such inventory does not include goods (i) that are not owned by a Loan Party, (ii) that are held by a Loan Party pursuant to a consignment agreement, or (iii) which have been sold by a Loan Party on a bill and hold basis;
- (e) such inventory is not subject to repossession on account of the "30 day goods" rule under section 81.1 of the *Bankruptcy and Insolvency Act* (Canada) or similar Applicable Law except to the extent the applicable vendor has entered into an agreement with the Agent, in form and substance satisfactory to the Agent, waiving its right to repossession;
- (f) such inventory does not consist of work in process, store room materials, samples, prototypes, or packing and shipping materials not considered for sale by such Loan Parties in the ordinary course of business;
- (g) such inventory does not consist of goods that are returned (as defective or not fit for purpose) or used goods taken in trade;
- (h) any portion of the value of such inventory which results from a profit or gain resulting from an inter-company sale or other disposition of such inventory shall be excluded;
- (i) any "seconds" or scrap inventory shall be valued at scrap value;
- (j) such inventory is not evidenced by negotiable documents of title unless delivered to the Agent with endorsements;
- (k) such inventory does not constitute Hazardous Substances;
- (l) such inventory is covered by casualty insurance;
- (m) such inventory is not inventory on reserve, the materials for which were financed by a customer of a Loan Party (until such time as all such financed amounts have been repaid to such customer or otherwise satisfied); and
- (n) the Agent has not determined that it may not sell or otherwise dispose of such inventory in accordance with the terms of the applicable Loan Documents without infringing upon the rights of another Person or violating any contract with any other Person.

“Environmental Laws” means all Applicable Law regarding the environment or occupational health and safety, or pursuant to which Environmental Liabilities would arise or have arisen, including relating to the Release or threatened Release of any Hazardous Substances or the generation, use, storage or transportation of any Hazardous Substances.

“Environmental Liabilities” means any and all obligations and liabilities for any Release, any environmental damage, any contamination or any other environmental problem caused or alleged to have been caused to any Person, property or the environment as a result of any Release or the condition of any Property, whether or not caused by a breach of Applicable Law, including all obligations and liabilities arising from or related to: any surface, underground, air, groundwater, or surface water contamination; the abandonment or plugging of any well; restorations and reclamations; the removal of or failure to remove any foundations, structures or equipment; the cleaning up, remediation or reclamation of storage sites; any Release; violation of pollution standards; and personal injury (including sickness, disease or death) and property damage arising from the foregoing.

“Equipment” means all vehicles, plant, machinery, equipment and other tangible personal Property now owned or hereafter acquired by any Loan Party, and all substitutions, replacements, additions and accessories thereto, but specifically excluding Property constituting inventory and any goodwill and other intangible assets.

“Equivalent Amount” in one currency (the **“First Currency”**) of an amount in another currency (the **“Other Currency”**) means, as of the date of determination, the amount of the First Currency which would be required to purchase such amount of the Other Currency at the average rate of exchange for interbank transactions quoted by the Bank of Canada at approximately the close of business on the Business Day immediately preceding such date. If the Bank of Canada does not announce such a rate, then the Agent will use the spot rate available from the Bloomberg service or, if such a rate is not available, its own spot rate or, if it does not have its own rate, a rate it determines to be reasonable.

“ERISA” means the *Employment Retirement Income Security Act of 1974* of the United States together with the regulations thereunder, as the same may be amended from time to time.

“Escrow Funds” has the meaning given to it in Section 10.4.

“Euro”, **“€”** and **“EUR”** means the single lawful currency of the European Union.

“EUR Letter of Credit Facility” means the Euro letter of credit facility provided by Canadian Imperial Bank of Commerce to the Loan Parties, provided such facility is unsecured and is otherwise on terms acceptable to the Agent.

“Event of Default” means any of the events or circumstances specified in Section 10.1.

“Excess Cash Flow” means, without duplication, for each Fiscal Year of the Borrower as determined on a combined consolidated basis:

- (a) EBITDA for such period; *minus*
- (b) all amounts (other than Financing Charges) added back to Net Income in the calculation of EBITDA (in accordance with GAAP), to the extent paid in cash during such period; *minus*
- (c) Unfunded Capital Expenditures of the Borrower to the extent paid in cash during such period; *minus*
- (d) all Permitted Distributions made by the Borrower to the extent paid in cash during such period; *minus*

- (e) Financing Obligations to the extent paid in cash during such period; *minus*
- (f) the aggregate amount of all voluntary principal prepayments of Term Debt permitted hereunder and to the extent paid in cash during such period; *minus*
- (g) the aggregate amount of all mandatory principal prepayments of the Term Facility made as required under Section 4.3 during such period; *minus*
- (h) the Change in Working Capital (except as a result of the reclassification of items from short-term to long-term or *vice versa*) during such period.

"Excess Cash Flow Amount" means, as at the last day of any Fiscal Year, an amount equal to one hundred percent (100%) Excess Cash Flow for such Fiscal Year.

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of a Loan Party hereunder, (a) Taxes imposed on or measured by its net income or capital or purchases, by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Agent or Lender is located, and (c) any U.S. federal withholding taxes for or in respect of FATCA.

"Facilities" means collectively, the Term Facility, the WIP Facility, the Operating Facility, the Swingline Facility and the LC Facility and **"Facility"** means any of them.

"FATCA" means sections 1471 through 1474 of the United States Internal Revenue Code of 1986 (amended from time to time) (the **"Code"**), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements enacted pursuant to the foregoing, including any current or future regulations or official interpretations with respect to such intergovernmental agreement.

"Federal Funds Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the annual rates of interest on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such day is not a Business Day, such weighted average for the immediately preceding Business Day for which the same is published or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it.

"Financial Assistance" means, with respect to any Person and without duplication, any loan, Guarantee, indemnity, assurance, acceptance, extension of credit, loan purchase, share purchase, equity or capital contribution, investment or other form of direct or indirect financial assistance or support of any other Person or any obligation (contingent or otherwise) primarily for the purpose of enabling another Person to incur or pay any Debt or to comply with agreements relating thereto, or to assure or protect creditors of the other Person against loss and includes any Guarantee of or indemnity in respect of the Debt of the other Person and any absolute or contingent obligation to (directly or indirectly):

- (a) advance or supply funds for the payment or purchase of any Debt of any other Person;
- (b) purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any Person to make payment of Debt or to assure a creditor against loss;

- (c) Guarantee, indemnify, hold harmless or otherwise become liable to any creditor of any other person from or against any losses, liabilities or damages of the Person;
- (d) make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof; or
- (e) make an advance, loan or other extension of credit to or to make any subscription for equity, equity or capital contribution, or investment in or to maintain the capital, working capital, solvency or general financial condition of another Person.

The amount of any Financial Assistance is the amount of any loan or direct or indirect financial assistance or support, without duplication, given, or all Debt of the obligor to which the Financial Assistance relates, unless the Financial Assistance is limited to a determinable amount, in which case the amount of the Financial Assistance is the determinable amount.

"Financial Covenants" means the covenants set out in Section 9.1.

"Financial LC" means a stand-by letter of credit if it serves as a payment guarantee of a Borrower's financial obligations and is treated as a direct credit substitute for purposes of applicable capital adequacy guidelines.

"Financial Lease" means any lease of property, real or personal, which would, in accordance with GAAP, be required to be classified and accounted for as a lease (other than a premises lease) on a balance sheet of the Borrower.

"Financing Charges" means, for any fiscal period, without duplication, interest expense determined on a combined consolidated basis in accordance with GAAP, as the same would be set forth or reflected in a combined consolidated statement of income (loss) and deficit of the Borrower.

"Financing Obligations" means, in respect of the 12-month period ending on the last day of a Fiscal Quarter and as determined on a combined consolidated basis in respect of the Borrower:

- (a) Financing Charges; plus
- (b) the aggregate amount of all scheduled payments of Permitted Debt during such period;

"Fiscal Quarter" means the three month period commencing on the first day of each Fiscal Year and each successive three month period thereafter during such Fiscal Year.

"Fiscal Year" means the Borrower's fiscal year, currently commencing on January 1 of each year and ending on December 31 of such year.

"Fixed Charge Coverage Ratio" means, measured as at the end of each Fiscal Quarter of the Borrower, the ratio of:

- (a) EBITDA during the twelve-month period ending on the last day of such Fiscal Quarter less (i) cash taxes of the Borrower to the extent paid during such period, (ii) Distributions paid in cash during such period and (iii) Unfunded Capital Expenditures of the Borrower (on a consolidated basis) made during such period; to
- (b) the sum of Financing Obligations paid in cash during such period.

"Fronted Letter of Credit" means a Letter of Credit issued by a Fronting Lender under the LC Facility.

"Fronting Fee" has the meaning given to it in Section 5.5(b).

"Fronting Fee Rate" means, for the purposes of fees payable by the Borrower pursuant to Section 5.5(b) in connection with Fronted Letters of Credit, the per annum fee to be charged by a Fronting Lender for the issuance by it of Fronted Letters of Credit, in the amount of 25 bps or such other rate as is agreed to in writing between the Borrower and the applicable Fronting Lender.

"Fronting Lender" means each LC Lender who from time to time agrees with the Agent and the Borrower, pursuant to a Fronting Lender Acknowledgement substantially in the form of Schedule I, to issue or have outstanding Fronted Letters of Credit, in either case for so long as or such LC Lender has an LC Facility Commitment hereunder or has issued Fronted Letters of Credit hereunder which remain outstanding.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

"Good Unbilled Revenue" means Unbilled Revenue of the Borrower from Canadian or U.S. debtors which when billed would constitute Eligible Accounts Receivable.

"Governmental Action" means any authorization, consent, approval, waiver, order, decree, license, exemption, permit, registration, filing, qualification or declaration of or with any Governmental Authority (other than routine reporting requirements) or the giving of notice to any Governmental Authority or any other action in respect of a Governmental Authority.

"Governmental Authority" means any federal, state, provincial, county, local or municipal government; any governmental body, agency, authority, board, bureau, department or commission (including any taxing authority); any instrumentality or office of any of the foregoing (including any court or tribunal) exercising executive, legislative, judicial, regulatory or administrative functions; or any entity directly or indirectly controlled by any of the foregoing.

"Guarantee" means any undertaking to assume, guarantee, indemnify, endorse (other than the routine endorsement of cheques in the ordinary course of business), contingently agree to purchase or to provide funds for the payment of, or otherwise become liable in respect of, any indebtedness, financial obligations or financial liabilities of any Person; provided that the amount of each Guarantee shall be deemed to be the amount of the indebtedness, financial obligations or financial liabilities guaranteed thereby, unless the Guarantee is limited to a specified amount or to realization exclusively on specified assets in which case the amount of such Guarantee shall be deemed to be the lesser of such specified amount or the fair market value of such specified assets, as the case may be, or the amount of such indebtedness, obligations or liabilities.

"Guarantors" means, collectively, the Borrower and all Material Subsidiaries of the Borrower from time to time, and their respective successors and assigns, and **"Guarantor"** means any one of them.

"Hazardous Substances" means, collectively, any materials, compounds, pollutants, contaminants, chemicals, substances (including dangerous substances, noxious substances, toxic substances, and deleterious substances), wastes and recyclables (including industrial wastes, toxic wastes, hazardous wastes, special wastes, dangerous or non-dangerous oilfield wastes, recyclable wastes and subject wastes), flammable or explosive materials, radioactive materials, petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, or any other substances, materials or wastes now or in the future declared or defined to be regulated or controlled in or pursuant to Environmental Laws.

"including" means including, without limitation, and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it, and **"includes"** shall be construed in a like manner.

"Indemnified Party" has the meaning given to it in Section 11.7(a).

"Information" has the meaning given to it in Section 13.4.

"Innova Employeecos" means 1948398 Alberta Ltd., 1948376 Alberta Ltd., 1948354 Alberta Ltd., 1949040 Alberta Ltd., 1949035 Alberta Ltd., 1948384 Alberta Ltd., 2058548 Alberta Ltd., 2058814 Alberta Ltd., 1065630 B.C. Unlimited Liability Company, 1065651 B.C. Unlimited Liability Company and 1065642 B.C. Unlimited Liability Company.

"Innova LP" means Innova Global Limited Partnership.

"Innova Managementcos" means 1941263 Alberta Ltd. and 1941198 Alberta Ltd.

"Innova Operating" means Innova Global Operating Ltd.

"Insolvency Event" means an Event of Default specified in Sections 10.1(h) or 10.1(i).

"Insured Receivables" means Accounts Receivable insured on acceptable terms by a recognized accounts receivable insurer, as determined by the Agent in its sole discretion.

"Intellectual Property" means all patents, trademarks, tradenames, copyrights, technology, software and other property customarily considered to be intellectual property and used in or necessary for the conduct of the Business of the Loan Parties.

"Interest Date" means the last Business Day of each month.

"Interest Swap" means a transaction entered into between a Person and a counterparty pursuant to an ISDA Master Agreement that is an interest rate swap transaction, interest rate option, cap transaction, floor transaction, collar transaction or other similar interest rate related transactions, the purpose of which is to manage such Person's exposure to fluctuations in interest rates.

"Investment" in any Person means any direct or indirect acquisition of any equity interest in any other Person, which does not otherwise constitute an Acquisition. In determining the amount of any Investment involving a transfer of any property other than cash, such property shall be valued at its fair market value at the time of such transfer.

"Investment Grade Debtor" means (a) an Account Debtor whose long term debt obligations (or those of its parent) are rated no worse than BBB(low) by DBRS Ltd. or BBB- by Standard & Poor's or Baa3 by Moody's Investors Services Inc.; or (b) an Account Debtor that does not satisfy the requirements of paragraph (a) above but in respect of which the Agent has agreed in advance to deem such Account Debtor an Investment Grade Debtor and such Account Debtor is described in the most recent Borrowing Base Certificate.

"ISDA Master Agreement" means either the 1992 form of Master Agreement (Multi Currency-Cross Border) or the 2002 form of Master Agreement or any successor form thereof, in each case published and as from time to time amended, restated or replaced by the International Swaps and Derivatives Association, Inc. (or its predecessor) and as used in this Agreement in relation to Lender Swaps means the form of such agreement as entered into between the applicable Loan Party and the applicable Swap Lender.

"Issue Date" means, as to any Letter of Credit, the date on which such Letter of Credit is issued.

“Judgment Currency” has the meaning given to it in Section 13.2.

“Judicial Order” has the meaning given to it in Section 3.14(c).

“LC Application” means an application on a Fronting Lender’s standard form of letter of credit application submitted to such Fronting Lender, as applicable, by the Borrower requesting such Lender to issue a Letter of Credit hereunder subject to such changes thereto as are requested by the Borrower and agreed to by such Lender, and in any event consistent with the terms of this Agreement.

“LC Disbursement” means any payment by a Fronting Lender under a Letter of Credit plus all Taxes and reasonable and customary fees, charges and other costs and expenses incurred by such Fronting Lender in connection with such payment.

“LC Expenses” has the meaning given to it in Section 3.12(a).

“LC Facility” has the meaning given to it in Section 3.1(a)(iv).

“LC Facility Commitment” means, with respect to each LC Lender, such LC Lender’s obligation to make Accommodations under the LC Facility available to the Borrower, subject to the terms of this Agreement, in an aggregate amount not at any time in excess of the amount set forth under such Lender’s name on Schedule A as it may be amended, supplemented, restated or replaced from time to time (or in any Assignment and Assumption executed hereafter) as such Lender’s LC Facility Commitment, as such amount may hereafter be cancelled, reduced, increased or terminated from time to time pursuant to the provisions of this Agreement.

“LC Lender” means a Lender in its capacity as a provider of an LC Facility Commitment and in no other capacity.

“LC Obligations” means the obligation of the Borrower at any time for an amount equal to the aggregate undrawn amount of all Letters of Credit then outstanding.

“LC Payment Period” has the meaning given to it in Section 5.5(a).

“Lender BA Suspension Notice” has the meaning given to it in Section 11.4(b)(ii).

“Lender Distress Event” means, in respect of a given Lender, such Lender or its Lender Parent (a) is subject to a forced liquidation, merger, sale or other change of control supported in whole or in part by Guarantees or other support (including the nationalization or assumption of ownership or operating control by the Government of the United States, Canada or any other Governmental Authority); or (b) is otherwise adjudicated as, or determined to be, insolvent or bankrupt, in each case, by any Governmental Authority having regulatory authority over such Lender or Lender Parent or their respective assets; provided that, for certainty, a Lender Distress Event shall not have occurred solely by virtue of the ownership or acquisition of any equity interest in such Lender or its Lender Parent by any Governmental Authority provided that such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Lender Insolvency Event” means, in respect of a given Lender, such Lender or its Lender Parent:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent, is deemed insolvent by Applicable Law or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) (i) institutes, or has instituted against it by a regulator, supervisor or any similar Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, (A) a proceeding pursuant to which such Governmental Authority takes control of such Lender's or Lender Parent's assets, (B) a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or winding-up law or other similar law affecting creditors' rights, or (C) a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar Governmental Authority; or (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or winding-up law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a Person or entity not described in clause (i) above and either (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or a substantial portion of all of its assets;
- (g) has a secured party take possession of all or a substantial portion of all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case, within 15 days thereafter;
- (h) causes or is subject to any event with respect to it which, under the Applicable Law of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) through (g) above, inclusive; or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing.

"Lender Libor Suspension Notice" has the meaning given to it in Section 11.4(a)(iii).

"Lender Outstandings" means collectively all Borrowings and Permitted Swap Indebtedness.

"Lender Parent" means any Person that directly or indirectly controls a Lender and, for the purposes of this definition, **"control"** shall have the same meaning as set forth in the definition of **"Affiliate"** contained herein.

"Lender's Proportion" shall mean the Lender's Proportion of such Lender in effect immediately prior to such cancellation or termination; provided however, that when such term is used in reference to or in relation to:

- (a) the Term Lenders, the Lender's Proportion for a Term Lender shall be the proportion that the Term Facility Commitment of such Term Lender bears to the Total Term Facility Commitment at such time;

- (b) the WIP Lenders, the Lender's Proportion for a WIP Lender shall be the proportion that the WIP Facility Commitment of such WIP Lender bears to the Total WIP Facility Commitment at such time;
- (c) the Operating Lenders, the Lender's Proportion for an Operating Lender shall be the proportion that the Operating Facility Commitment of such Operating Lender bears to the Total Operating Facility Commitment at such time;
- (d) the Swingline Facility, the Lender's Proportion for the Swingline Lender shall be 100% and for all other Lenders shall be 0%; and
- (e) the LC Lenders, the Lender's Proportion for an LC Lender shall be the proportion that the LC Facility Commitment of such LC Lender bears to the Total LC Facility Commitment at such time.

After the Adjustment Time, the Lender's Proportion of each Lender shall be calculated based on its Commitment as a proportion of the Total Commitment and without any distinction as to which Facility may be relevant to such Lender, and when used in Section 12.12(b) in relation to both Lenders and Swap Lenders, the "Lender Outstandings" of Swap Lenders for the purposes of such calculation shall be their Permitted Swap Indebtedness as calculated after the Adjustment Time.

"Lender Swap" means any Swap entered into by a Loan Party with a Swap Lender, whether or not such Lender remains a Lender thereafter.

"Lenders" means each of the financial institutions named on the signature pages hereto as Lenders, including the Swingline Lender (and including ATB, except in its capacity as the Agent), any other financial institution which is an Eligible Assignee that has executed an Assignment and Assumption pursuant to Section 13.1, which Assignment and Assumption has been executed by the assignee and the Agent, and **"Lender"** means any one of them.

"Letter of Credit" means any letter of credit or bank letter of guarantee issued by a Fronting Lender, as the same may be amended, supplemented, extended or otherwise modified from time to time in accordance with the terms hereof and thereof. Each such Letter of Credit shall be designated as either:

- (a) a Financial LC; or
- (b) a Non-Financial LC;

and **"Letters of Credit"** shall refer collectively to all Letters of Credit outstanding at any time.

"Letter of Credit Fee" means a fee as set out in the definition of "Applicable Margin" and expressed as a rate per 365 day period with respect to Letters of Credit.

"Libor" means, with respect to any Libor Interest Period applicable to a Libor Loan, the rate per annum, based on a 360 day year, determined by the Agent to be the offered rate that appears on the page of the LIBOR 01 screen of Reuters Limited (or any successor or other commercially available source providing quotations of Libor as designated by the Agent from time to time) that displays the average ICE Benchmark Administration Limited (or its successor) Interest Settlement Rate for deposits in U.S. Dollars (for delivery on the first day of such Libor Interest Period) with a term equal to such Libor Interest Period, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the first day of such Libor Interest Period. If such "LIBOR 01 Page" is not available, then **"Libor"** shall mean, with respect to any Libor Interest Period applicable to a Libor Loan, the rate determined by the Agent based on a 360 day year, rounded upwards, if necessary, to the nearest whole multiple of 1/100%, at which the Agent, in accordance with its normal practice, would be prepared to offer to leading banks in the London interbank market for delivery by the Agent on the first day of the applicable Libor Interest Period for a

period equal to the number of days in such Libor Interest Period, deposits in U.S. Dollars of amounts comparable to the principal amount of such Libor Loan to be outstanding during such Libor Interest Period, at or about 11:00 a.m. (London, England time) two Business Days prior to a Drawdown Date, Conversion Date or Rollover Date, as the case may be, for such Libor Interest Period; provided that, if the rate determined above shall ever be less than 84 bps, such rate shall be deemed to be 84 bps for the purposes of this Agreement.

"Libor Interest Date" means the date falling on the last day of each Libor Interest Period; provided that if the Borrower selects a Libor Interest Period for a period longer than three months, the Libor Interest Date shall be each date falling every three months after the beginning of such Libor Interest Period and the date falling on the last day of such Libor Interest Period.

"Libor Interest Period" means, with respect to each Libor Loan, the period (subject to availability) of approximately one (1) month, two months, three months or six months (as selected by the Borrower and notified to the Agent pursuant to Section 3.5 or 3.6) commencing on and including the Drawdown Date, Conversion Date or Rollover Date, as the case may be, applicable to such Libor Loan and ending on and including the last day of such period; provided that no Libor Interest Period may be selected which ends after the Maturity Date.

"Libor Loan" means the advances or any portion thereof made available by the Lenders to the Borrower pursuant to any of Sections 3.5, 3.17 or 3.18 and outstanding from time to time, which are denominated in U.S. Dollars and on which the Borrower has agreed to pay interest in accordance with Section 5.3.

"Loan Documents" means, collectively, this Agreement, the Security, each Bankers' Acceptance, each application and indemnity with respect to a Letter of Credit, arrangement/syndication fee agreements, agency agreements, and all other agreements, certificates, instruments and documents delivered by or on behalf of any Loan Party in connection herewith or therewith from time to time and all future renewals, extensions, or restatements of, or amendments, modifications or supplements to, all or any part of the foregoing, and, **"Loan Document"** means any one of them, and, when used in relation to any Person, the term **"Loan Documents"** shall mean and refer to the Loan Documents executed and delivered by such Person.

"Loan Parties" means, collectively, the Canadian Loan Parties, the US Loan Parties, the Mexican Loan Parties, the Dutch Loan Parties, the UK Loan Party, the Australian Loan Party and the other Guarantors and **"Loan Party"** means any one of them.

"Loan Party Guarantee" means a Guarantee in the form included in Schedule G and executed by a Guarantor with such changes as the Agent may approve.

"Loans" means Prime Loans, U.S. Base Rate Loans and Libor Loans.

"Loss" has the meaning given to it in Section 11.7(a).

"Majority Lenders" means:

- (a) during the continuance of a Default or an Event of Default when there are any Borrowings, and subject to Section 10.5(a), those Lenders to whom there is owing 66⅔% or more of the aggregate Borrowings under the Facilities; and
- (b) at any other time, those Lenders whose Commitments are, in the aggregate, at least 66⅔% of the Total Commitment;

provided that at all times when there are two or less Lenders, Majority Lenders shall mean all Lenders.

"Mark-to-Market" means, in respect of any Swap and for any day on which the Mark-to-Market is calculated, the amount, if any, that would be payable by any Loan Party to a counterparty (expressed as a positive number, a **"Positive Mark-to-Market"**) or by such counterparty to such Loan Party (expressed as a negative number, a **"Negative Mark-to-Market"**), estimated by making at mid-market the calculations contemplated by the ISDA Master Agreement between such counterparty, on the one hand, and such Loan Party, on the other hand, as if such ISDA Master Agreement were being terminated as a result of a Termination Event (as defined in the ISDA Master Agreement) with two Affected Parties (as defined in the ISDA Master Agreement) on that day of calculation and **"Marking-to-Market"** has a corresponding meaning.

"Material Adverse Effect" means any event, circumstance, occurrence or change which would reasonably be expected to:

- (a) impair in any material manner the ability of the Borrower or any Guarantor to perform any material obligation under any Loan Document;
- (b) have any material and adverse effect upon the validity or enforceability of any of the Security or upon the ranking of any of the Security Interests granted thereby or the material rights or remedies intended or purported to be granted to the Agent under or pursuant to the Security; or
- (c) be material and adverse to the Business, operations, assets, condition (financial or otherwise) or results of operations of the Loan Parties, on a combined consolidated basis.

"Material Agreement" means any contract, undertaking, agreement or other instrument to which any Loan Party is a party or by which it or any of its Property is bound or to which it or any of its Property is subject, pursuant to which any Loan Party (a) generated revenues or incurred expenditures, in either case, greater than or equal to Cdn.\$5,000,000 during the immediately preceding Fiscal Year or (b) is projected to generate revenues or incur expenditures, in either case greater than or equal to Cdn.\$5,000,000 during the then current or immediately succeeding Fiscal Year.

"Material Subsidiary" means:

- (a) any Subsidiary of the Borrower which, directly or indirectly (i) owns 5% or more of Total Assets as shown on the combined consolidated balance sheet in the financial statements of the Borrower most recently provided to the Agent, or (ii) accounts for 5% or more of EBITDA for the period covered by the financial statements of the Borrower most recently provided to the Agent;
- (b) any Subsidiary of the Borrower which has a direct or indirect ownership interest in a Material Subsidiary; and
- (c) any other Subsidiary of the Borrower designated (and not de-designated) as a Material Subsidiary by the Borrower from time to time pursuant to, and in compliance with, Section 9.5.

"Maturity Date" means April 30, 2020.

"Mex Sub 1" means Shelf Company No. 79, S. de R.L. de C.V., a corporation incorporated under the laws of Mexico, and its successors and permitted assigns.

"Mex Sub 2" means Shelf Company No. 82, S. de R.L. de C.V., a corporation incorporated under the laws of Mexico, and its successors and permitted assigns.

"Mexican Loan Parties" means Mex Sub 1 and Mex Sub 2 and **"Mexican Loan Party"** means any of them.

"Moody's" means Moody's Investors Services, Inc. and any successors thereto.

"Negative Mark-to-Market" has the meaning given to it in the definition of Mark-to-Market.

"Net Income" means, for any fiscal period, the comprehensive income, net of income tax, of the Borrower determined on a combined consolidated basis in accordance with GAAP, as shown on a combined consolidated statement of income (loss) and deficit in the financial statements of the Borrower most recently provided to the Agent for such period.

"New Rules" has the meaning given to it in Section 11.2.

"Non-Acceptance Discount Rate" means, for any day, the Discount Rate in paragraph (b) of the definition thereof, other than as it relates to ATB, where it shall mean the CDOR Rate.

"Non-Acceptance Lender" means a Lender which does not accept bankers' acceptances in the ordinary course of its business.

"Non-Financial LC" means a Letter of Credit that is not a Financial LC.

"Non-Investment Grade Debtor" means an Account Debtor that is not an Investment Grade Debtor.

"Non-Material Subsidiary" means any Subsidiary of the Borrower which is not a Material Subsidiary.

"Obligations" at any time means, in relation to the Loan Documents and the Credit Documents, all indebtedness, financial obligations and financial liabilities of each Loan Party to the Secured Parties, direct or indirect, present or future, absolute or contingent and matured or not, including the aggregate at any such time of:

- (a) the Lender Outstandings;
- (b) all accrued and unpaid interest outstanding in respect of Prime Loans, U.S. Base Rate Loans and Libor Loans and all other accrued and unpaid interest and fees payable pursuant to Article 5; and
- (c) all accrued and unpaid fees, expenses, reimbursement obligations, indemnities (including environmental indemnities included in the Security) and other amounts of any nature or kind that are payable under this Agreement or any other Loan Documents or Credit Documents, but not included in any of the foregoing, whether matured or unmatured.

"One Month BA Rate" means, on any day, the CDOR Rate (determined as of 8:00 a.m. Calgary time on such day) which would be applicable in respect of an issuance of Bankers' Acceptances with a term to maturity of one month in an aggregate amount of Cdn.\$10,000,000 issued on such day, or if such day is not a Business Day, then on the immediately preceding Business Day.

"Operating Accommodations" has the meaning given to it in the definition of Accommodations.

"Operating Borrowings" has the meaning given to it in the definition of Borrowings.

"Operating Facility" has the meaning given to it in Section 3.1(a)(iii).

"Operating Facility Borrowing Base" means, at any time of determination, the sum of:

- (a) (i) 90% of Insured Receivables; (ii) 85% of Eligible Accounts Receivable owed by Investment Grade Debtors; and (iii) 75% of Eligible Accounts Receivable owed by Non-Investment Grade Debtors; plus
- (b) 50% of the net book value (as determined in accordance with GAAP) of all Eligible Inventory to a maximum of 50% of the aggregate of Eligible Accounts Receivable and Insured Receivables of the Borrower on a combined consolidated basis; plus
- (c) the Unmargined Contribution; less
- (d) a portion of the Priority Payables allocated *pro rata* between the Operating Facility Borrowing Base and the WIP Facility Borrowing Base,

as determined by the Agent and the Majority Lenders and the Borrower acting reasonably.

“Operating Facility Borrowing Base Shortfall” has the meaning assigned to such term in Section 3.3(e).

“Operating Facility Commitment” means, with respect to each Operating Lender, such Lender’s obligation to make Accommodations under the Operating Facility available to the Borrower, subject to the terms of this Agreement, in an aggregate amount not at any time in excess of the amount set forth under such Lender’s name on Schedule A as it may be amended, supplemented, restated or replaced from time to time (or in any Assignment and Assumption executed hereafter) as such Lender’s Operating Facility Commitment, as such amount may hereafter be cancelled, reduced, increased or terminated from time to time pursuant to the provisions of this Agreement.

“Operating Facility Commitment Reduction Date” has the meaning assigned to such term in Section 3.1(b).

“Operating Lender” means a Lender in its capacity as a provider of an Operating Facility Commitment and in no other capacity.

“Organizational Chart” means the organizational chart contained in Schedule K hereof.

“Original Credit Agreement” has the meaning assigned to such term in Recital A.

“Original Operating Facility” means the Operating Facility provided for in the Original Credit Agreement.

“Original WIP Facility” means the WIP Facility provided for in the Original Credit Agreement.

“Participant” has the meaning given to it in Section 13.1(d).

“Participation Date” has the meaning given to it in Section 3.10(b).

“Pension Laws” means the *Employment Pension Plans Act* (Alberta), the *Employment Pension Plans Regulations* (Alberta), the *Income Tax Act* (Canada), the *Income Tax Regulations* (Canada), ERISA and all other applicable provincial, state or federal pension standards legislation and regulations thereunder and **“Pension Law”** means any one of them.

“Pension Plan” means each pension plan required to be registered under Pension Laws which is maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Loan Party in respect of any Person’s employment in Canada or the United States with such Loan Party but does not include (a) the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively; or (b) plans to which any Loan Party contributes which are not maintained or administered by the Loan Party or any of its Affiliates.

"Permitted Acquisition" means any Acquisition in respect of which each of the following criteria shall have been satisfied:

- (a) the business or operating assets related to the Acquisition are located in Canada or the United States;
- (b) the Acquisition is not a hostile Acquisition;
- (c) the Acquisition is related to the Business;
- (d) the total consideration for each Acquisition is Cdn.\$1,000,000 and the maximum aggregate in total consideration for all Acquisitions in any one Fiscal Year does not exceed Cdn.\$5,000,000. Total consideration for the purposes hereof shall exclude any Excess Cash Flow used and any additional equity or subordinated debt provided to aid in financing such Permitted Acquisition;
- (e) the Agent has received 30 days prior to the closing of the acquisition satisfactory due diligence materials including without limitation, the purchase and sale agreement, financial information, any fairness opinions, and appraisals (if applicable);
- (f) the Agent has received evidence that all operating permits, approvals and consents are in place;
- (g) the Agent has received evidence of completion of legal and environmental due diligence along with an officer's certificate certifying there are no environmental liabilities or outstanding litigation that could cause a Material Adverse Effect;
- (h) the Agent has received evidence of the business or assets acquired shall be free and clear of all liens except for Permitted Encumbrances;
- (i) at or immediately following the closing of the Acquisition, the Agent shall receive (A) a guarantee by each acquired entity in which it guarantees all the obligations of the Borrower (if the acquisition is of the entity's equity), (B) such security as the Lenders view as necessary in order to create a first priority perfected encumbrance (subject to Permitted Encumbrances) in all assets and/or stock of the acquired entity, and (C) such legal opinions as may be reasonably required by the Agent;
- (j) after giving effect to any Drawdown required to close an Acquisition, the Borrower shall be in compliance with the Financial Covenants. For the purposes of foregoing:
 - (i) In calculating Term Debt, credit outstanding under the Facilities shall be deemed to be such amount on a pro forma basis after giving effect to such drawdown under the Facilities and the outstanding Term Debt on the last day of the immediately preceding quarter; and
 - (ii) in calculating EBITDA, it shall be deemed to be EBITDA of the Borrower for the most recently completed four quarters plus the most recently completed four quarters EBITDA from the acquisition (if applicable) and as agreed to by the Lenders; and
- (k) no Default or Event of Default has occurred and is continuing immediately prior to the Acquisition, or would occur as a result thereof.

"Permitted Debt" means, in respect of the Loan Parties:

- (a) the Lender Outstandings;
- (b) Creditcard Obligations up to Cdn.\$1,000,000;
- (c) Cash Management Obligations;
- (d) Swap Indebtedness;
- (e) Debt in respect of Purchase Money Security Interests, Financial Leases, Sale/Leasebacks or secured by other Security Interests (excluding general Security Interests such as floating charges and general security agreements with respect to all or substantially all of the personal property of a Loan Party, or all or substantially all of the receivables of a Loan Party) provided that the aggregate outstanding principal amount of such Debt does not exceed Cdn.\$2,000,000 at any time for all Loan Parties;
- (f) the TriEmissions LP Mezz Debt, the TriEmissions US LP Mezz Debt and Debt under the Braden Short Term Notes, in each case , including all principal and accrued and unpaid interest thereon, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion;
- (g) Debt in respect of the Braden Permanent Notes, , including all principal and accrued and unpaid interest thereon, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion;
- (h) the TriEmissions US LP Sub Debt, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion;
- (i) the TriEmissions LP 2018 Debt and the EDC 2018 Debt, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion;
- (j) Debt in respect of performance bonding arrangements not to exceed Cdn.\$125,000,000 in the aggregate, provided that such Debt is subordinated to the Secured Obligations on terms and conditions acceptable to the Agent and the Lenders in their sole discretion;
- (k) Debt of a Loan Party to another Loan Party;
- (l) Debt under the EUR Letter of Credit Facility and the ABN Facility, provided that the aggregate principal amount of such Debt does not exceed EUR\$14,000,000 at any time for all Loan Parties on a combined consolidated basis;
- (m) Debt not to exceed Cdn.\$2,500,000 in the aggregate at any time in respect of any Cure Action including all principal and accrued and unpaid interest thereon, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion; and
- (n) other Debt not described in paragraphs (a) through (m) above, provided that the aggregate outstanding principal amount of such Debt does not exceed Cdn.\$1,000,000 at any time.

"Permitted Dispositions" means, in respect of the Loan Parties:

- (a) sales of inventory of the Business in accordance with prudent industry practice;
- (b) any sale, lease, transfer or other disposition of any tools, implements, equipment or machinery which have become worn out, unserviceable, obsolete, unsuitable or unnecessary in operations or activities relating to the Business;
- (c) assets traded in the ordinary course of business for assets of equal or greater value;
- (d) leases and licenses granted to Persons in the ordinary course of business;
- (e) abandonments, surrenders or terminations of immaterial rights or interests which are effected in accordance with prudent industry practice;
- (f) any sale, lease, transfer or other disposition of Property by a Loan Party to another Loan Party; and
- (g) any other sale, lease, transfer or other disposition of assets provided that all proceeds thereof (net of expenses of such disposition) are re-invested or are applied by the Borrower as required by Section 4.3,

provided that with respect to the Permitted Dispositions referred to in clauses (f) and (g) above, no Event of Default exists at the time such Permitted Disposition is made or would reasonably be expected to result therefrom.

"Permitted Distributions" means, in respect of the Loan Parties:

- (a) Distributions by a Loan Party to another Loan Party;
- (b) Distributions by the Borrower or Innova LP to each Innova Managementco and Innova Employeeco to pay for income taxes payable by such Persons directly related to the operations and structure of the Borrower and for the reimbursement of other fees necessary to maintain the good standing of the Borrower, reasonable out of pocket administrative expenses, and reasonable accounting and legal fees incurred on behalf of the Borrower, not to exceed the highest combined federal and provincial corporate tax rate of pre-tax income of the Borrower in any Fiscal Year; and
- (c) Distributions by the Borrower or Innova LP for income taxes payable by the Sponsor (or an Affiliate thereof) directly related to the operations and structure of the Borrower or Innova LP, and for the reimbursement of other fees necessary to maintain the good standing of the Borrower or Innova LP, including reasonable out of pocket administrative expenses, and reasonable accounting and legal fees incurred on behalf of the Borrower or Innova LP, not to exceed, when combined with all taxes payable by the Borrower or Innova LP, the highest combined federal and provincial corporate tax rate of pre-tax earnings in each Fiscal Year;

provided that, except in the case of the Permitted Distributions described in (b) and (d) above, no Default or Event of Default exists at the time any such Distribution is made or would reasonably be expected to result therefrom.

"Permitted Encumbrances" means, in respect of the Loan Parties:

- (a) Security Interests for Taxes, assessments or governmental charges which are not due or delinquent, or the validity of which any Loan Party is diligently contesting in good faith

and by appropriate proceedings if such contest involves no material risk of loss of any Property of such Loan Party the loss of which would have a Material Adverse Effect;

- (b) the Security Interests of any judgment rendered in an amount less than Cdn.\$500,000, or claim filed in an amount less than Cdn.\$500,000, against any Loan Party, which such Loan Party is diligently contesting in good faith and by appropriate proceedings if such contest involves no material risk of loss of any Property of such Loan Party the loss of which would have a Material Adverse Effect;
- (c) Security Interests imposed or permitted by law such as carriers' liens, builders' liens, materialmen's liens and other liens, privileges or other charges of a similar nature which relate to obligations not due or delinquent or, if due or delinquent, any lien, privilege or charge which any Loan Party is diligently contesting in good faith and by appropriate proceedings if such contest involves no material risk of loss of any Property of such Loan Party the loss of which would have a Material Adverse Effect;
- (d) Security Interests arising in the ordinary course of and incidental to construction or current operations which have not been filed pursuant to law against any Loan Party or in respect of which no steps or proceedings to enforce such Security Interests have been initiated or which relate to obligations which are not due or delinquent or, if due or delinquent or if a filing or enforcement proceeding in respect thereof has been made or initiated, any Security Interest which any such Loan Party is contesting in good faith and by appropriate proceedings if such contest involves no material risk of loss of any Property of such Loan Party the loss of which would have a Material Adverse Effect;
- (e) Security Interests arising in connection with workers' compensation, employment insurance, pension and employment or similar laws or regulations in respect of amounts which are not due or delinquent;
- (f) Security Interests in favour of any public utility or Governmental Authority when required by such public utility or Governmental Authority in the ordinary course of the business of any Loan Party in connection with operations of such Loan Party if such Security Interest does not, either alone or in the aggregate, materially impair the conduct of the business of such Loan Party;
- (g) easements, rights-of-way and rights in the nature of easements, servitudes, zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licenses, and similar rights in land (including rights-of-way and servitudes for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, gas mains, steam and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other Persons;
- (h) the reservations, limitations, provisos and conditions in any original grants from the Crown of any land or interests therein and statutory exceptions, qualifications and reservations in respect of title;
- (i) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any lease, sublease, license or sublicense permitted by this Agreement;
- (j) deposits to secure performance of (i) bids, tenders, contracts (other than contracts for the payment of money) or (ii) leases of real property entered into in the ordinary course of business, in each case, to which the Loan Party is a party;

- (k) Security Interests resulting from the deposit of cash or Cash Equivalents as security when the Loan Party is required to do so by a Governmental Authority or by normal business practice in connection with contracts, licenses or tenders, including Security Interests granted on contracts or the issuance of letters of credit, in each case, to secure surety or performance bonds entered into in normal business practice, or similar matters in the ordinary course of business and for the purpose of carrying on the same;
- (l) Purchase Money Security Interests or Security Interests in respect of Financial Leases and Sale/Leasebacks or other Debt if the aggregate outstanding principal amount of indebtedness, obligations or liabilities secured thereby is otherwise Permitted Debt;
- (m) registration filings in respect of any operating lease entered into in the ordinary course of business (which, for certainty, shall not include any operating leases of personal property entered into in connection with any Sale/Leaseback);
- (n) bankers' liens, rights of set-off and other similar liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained in accordance with Section 9.2(i), in each case, granted in the ordinary course of business securing amounts owing with respect to Cash Management Services;
- (o) landlord's liens or any other rights of distress reserved in or exercisable under any lease of real property for rent and for compliance with the terms of such lease; provided that such rent is not then overdue and such Loan Party is then in compliance in all material respects with such terms and the lien only attaches to the property that is the subject of such lease;
- (p) Security Interests in favour of the Agent (for the benefit of the Secured Parties) to secure the Secured Obligations pursuant to the Loan Documents;
- (q) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Security Interest referred to in the preceding subparagraphs (a) to (q) inclusive of this definition, so long as any such extension, renewal or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed or replaced (plus improvements on such property) and the indebtedness or obligation secured thereby is not increased; and
- (r) Security Interests in favour of ABN AMRO Bank N.V. that are created by or pursuant to the general banking conditions of ABN AMRO Bank N.V. and which are subject to the notice of pledge of account receivables consented to and acknowledged by ABN AMRO Bank N.V. on December 18, 2017.

"Permitted Swap Indebtedness" means Swap Indebtedness of any Loan Party to a Swap Lender under a Permitted Swap and for which the only security is the Security.

"Permitted Swaps" means any Swap other than those prohibited by the provisions of Section 9.3(k).

"Permitted Title Defects" means, in respect of any particular Property of a Loan Party, the following defects in its title thereto:

- (a) Permitted Encumbrances;
- (b) title defects or irregularities which are of a minor nature and which in the aggregate will not materially impair the use of the Property for the purposes for which it is held, or impair

its saleability, or cause a material disruption or reduction in the operation thereof or the cash flow associated therewith; or

- (c) title defects which are disclosed to and expressly consented to in writing by the Majority Lenders as constituting Permitted Title Defects hereunder.

"Person" means any individual, firm, partnership, corporation or other body corporate, Governmental Authority, trust, unincorporated body of persons or association and the heirs, executors, administrators or other legal representatives of an individual.

"Platform" has the meaning given to it in Section 14.13(a).

"Positive Mark-to-Market" has the meaning given to it in the definition of "Mark-to-Market".

"Prime Loan" means the advances or any portion thereof made available by the Lenders to the Borrower pursuant to any of Sections 3.5, 3.10, 3.17 or 3.18 and outstanding from time to time, which are denominated in Canadian Dollars and on which the Borrower has agreed to pay interest in accordance with Section 5.1.

"Prime Rate" means, with respect to Prime Loans on any day, the greater of:

- (a) the annual rate of interest announced from time to time by the Agent or the Swingline Lender, as applicable, as being its reference rate then in effect for determining interest rates on Canadian Dollar denominated commercial loans made by the Agent or the Swingline Lender, as applicable, in Canada; and
- (b) the One Month BA Rate in effect on such day plus 100 bps.

"Priority Payables" means, at any time, with respect to a Loan Party, the amount past due and owing by such Loan Party and the balance of amounts accruing due in excess of C\$4,000,000 and the accrued amount that is past due and owing for which such Loan Party has an obligation to remit, to a Governmental Authority or any other Person pursuant to any Applicable Law in respect of (i) pension fund obligations; (ii) Canada Pension Plan and Québec Pension Plan; (iii) employment insurance; (iv) harmonized sales taxes, provincial sales taxes, excise taxes, employee income taxes, and other taxes payable or to be remitted or withheld; (v) workers' compensation; (vi) wages; (vii) vacation pay; (viii) amounts currently due and not paid for realty, municipal or similar taxes; and (ix) other like charges and demands; in each case, in respect of which any Governmental Authority or other Person may claim a Security Interest, trust, right or other claim ranking or capable of ranking in priority to or pari passu with one or more of the Security Interests granted in the Security; provided that Priority Payables shall not include any amounts the validity of which is being contested by such Loan Party in good faith.

"Property" means, with respect to any Loan Party, all property, assets and undertaking of such Loan Party of every kind and wheresoever situate, whether now owned or hereafter acquired, and both real and personal, including for certainty Real Estate and Intellectual Property.

"Purchase Money Security Interest" means:

- (a) a Security Interest taken or reserved in property to secure payment of all or part of its purchase price; and
- (b) a Security Interest taken in property by a Person who gives value for the purpose of enabling a Loan Party to acquire rights in such property, to the extent that the value is applied to acquire those rights.

"rateable" and **"rateably"** means, subject to adjustment pursuant to Section 10.8(b)(i), the proportion that the Lender Outstandings of any Lender or Swap Lender (if not then a Lender) bears to the aggregate of the Lender Outstandings of all Lenders and Swap Lenders, as determined at the Adjustment Time.

"Real Estate" means Property of any Loan Party that consist of interests in real property, whether freehold or leasehold, including for certainty, office premises and warehouse locations used by a Loan Party, including the properties owned or leased by a Loan Party and identified in Schedule M, as such schedule may be amended from time to time, but specifically excluding any goodwill and other intangible assets.

"Register" has the meaning given to it in Section 13.1(c).

"Release" has the meaning prescribed in any Environmental Laws and includes any presence, release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leaching, spraying, inoculation, abandonment, seeping, emptying, throwing, dumping, placing, exhaust, or migration of any element or compound in, on, under, into or out of the indoor or outdoor environment through the air, soil, subsoil, surface water, groundwater, rock formation, portions of a building or any other facility (including the abandonment, storage or disposal of any barrels, tanks, vessels, containers or receptacles containing any Hazardous Substances), or otherwise.

"Remaining Lenders" has the meaning given to it in Section 12.17.

"Renewal Notification Date" has the meaning given to it in Section 3.9(e).

"Rollover" means, in respect of a maturing Bankers' Acceptance or Libor Loan, the provision by a Lender of a further Accommodation by way of a Bankers' Acceptance or Libor Loan, as applicable, in the same currency, the proceeds of which are to be applied in whole or part to the repayment of the maturing Borrowing, and with respect to any outstanding Letter of Credit, the extension of the expiry date thereof.

"Rollover Date" means each Business Day that the Borrower has notified the Agent as the date on which the Rollover of a Borrowing or a portion thereof is to be made pursuant to a request from the Borrower under Section 3.18.

"Rollover Notice" means a notice to effect a Rollover delivered under Section 3.18 and substantially in the form of Schedule C with all applicable blanks completed.

"S&P" means the Standard & Poor's Rating Group (a division of The McGraw Hill Companies, Inc.) and any successors thereto.

"Sale/Leaseback" means an arrangement under which title to any property or asset, or an interest therein, is transferred by a Person (the **"First-Mentioned Person"**) to some other Person which leases or otherwise gives or grants the right to use such property or asset or interest therein to the First-Mentioned Person, whether or not in connection therewith the First Mentioned Person also acquires a right or is subject to an obligation to re-acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

"Schedule I Reference Lender" means up to two Canadian chartered banks listed on Schedule I to the *Bank Act* (Canada) as are determined from time to time by the Agent.

"Secured Obligations" at any time means, in relation to the Loan Documents and the Credit Documents, all indebtedness, financial obligations and financial liabilities of each Loan Party to the Secured Parties, direct or indirect, present or future, absolute or contingent and matured or not, including the aggregate at any such time of:

- (a) the Obligations;

- (b) the Creditcard Obligations;
- (c) the Cash Management Obligations; and
- (d) Swap Indebtedness.

"Secured Parties" means, collectively and without duplication, the Agent, the Lenders (including in the capacity of Operating Lender), the Swap Lenders, the Creditcard Lenders, the Cash Management Lenders and the Fronting Lenders, and **"Secured Party"** means any one of them.

"Security" has the meaning given to it in Section 6.1 and, for certainty, includes all documents, instruments or agreements directly or indirectly assuring or securing the Secured Parties in respect of the Secured Obligations; any amendments to any of the foregoing; any indentures or instruments supplemental to or an implementation of any of the foregoing; and any and all other documents, instruments or agreements pursuant to which the Secured Parties are assured or granted or receive a Security Interest pursuant to the terms hereof (including as provided in Section 6.1) or thereof.

"Security Interest" means any assignment, mortgage, charge, pledge, lien, hypothec, encumbrance securing or in effect securing an obligation or any indebtedness of any Person, conditional sale, title retention agreement or security interest whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, and includes a Purchase Money Security Interest and the rights of a lessor pursuant to a Financial Lease or a Sale/Leaseback, but does not include a right of set-off or a set-off unless such right of set-off has been created expressly for the purpose of securing Debt.

"Sponsor" means TriWest Capital Partners V (2015) Inc.

"Standard Term" means the term to maturity of a Bankers' Acceptance (subject to availability) of approximately one month, two months, three months or six months (as selected by the Borrower and notified to the Agent pursuant to Section 3.5 or 3.7) for which a quote is available pursuant to paragraph (a) of the definition of CDOR Rate, commencing on and including the Drawdown Date, Conversion Date or Rollover Date, as the case may be, applicable to such Bankers' Acceptance.

"Standby Fee Rate" means, at any time, the rate, expressed as a rate per annum based on a year of 365 days, set out in the table in the definition of Applicable Margin in this Agreement, under the heading "Standby Fees (bps)", opposite the applicable period.

"Subordinated Debt" means:

- (a) the Braden Subordinated Debt;
- (b) the TriEmissions Subordinated Debt; and
- (c) the EDC 2018 Debt,

in each case including all principal and accrued and unpaid interest thereon, provided that such Debt is expressly subordinated to the Secured Obligations on terms acceptable to the Agent and the Lenders in their sole discretion.

"Subsidiary" means:

- (a) a Person of which another Person alone or in conjunction with its other Subsidiaries owns an aggregate number of the Voting Securities sufficient to enable the election of a majority of the directors (or other Persons performing similar functions) regardless of the manner in which other Voting Securities are voted;

- (b) a Person of which another Person alone or in conjunction with its other Subsidiaries has, through the operation of any agreement or otherwise, the ability to elect or cause the election of a majority of the directors (or other Persons performing similar functions) or otherwise exercise control over the management and policies of such Person; and
- (c) any partnership or trust of which any Loan Party:
 - (i) is the general or managing partner or trustee; or
 - (ii) directly or indirectly owns more than fifty percent (50%) of the equity or beneficial interest thereof.

“Swap” means a Currency Swap or an Interest Swap.

“Swap Demand for Repayment” means a demand made by a Swap Lender in accordance with a Lender Swap pursuant to a default by a Loan Party under or related to such Lender Swap that results in an early termination thereof and requires a payment by a Loan Party in settlement of obligations thereunder as a result of such early termination.

“Swap Indebtedness” means:

- (a) at any time prior to the Adjustment Time, an amount determined by the Agent (or by the Borrower for the purposes of the Compliance Certificate) by,
 - (i) calculating, for each Swap Lender, the difference, if positive, between the Positive Mark-to-Market and Negative Mark-to-Market for all of its Lender Swaps, and
 - (ii) when such term is used in reference to all Lenders or Swap Lenders, adding together the aggregate net amounts calculated in (a)(i) under this definition above for all Swap Lenders; and
- (b) after the Adjustment Time, an amount being determined by each Swap Lender by,
 - (i) calculating for each of its Lender Swaps, the Termination Amount, and determining the difference, if positive, of the aggregate net amounts payable by any Loan Party to such Swap Lender, and
 - (ii) when such term is used in reference to all Swap Lenders, adding together the amounts calculated in (b)(i) under this definition above for all Swap Lenders.

“Swap Lender” means a Person, which was a Lender or an Affiliate of a Lender at the time that it entered into any Swap with a Loan Party.

“Swingline Accounts” has the meaning given to it in Section 3.21.

“Swingline Facility” has the meaning assigned to such term in Section 3.2(a).

“Swingline Facility Commitment” means, with respect to the Swingline Lender, its obligation to make Swingline Loans under the Swingline Facility available to the Borrower, subject to the terms of this Agreement, in an aggregate amount not at any time in excess of the amount set forth under such Lender’s name on Schedule A as it may be amended, supplemented, restated or replaced from time to time (or in any Assignment and Assumption executed hereafter) as such Lender’s Swingline Facility Commitment, as such amount may hereafter be cancelled, reduced, increased or terminated from time to time pursuant to the provisions of this Agreement.

"Swingline Lender" means ATB Financial in its capacity as the provider of the Swingline Facility and in no other capacity.

"Swingline Lender's Account for Payments" means:

- (a) for all payments in Canadian Dollars, the following account maintained by the Swingline Lender to which payments and transfers are to be effected as follows:

ATB Financial
239 – 8th Avenue S.W.
Calgary, Alberta
T2P 1B9
Swift Code: ATBRCA6EXXX
Beneficiary/for account of: Innova Global Ltd.
Address: 4000 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3
Transit & Account: 07609-00552162900

- (b) for all payments in U.S. Dollars, the following account maintained by the Swingline Lender to which payments and transfers are to be effected as follows:

Bank of America – New York
100 W 33rd Street, New York, New York, USA 10001
Swift Code/ABA No.: BOFAUS3NXXX or ABA 026009593
Beneficiary Account No.: 1233235276
Beneficiary/for the account of: ATB Financial
Address/Branch: 2100, 10020 – 100 Street NW, Edmonton, Alberta, T5J 0N3
FFC: 021907609 00552278100 Innova Global Ltd.

or such other places or accounts as may be agreed upon by the Swingline Lender and the Borrower from time to time.

"Swingline Lender's Branch of Account" means the office or branch of the Swingline Lender located at the address set forth under the Swingline Lender's name on Schedule A or such other office or branch of the Swingline Lender in Canada as the Swingline Lender may advise the Borrower in writing.

"Swingline Loan" has the meaning assigned to such term in Section 3.2(b).

"Tax" or **"Taxes"** means all present and future taxes, rates, levies, imposts, assessments, dues, government fees, stamp taxes, deductions, charges or withholdings, and all liabilities with respect thereto, and any interest, additions to tax and penalties imposed with respect thereto, but excluding Excluded Taxes.

"Term Accommodations" has the meaning given to it in the definition of Accommodations.

"Term Borrowings" has the meaning given to it in the definition of Borrowings.

"Term Debt" means Debt of the Borrower on a combined consolidated basis minus the WIP Borrowings, Operating Borrowings, Subordinated Debt and LC Borrowings margined against the amount of the EDC Guarantee.

"Term Debt to EBITDA Ratio" means, measured as at the end of each Fiscal Quarter of the Borrower, the ratio of Term Debt at such time to EBITDA for the twelve-month period ending at such time.

"Term Facility" has the meaning given to it in Section 3.1(a)(i).

"Term Facility Commitment" means, with respect to each Term Lender, such Lender's obligation to make Loans under the Term Facility available to the Borrower, subject to the terms of this Agreement, in an aggregate amount not at any time in excess of the amount set forth under such Lender's name on Schedule A as it may be amended, supplemented, restated or replaced from time to time (or in any Assignment and Assumption executed hereafter) as such Lender's Term Facility Commitment, as such amount may hereafter be cancelled, reduced, increased or terminated from time to time pursuant to the provisions of this Agreement.

"Term Lender" means a Lender in its capacity as a provider of a Term Facility Commitment and in no other capacity.

"Termination Amount" means, in respect of a Lender Swap on any day, the amount (whether positive or negative) determined in accordance with the ISDA Master Agreement between any Loan Party and such Swap Lender as of the close of business as though such day were an "Early Termination Date" and the Swap was a "Terminated Transaction" pursuant to an "Event of Default" of such Loan Party thereunder, with any such termination amount being expressed in Canadian Dollars and all defined terms used in this definition and not otherwise defined in this Agreement having the meaning given to it in such ISDA Master Agreement.

"Termination Event" means:

- (a) an automatic acceleration of the repayment of indebtedness outstanding hereunder without any notice being required thereunder from the Agent or any Lender; or
- (b) an automatic early termination of obligations relating to a Lender Swap resulting from a default by a Loan Party thereunder, without any notice being required from the Swap Lender.

"Total Assets" means, as at any date of determination, an amount equal to the total assets of the Borrower on a combined consolidated basis as shown on the combined consolidated balance sheet in the financial statements of the Borrower most recently provided to the Agent.

"Total Commitment" means the aggregate of the Total WIP Facility Commitment, the Total Operating Facility Commitment, the Total Term Facility Commitment and the Total LC Facility Commitment.

"Total LC Facility Commitment" means, at any time, the amount equal to the aggregate of the LC Facility Commitment of each Fronting Lender at such time.

"Total Operating Facility Commitment" means, at any time, the amount equal to the aggregate of the Operating Facility Commitment of each Operating Lender at such time.

"Total Term Facility Commitment" means, at any time, the amount equal to the aggregate of the Term Facility Commitment of each Term Lender at such time.

"Total WIP Facility Commitment" means, at any time, the amount equal to the aggregate of the WIP Facility Commitment of each WIP Lender at such time.

"TriEmissions LP" means TriEmissions Holdings Limited Partnership, a limited partnership formed under the laws of Alberta, and its successors and assigns.

"TriEmissions LP 2018 Debt" means all amounts owing under the subordinated convertible promissory note dated October 19, 2018 in the principal amount of Cdn.\$3,581,040 issued by Innova LP in favour of TriEmissions LP, including all principal and accrued and unpaid interest thereon.

“TriEmissions LP Mezz Debt” means all amounts owing under the amended and restated subordinated convertible promissory note dated October 19, 2018 in the principal amount of Cdn.\$2,914,800 issued by Innova LP in favour of TriEmissions LP, including all principal and accrued and unpaid interest thereon.

“TriEmissions Subordinated Debt” means, collectively, the TriEmissions LP Mezz Debt, the TriEmissions US LP Mezz Debt, the TriEmissions US LP Sub Debt and the TriEmissions LP 2018 Debt, provided such Debt is unsecured, has an interest rate not exceeding 18% per annum and is otherwise on terms acceptable to the Agent and the Lenders in their sole discretion.

“TriEmissions US LP” means TriEmissions Holdings (US) Limited Partnership, a limited partnership formed under the laws of Alberta, and its successors and assigns.

“TriEmissions US LP Mezz Debt” means all amounts owing under the amended and restated subordinated convertible promissory note dated October 19, 2018 in the principal amount of Cdn.\$585,200 issued by Innova LP in favour of TriEmissions US LP, including all principal and accrued and unpaid interest thereon.

“TriEmissions US LP Sub Debt” means all amounts owing under the unsecured subordinated promissory note dated December 30, 2015 in the principal amount of Cdn.\$1,377,700.68 issued by the Borrower in favour of TriEmissions US LP, as amended, restated, replaced or otherwise modified from time to time, including all principal and accrued and unpaid interest thereon.

“TriWest Guarantee” has the meaning assigned to such term in Section 6.1(b);

“UK Loan Party” means Innova Global Limited.

“Unbilled Revenue” means unbilled accounts receivable set forth in the financial statements of the Borrower prepared in accordance with GAAP representing the contract revenue recognized to date but not yet invoiced to the client due to contract terms of the timing of the accounting invoice cycle.

“Unfunded Capital Expenditures” means for any period, the sum (without duplication) of the aggregate amount of all Capital Expenditures made by the Borrower (on a combined consolidated basis) during such period, to the extent such Capital Expenditures are not funded by (a) Permitted Debt, (b) the proceeds of share issuances or equity contributions, (c) the proceeds of a Permitted Disposition effected either within 180 days before or after the Permitted Disposition or pursuant to a binding commitment entered into within 180 days after the Permitted Disposition, or (d) insurance proceeds attributable to the loss of damage of the Property being replaced or restored by the subject Capital Expenditures and that are funded by the Operating Facility or the WIP Facility. For greater certainty, any negative Unfunded Capital Expenditures for any period shall be deemed to be zero.

“Uniform Customs” has the meaning given to it in Section 3.11(d).

“Unmargined Contribution” means an unmargined contribution to the Operating Facility Borrowing Base in the amount of C\$5,000,000, reducing to C\$2,500,000 on February 28, 2019. Whenever any payment is made under the TriWest Guarantee, the Unmargined Contribution shall be reduced by an amount equal to such payment.

“U.S. Base Rate” means, with respect to U.S. Base Rate Loans on any day, the greater of:

- (a) the annual rate of interest announced from time to time by the Agent as being its reference rate then in effect for determining interest rates on U.S. Dollar denominated commercial loans made by the Agent in Canada;
- (b) the Federal Funds Rate plus one percent (1.00%); and

(c) the Libor rate for a Libor Interest Period of one month plus one percent (1.00%).

"U.S. Base Rate Loan" means the advances or any portion thereof made available by the Lenders to the Borrower pursuant to either Section 3.5, 3.6, 3.10, 3.17 or 3.18 and outstanding from time to time, which are denominated in U.S. Dollars and on which the Borrower has agreed to pay interest in accordance with Section 5.2.

"U.S. Dollars" and the symbol **"U.S.\$"** each means lawful money of the United States of America.

"US Loan Parties" means, collectively, Innova Global Inc., Innova Global LLC and Braden Manufacturing LLC and their respective successors and permitted assigns, and **"US Loan Party"** means any one of them.

"US Sanctions Designated Person" has the meaning given to it in Section 2.1(y)(iv).

"Voting Securities" means:

- (a) share capital of any class of any corporation or securities of any other Person which carry voting rights to elect the board of directors or other body exercising similar functions under any circumstances, but shares or other securities which carry the right to so vote conditionally upon the happening of an event shall not be considered Voting Securities until the occurrence of such event; and
- (b) an interest in a general partnership, limited partnership, trust, joint venture or similar Person which entitles the holder of such interest to receive a share of the profits, or on dissolution or partition, of the assets, of such Person.

"Welfare Plan" means (i) a "welfare plan" as such term is defined in Section 3(1) of ERISA, and (ii) any other medical, health, hospitalization, insurance or other employee benefit or welfare plan, agreement or arrangement applicable to employees of a Loan Party.

"WIP Accommodations" has the meaning given to it in the definition of Accommodations.

"WIP Borrowings" has the meaning given to it in the definition of Borrowings.

"WIP Facility" has the meaning given to it in Section 3.1(a)(ii).

"WIP Facility Borrowing Base" means, at any time of determination, an amount equal to:

- (a) 50% of Good Unbilled Revenue on a combined consolidated basis, less
- (b) a portion of the Priority Payables allocated pro rata between the WIP Facility Borrowing Base and the Operating Facility Borrowing Base,

as determined by the Agent and the Majority Lenders and the Borrower acting reasonably.

"WIP Facility Borrowing Base Shortfall" has the meaning assigned to such term in Section 3.3(f).

"WIP Facility Commitment" means, with respect to each WIP Lender, such Lender's obligation to make Loans under the WIP Facility available to, and to accept and purchase Bankers' Acceptances from (or, if applicable, make BA Equivalent Advances for the account of) and, in the case of the Fronting Lender only, to issue Fronted Letters of Credit for the account of the Borrower, subject to the terms of this Agreement, in an aggregate amount not at any time in excess of the amount set forth under such Lender's name on Schedule A (or in any Assignment and Assumption executed hereafter) as such

Lender's WIP Facility Commitment, as such amount may hereafter be increased, cancelled, reduced or terminated from time to time pursuant to the provisions of this Agreement.

"WIP Lender" means a Lender in its capacity as a provider of a WIP Facility Commitment and in no other capacity.

"Working Capital Ratio" means, measured as at the end of each Fiscal Quarter of the Borrower, the ratio of Current Assets to Current Liabilities.

1.2 Headings and Table of Contents

The headings, the table of contents and the Article and Section titles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 References

Unless something in the subject matter or context is inconsistent therewith, all references to Sections, Articles and Schedules are to Sections and Articles of and Schedules to this Agreement. The words **"hereto"**, **"herein"**, **"hereof"**, **"hereunder"** and similar expressions mean and refer to this Agreement.

1.4 Rules of Interpretation

In this Agreement, unless otherwise specifically provided,

- (a) the singular includes the plural and *vice versa*, **"month"** means calendar month, **"quarter"** means calendar quarter, and **"in writing"** or **"written"** includes printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception, including facsimile and pdf;
- (b) references to any agreement, contract, document or other instrument means a reference to any such agreement, contract, document or other instrument as the same has been or may be amended, modified, supplemented or restated from time to time; provided that, if consent to any such amendment, modification, supplement or restatement is required under any Loan Document, such consent must have been obtained; and
- (c) references to any statute, act or other legislative enactment shall be to such statute, act or other legislative enactment as amended from time to time or replaced by a statute, act or other legislative enactment dealing with substantially the same subject matter as the statute, act or other legislative enactment so replaced.

1.5 Generally Accepted Accounting Principles

All financial statements required to be furnished by the Borrower to the Agent hereunder shall be prepared in accordance with GAAP. Each accounting term used in this Agreement, unless otherwise defined herein, has the meaning assigned to it under GAAP applied consistently throughout the relevant period and relevant prior periods and, except as otherwise provided herein, reference to any balance sheet item, statement of income item or statement of cash flows item means such item as computed from the applicable financial statement prepared in accordance with GAAP.

1.6 Accounting Terms: Changes to Generally Accepted Accounting Principles

- (a) If the Borrower, the Agent or the Majority Lenders determine at any time that any amount required to be determined hereunder would be materially different if such amount were determined in accordance with:

- (i) GAAP applied by the Borrower in respect of its financial statements on the date hereof ("**Old GAAP**"), rather than
- (ii) GAAP subsequently in effect in Canada and applied by the Borrower in respect of its financial statements and utilized for purposes of determining such amount,

then written notice of such determination shall be delivered by the Borrower to the Agent, in the case of a determination by the Borrower, or by the Agent to the Borrower, in the case of a determination by the Agent or the Majority Lenders.

- (b) If the Borrower adopts a change in an accounting policy in the preparation of its financial statements in order to conform to accounting recommendations, guidelines, or similar pronouncements, or legislative requirements, and such change would require disclosure thereof under Old GAAP, or would reasonably be expected to adversely affect (i) the rights of, or the protections afforded to, the Agent or the Lenders hereunder or (ii) the position of the Loan Parties or of the Agent or the Lenders hereunder, the Borrower shall so notify the Agent, describing the nature of the change and its effect on the current and immediately prior year's financial statements in accordance with Old GAAP and in detail sufficient for the Agent and the Lenders to make the determination required of them in the following sentence. If either the Borrower, the Agent or the Majority Lenders determine at any time that such change in accounting policy results in an adverse change either (A) in the rights of, or protections afforded to, the Agent or the Lenders intended to be derived, or provided for, hereunder or (B) in the position of the Loan Parties or of the Agent and the Lenders hereunder, written notice of such determination shall be delivered by the Borrower to the Agent, in the case of a determination by the Borrower, or by the Agent to the Borrower, in the case of a determination by the Agent or the Majority Lenders.
- (c) Upon the delivery of a written notice pursuant to Section 1.6(a) or Section 1.6(b), the Borrower and the Agent on behalf of the Lenders shall meet to consider the impact of such change in Old GAAP or such change in accounting policy, as the case may be, on the rights of, or protections afforded to, the Agent and the Lenders or on the position of the Loan Parties or of the Agent and the Lenders and shall in good faith negotiate to execute and deliver an amendment or amendments to this Agreement in order to preserve and protect the intended rights of, or protections afforded to, the Agent and the Lenders on the date hereof or the position of the Loan Parties or the Agent and the Lenders (as the case may be); provided that, until this Agreement has been amended in accordance with the foregoing, then for all purposes hereof, the applicable changes from Old GAAP or in accounting policy (as the case may be) shall be disregarded hereunder and any amount required to be determined hereunder shall, nevertheless, continue to be determined under Old GAAP and the Borrower's prior accounting policy, as applicable. For the purposes of this Section 1.6, the Borrower, the Lenders and the Agent acknowledge that the amendment or amendments to this Agreement are to provide substantially the same rights and protection to the Agent and the Lenders as is intended by this Agreement on the date hereof and such amendment or amendments shall not result in, or create any, Default or Event of Default if no such Default or Event of Default existed prior to such amendment or amendments by the use of Old GAAP. If the Borrower and the Agent on behalf of the Majority Lenders do not (for any reason whatsoever) mutually agree (in their respective sole discretions, without any obligation to so agree) on such amendment or amendments to the Agreement within 60 days following the date of delivery of such written notice, the Borrower shall continue to provide financial calculations in accordance with Old GAAP and, for all purposes hereof, the applicable changes from Old GAAP or in accounting policy (as the case may be) shall be disregarded hereunder and any amount required to be determined hereunder shall, nevertheless, continue to be determined under Old GAAP and the Borrower's prior accounting policy, as applicable.

1.7 Time

Unless otherwise provided herein, all references to a time in this Agreement shall mean local time in the City of Calgary, Alberta.

1.8 Payment for Value

All payments required to be made hereunder shall be made for value on the required day in same day immediately available funds.

1.9 Monetary References

Whenever an amount of money is referred to herein, such amount shall, unless otherwise expressly stated, be in Canadian Dollars.

1.10 Swap Lenders, Creditcard Lenders and Cash Management Lenders

Each Lender, in its capacity as a Swap Lender, Creditcard Lender or Cash Management Lender and for and on behalf of any of its Affiliates which become a Swap Lender, a Creditcard Lender or Cash Management Lender, agrees to comply with and to cause each such Affiliate in its capacity as a Swap Lender, Creditcard Lender or Cash Management Lender to comply with the provisions of the Loan Documents to the extent such Loan Documents apply to any Swap Lender or a Creditcard Lender and agrees that any action taken by it under or in connection with the Loan Documents in its capacity as a Lender shall be binding on it, and, if applicable, any of its Affiliates, each in their capacity as a Swap Lender, Creditcard Lender or Cash Management Lender.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties

The Borrower, for and on behalf of itself and each other Loan Party, represents and warrants to each of the Lenders and the Agent (all of which are being relied upon by the Lenders and the Agent in entering into this Agreement) that:

- (a) **Existence and Qualification:** Each Loan Party (a) has been duly incorporated, formed, amalgamated, merged or continued, as the case may be, and is validly subsisting and in good standing as a corporation or company, under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be (or in the case of Loan Parties which are not corporations or companies, has been duly created or established as a partnership or other applicable entity and validly exists under and is in good standing under the laws of the jurisdiction in which it has been created or established), and (b) is duly qualified to carry on its business in each jurisdiction in which it carries on business except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.
- (b) **Power and Capacity:** Each Loan Party has the corporate, company or partnership power and capacity, as the case may be, (a) to enter into, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party, and (b) to own its property and carry on its business as currently conducted and as currently proposed to be conducted by it.
- (c) **Execution, Delivery, Performance and Enforceability of Loan Documents:** The execution, delivery and performance of each of the Loan Documents to which any Loan Party is a party have been duly authorized by all corporate, company or partnership

actions required, and each of such documents has been duly executed and delivered by it. Each Loan Document to which any Loan Party is a party constitutes the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with its respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

- (d) **No Conflict:** None of the execution or delivery of, the consummation of the transactions contemplated in, or the compliance with the terms, conditions and provisions of any of, the Loan Documents by any Loan Party conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Applicable Law, such Loan Party's constating documents or any Material Agreement or results or will result in the creation or imposition of any Security Interest upon any of its Property except for Permitted Encumbrances.
- (e) **Consent Respecting Loan Documents:** Each Loan Party has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (except for registrations or filings which may be required in respect of the Security) to enable it to execute and deliver each of the Loan Documents to which it is a party and to consummate the transactions contemplated in the Loan Documents, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.
- (f) **Authorizations:** Each Loan Party possesses all authorizations, permits, consents, registrations and approvals necessary under Applicable Law to properly conduct the Business, except to the extent the absence of which would not have, or would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.
- (g) **Title to Property:** Each Loan Party has good and valid title to its Property, free and clear of all Security Interests except Permitted Encumbrances and Permitted Title Defects and no Person has any agreement or right to acquire an interest in such assets other than in the ordinary course of its business and pursuant to a Permitted Disposition.
- (h) **Intellectual Property:** Each Loan Party has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business.
- (i) **Material Agreements:** As of the Effective Date, Schedule L contains a true and complete list of all Material Agreements. Each Material Agreement is in good standing and in full force and effect and none of the Loan Parties is in material breach of any of the terms or conditions contained therein. Except as disclosed in writing to the Agent and as permitted hereby, no Material Agreement has been amended, supplemented or revised since the date of execution thereof.
- (j) **Judgments, Etc.:** No Loan Party is subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation (other than customary or ordinary course restrictions, rules and regulations consistent or similar with those imposed on other Persons engaged in similar businesses), which has not been stayed or of which enforcement has not been suspended, which would reasonably be expected to have a Material Adverse Effect.
- (k) **Litigation:** There are no actions, suits or proceedings pending or judgments existing or, to the best of its knowledge, threatened against or affecting any Loan Party or its properties which if determined adversely to any Loan Party would result in a Material Adverse Effect.

- (l) **Taxes:** Except to the extent that the failure to do so would result in a Material Adverse Effect, each Loan Party has duly and timely filed all Tax returns required to be filed by it and has paid or made adequate provision for the payment (in accordance with GAAP) of all Taxes levied on its property or income which are showing therein as due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes.
- (m) **Compliance with Laws:** Each Loan Party is in compliance with all Applicable Law except to the extent that non-compliance would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.
- (n) **Employee Benefit Plans:** All employee benefit plans in which an employee of a Loan Party participates have been established, operated, administered and maintained in compliance with all laws, regulations and orders applicable thereto, except where failure so to comply would not be reasonably expected to have a Material Adverse Effect. All premiums, contributions and any other amounts required by applicable employee benefit plan documents or Applicable Law to be paid or accrued by the Loan Parties have been paid or accrued as required, and each Loan Party is otherwise in compliance with all employee benefit plans to which it is a party or by which it is bound, except where failure so to pay, accrue or comply would not be reasonably expected to have a Material Adverse Effect.
- (o) **Pension and Welfare:** No Loan Party has adopted or maintains, or is required to adopt or maintain, by Applicable Law or otherwise, any Pension Plans or Welfare Plans.
- (p) **Labour Agreements.** There are no labour agreements in effect between any of the Loan Parties and any labour union or employee association and the Loan Parties are not under any obligation to assume any labour agreements to or conduct negotiations with any labour union or employee association with respect to any future agreements; and the Loan Parties are not aware of any current attempts to organize or establish any such labour union or employee association.
- (q) **Labour Relations:** No Loan Party is aware that it is engaged in any unfair labour practice and, to the knowledge of the Loan Parties, there is no unfair labour practice complaint or complaint of employment discrimination pending against any Loan Party, or, to the knowledge of the Loan Parties, threatened against any Loan Party, before any Governmental Authority which if determined adversely to any Loan Party, would result in a Material Adverse Effect.
- (r) **Environmental:** (i) No Loan Party is subject to any investigation relating to Environmental Laws and no Loan Party is aware of any threatened investigation relating to Environmental Laws; (ii) each Loan Party currently operates its business and its properties (whether owned, leased or otherwise occupied) in compliance with all applicable Environmental Laws; (iii) no Hazardous Substances are or have been stored or disposed of by any Loan Party or otherwise used by any Loan Party in violation of any applicable Environmental Laws (including, without limitation, any release of Hazardous Substances by any Loan Party at, on or under any property now or previously owned or leased by the Borrower or any other Loan Parties); (iv) all underground storage tanks of which a Loan Party is aware now or previously located on any real property owned or leased by it have been operated, maintained and decommissioned or closed, as applicable, in compliance with applicable Environmental Laws; and (v) no real property or groundwater in, on or under any property now or previously owned or leased by any Loan Party is or has been during such Loan Party's ownership or occupation of such property (or, to its knowledge, prior to its ownership or occupation) contaminated by any Hazardous Substance; except, in each case, where such occurrence or failure to comply, as the case may be, would not reasonably be expected, either individually or in the

aggregate, to have a Material Adverse Effect.

- (s) **Operation of Assets:** All of the Loan Parties' Property has been and will continue to be operated and maintained, as the case may be, in a good and workmanlike manner in accordance with sound industry practice and in accordance with all Applicable Law, except to the extent that the failure to operate or maintain such Property in such manner would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.
- (t) **Security:** The Security Interests created by the Security granted by each Loan Party to the Agent rank as first priority Security Interests in priority to all other Security Interests over the Property of each such Loan Party, subject only to Permitted Encumbrances which under Applicable Law rank in priority thereto.
- (u) **Insurance:** The Loan Parties have in full force and effect such policies of insurance in such amounts issued by insurers of recognized standing insuring its Property and operations, including replacement cost insurance (or the equivalent thereof) and including, where applicable, the Agent as first loss payee, and providing such coverage as would be maintained by a prudent Person engaged in the same or similar business of similar size in the localities where its Property and operations are located.
- (v) **No Default:** No Default or Event of Default has occurred and is continuing which is known to the Borrower and which has not been disclosed to the Agent.
- (w) **Debt:** No Loan Party has outstanding, any Debt other than Permitted Debt.
- (x) **Financial Assistance:** No Loan Party has outstanding, any Financial Assistance to any Person other than as permitted by Section 9.3(g).
- (y) **Foreign Assets Control Regulations, Etc.:**
 - (i) No Loan Party:
 - (A) is, to its knowledge, under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering, drug trafficking or terrorist-related activities under any Applicable Law (collectively, "**Anti-Money Laundering Laws**"),
 - (B) has been assessed civil penalties under any Anti-Money Laundering Laws, or
 - (C) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

The Borrower has taken reasonable measures appropriate to the circumstances (in any event as required by Applicable Law) to ensure that each Loan Party is in compliance with all Anti-Money Laundering Laws applicable to such Loan Party.
 - (ii) No part of the Accommodations will be used, directly or indirectly, for any improper payments to any governmental official or employee, political party, official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official governmental capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of Applicable Law. The Borrower has taken reasonable measures appropriate to the circumstances (in any event as required by

Applicable Law) to ensure that each Loan Party is in compliance with all applicable anti-corruption laws and regulations.

- (iii) No Loan Party is (i) a Person described or designated under the provisions of the *Special Economic Measures Act* (Canada) or the *United Nations Act* (Canada), or any associated regulations (each a “**Canadian Sanctions Designated Person**”), (ii) engages in any dealings or transactions with any Canadian Sanctions Designated Person, or (iii) is in possession or control of any property or entity that is owned or controlled by a Canadian Sanctions Designated Person.
- (iv) No Loan Party is (i) a Person described or designated by the U.S. Treasury Department/ Office of Foreign Assets Control, U.S. Treasury Department/ Financial Crimes Enforcement Network, U.S. State Department/ Directorate of Defense Trade Controls, U.S. Commerce Department/ Bureau of Industry and Security, U.S. Internal Revenue Service, the U.S. Justice Department and U.S. Securities and Exchange Commission (each a “**US Sanctions Designated Person**”), (ii) engages in any dealings or transactions with any US Sanctions Designated Person, or (iii) is in possession or control of any property or entity that is owned or controlled by a US Sanctions Designated Person.
- (z) **Corporate Structure:** The corporate structure of the Borrower and its Subsidiaries is, as at the Effective Date, as set out in the Organizational Chart attached hereto in Schedule K. and the share ownership of each Loan Party, as at the Effective Date, is as set out in Schedule K, which, in the case of the Borrower, may exclude specific ownership details of Persons that are directly or indirectly controlled by, or associated with, the Sponsor.
- (aa) **Location of Business:** As of the Effective Date, no Loan Party carries on business in any jurisdictions except as follows:
 - (i) for the Canadian Loan Parties, Alberta, British Columbia, Saskatchewan, Ontario and Chile;
 - (ii) for the US Loan Parties, the United States, Mexico, China, Indonesia, Korea, Japan, Jebel Ali Dubia (Freezone) and Canada;
 - (iii) for the Mexican Loan Parties, Monterrey, Mexico;
 - (iv) for the Dutch Loan Parties, the Netherlands, Egypt, Iraq, China, Thailand, India and Jebel Ali Dubia (Freezone);
 - (v) for the UK Loan Party, the United Kingdom; and
 - (vi) for the Australian Loan Party, Australia,together with such other jurisdictions as are disclosed to the Agent pursuant to Section 6.8 from time to time. Schedule N sets out each Loan Party's jurisdiction of incorporation, registered office, chief executive office and the locations of its assets.
- (bb) **Financial Information:** All of the monthly, quarterly and annual financial statements which have been furnished to the Agent and the Lenders, or any of them, in connection with this Agreement are complete in all material respects and such financial statements fairly present the results of operations and financial position of the Borrower as of the dates referred to therein and, except as otherwise disclosed to the Agent in writing, have been prepared in accordance with GAAP. All other material financial information (including, without limitation, budgets, but excluding projections) provided to the Agent

and the Lenders in respect of the Loan Parties are (and in the case of all such financial information provided by Persons other than the Sponsor (or an Affiliate thereof) or the Loan Parties, to the Borrower's knowledge) true, complete and accurate in all material respects and all budgets and projections were prepared in good faith based on reasonable assumptions and expectations in the context of which the same were provided. From the date of the latest of such financial statements submitted to the Agent which are audited, no event has occurred which has or would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

- (cc) **Real Estate:** All Real Estate is individually listed and accurately described with legal land descriptions or municipal addresses in Schedule M, as such schedule is required to be updated by the Borrower from time to time.
- (dd) **CERCLA:** No portion of any Property of any Loan Party has been listed, designated or identified in the National Priorities List or the CERCLA Information System both as published by the United States Environment Protection Agency, or any similar list of sites published by any federal, state or local authority proposed for requiring clean up or remedial or corrective action under any requirements of Environmental Laws.

2.2 Deemed Representation and Warranty

Each request by the Borrower for a Drawdown shall be deemed to be a representation and warranty by the Borrower to the Lenders and the Agent that the matters referred to in Section 2.1 are, as of the date of such request and will be as of the applicable Drawdown Date (other than those made as of a specific date), true and correct as of each such date. Each request by the Borrower for a Conversion or Rollover shall be deemed to be a representation and warranty by the Borrower that as of the date of such request and as of each Conversion Date or Rollover Date, there exists no Default or Event of Default.

2.3 Survival of Representations and Warranties

The representations and warranties in this Agreement and in any certificates or documents delivered to the Agent and the Lenders hereunder shall not merge in or be prejudiced by and shall survive any Accommodations and shall continue in full force and effect so long as any amounts are owing by the Borrower to the Lenders, or available to the Borrower, under this Agreement.

ARTICLE 3 THE FACILITIES

3.1 Establishment of the Facilities

- (a) **Availment Options:** From and after the Effective Date and relying on each of the representations and warranties set out in Section 2.1 and subject to the terms and conditions of this Agreement:
 - (i) the Term Lenders establish a non-revolving term credit facility for the purposes set forth in Section 3.4 (the "**Term Facility**") and agree that the Term Accommodation outstanding under the Original Credit Agreement on the Effective Date in a principal amount equal to the Total Term Facility Commitment shall, on the Effective Date, be deemed to be outstanding hereunder as a Term Accommodation under the Term Facility;
 - (ii) the WIP Lenders agree to make WIP Accommodations available to the Borrower in an aggregate principal amount not to exceed the lesser of:

- (A) the Total WIP Facility Commitment; and
- (B) the WIP Facility Borrowing Base,
by way of a revolving credit facility for the purposes set forth in Section 3.4, commencing on the Effective Date and ending on the Maturity Date (the “**WIP Facility**”); and
- (iii) the Operating Lenders agree to make Operating Accommodations available to the Borrower in an aggregate principal amount not to exceed the lesser of:
 - (A) the Total Operating Facility Commitment; and
 - (B) the Operating Facility Borrowing Base,
by way of a revolving operating credit facility, which includes the Swingline Facility, for the purposes set forth in Section 3.4, commencing on the Effective Date and ending on the Maturity Date (the “**Operating Facility**”); and
- (iv) the LC Lenders agree to make LC Accommodations available to the Borrower and the Loan Parties in an aggregate principal amount not to exceed the LC Facility Commitment by way of a revolving letter of credit facility for the purposes set forth in Section 3.4, commencing on the Effective Date and ending on the Maturity Date (the “**LC Facility**”).
- (b) **Reduction in Operating Facility Commitment.** On February 28, 2019 (the “**Operating Facility Commitment Reduction Date**”), the Total Operating Facility Commitment and each Lender’s Operating Facility Commitment will reduce as set out in Schedule A. If such reduction results in the Equivalent Amount in Canadian Dollars of the Operating Borrowings exceeding the Total Operating Facility Commitment on the Operating Facility Commitment Reduction Date, the Borrower shall, on the Operating Facility Commitment Reduction Date, repay such Operating Borrowings as is required to eliminate such excess. The Borrower will apply such payments *pro rata* amongst the Operating Lenders in the following order: (A) first against Prime Loans and U.S. Base Rate Loans, (B) second to repay Bankers’ Acceptances, and (C) third to repay Libor Loans, in each case, subject to Section 4.7, until such excess has been eliminated.
- (c) **Cash Management Services.** An Operating Lender may agree to make available Cash Management Services to the Borrower and any other Loan Party under the Operating Facility (in which case such Operating Lender shall also be a Cash Management Lender), provided that the Borrower and any other applicable Loan Party shall have first executed and delivered to such Cash Management Lender such ancillary documents and any other applications and indemnities as such Cash Management Lender may require for similar transactions.
- (d) **Maximum Amount:** At no time shall:
 - (i) the aggregate of the Term Borrowings exceed the Total Term Facility Commitment;
 - (ii) the Equivalent Amount in Canadian Dollars of the Operating Borrowings exceed the Total Operating Facility Commitment;
 - (iii) the Equivalent Amount in Canadian Dollars of the WIP Borrowings exceed the Total WIP Facility Commitment;

- (iv) the Equivalent Amount in US Dollars of the LC Borrowings exceed the Total LC Facility Commitment;
- (v) the Equivalent Amount in Canadian Dollars of the WIP Borrowings exceed the WIP Facility Borrowing Base;
- (vi) the Equivalent Amount in Canadian Dollars of the aggregate of the Operating Borrowings exceed the Operating Facility Borrowing Base; or
- (vii) the Equivalent Amount in Canadian Dollars of the aggregate Swingline Loans exceed the Swingline Facility Commitment.

3.2 Swingline Facility

- (a) Subject to the terms and conditions of this Agreement, the Swingline Lender establishes in favour of the Borrower a revolving credit facility that is part of the Operating Facility on the terms set forth in this Section 3.2 (the "**Swingline Facility**") up to the amount specified in Section 3.2(c). Subject to the terms and conditions hereof, the Borrower may increase or decrease the amount of Obligations outstanding under the Swingline Facility by making Drawdowns, repayments and further Drawdowns.
- (b) At any time that the Borrower would be entitled to obtain Loans under the Operating Facility, the Borrower will be entitled to draw cheques on its Swingline Accounts and (i) any Cdn. Dollar debit balance from time to time in any such Swingline Account will be deemed to be a Prime Loan outstanding to the Borrower from the Swingline Lender under the Operating Facility, and (ii) any U.S. Dollar debit balance from time to time in any such Swingline Account will be deemed to be a U.S. Base Rate Loan outstanding to the Borrower from the Swingline Lender under the Operating Facility. A Prime Loan or U.S. Base Rate Loan from the Swingline Lender as contemplated by this Section 3.2(b), prior to such time as such Loan is repaid as contemplated by Section 3.2(d), or purchased as contemplated by Section 3.2(e), is referred to as a "**Swingline Loan**".
- (c) The Equivalent Amount in Cdn. Dollars of all Swingline Loans at any time may not exceed the lesser of:
 - (i) Cdn.\$5,000,000; and
 - (ii) the amount, if any, by which (A) the limit of the Operating Facility at such time pursuant to Section 3.1(a)(iii) of the Credit Agreement exceeds (B) the Equivalent Amount in Cdn. Dollars of all Borrowings (other than Swingline Loans) outstanding at such time under the Operating Facility.
- (d) At any time and from time to time in its discretion, the Swingline Lender may (but will not be obliged to) deliver a written notice to the Agent (which will thereupon deliver a similar notice to each of the Lenders) and to the Borrower, requiring repayment of a Swingline Loan. The Borrower will be deemed to have given at such time a Borrowing Notice to the Agent requesting a Prime Loan or U.S. Base Rate Loan as applicable under the Operating Facility in an aggregate amount equal to the amount of such Swingline Loan. The Lenders will thereupon (irrespective of whether any condition precedent to a Loan has been satisfied, whether the amount of such Loan to be made available under the Operating Facility is less than, equal to or more than the minimum amount of a Loan required to be included in a Loan constituting such type of Loan under this Agreement, whether any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Facilities and the Commitments) has occurred or commenced under any of the Loan Documents or

otherwise or whether the Maturity Date has occurred) make such Prime Loan or U.S. Base Rate Loan as applicable under the Operating Facility and the Agent will apply the proceeds thereof in repayment of such Swingline Loan. The Agent will promptly notify the Borrower of any such Prime Loans or U.S. Base Rate Loans as applicable, and the Borrower will accept each such Prime Loan or U.S. Base Rate Loan and hereby irrevocably authorizes and directs the Agent to apply the proceeds thereof in payment of the applicable Swingline Loan.

- (e) Without limiting the provisions of Section 3.2(d), on the Maturity Date, or if an Event of Default has occurred and is continuing, each of the Lenders, other than the Swingline Lender, will purchase from the Swingline Lender, and the Swingline Lender will sell to such Lenders, for cash, at par, without representation or warranty from or recourse against the Swingline Lender (and irrespective of whether any condition precedent to a Loan has been satisfied, any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Facilities and the Commitments) has occurred or commenced under any of the Loan Documents or otherwise or whether the Maturity Date has occurred), on a *pro rata* basis, an undivided interest in all Swingline Loans then outstanding. The Agent, upon consultation with the applicable Lenders, will have the power to settle any documentation required to evidence any such purchase and, if deemed advisable by the Agent, to execute any document as attorney for any Lender in order to complete any such purchase. The Borrower and the Lenders acknowledge that the foregoing arrangements are to be settled by the Lenders among themselves, and the Borrower expressly consents to the foregoing arrangements between such Lenders.
- (f) Each of the Lenders will indemnify and save harmless the Swingline Lender on a *pro rata* basis against all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, costs, expenses, payments or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Swingline Lender in any way related to or arising out of any Swingline Loan made by the Swingline Lender (except for any such liabilities to the extent that they result from the gross negligence or wilful misconduct of the Swingline Lender).

3.3 Repayment and Redrawing

- (a) Until the Maturity Date, the Borrower may only repay and prepay Term Borrowings as provided herein, and may not re-borrow Term Borrowings. On the Maturity Date, the Total Term Facility Commitment shall reduce to zero and all Term Borrowings shall be due and payable.
- (b) Until the Maturity Date, the WIP Borrowings of each WIP Lender may, within the limits and subject to the conditions herein provided, increase and decrease and the Borrower may borrow, repay and re-borrow WIP Borrowings without penalty or premium. On the Maturity Date, the Total WIP Facility Commitment shall reduce to zero and all WIP Borrowings shall be due and payable.
- (c) Until the Maturity Date, the Operating Borrowings of each Operating Lender may, within the limits and subject to the conditions herein provided, increase and decrease and the Borrower may borrow, repay and re-borrow Operating Borrowings without penalty or premium. On the Maturity Date, the Total Operating Facility Commitment shall reduce to zero and all Operating Borrowings shall be due and payable.
- (d) Until the Maturity Date, the LC Borrowings of each LC Lender may, within the limits and subject to the conditions herein provided, increase and decrease and the Borrower may borrow, repay and re-borrow LC Borrowings without penalty or premium. On the Maturity

Date, the Total LC Facility Commitment shall reduce to zero and all LC Borrowings shall be due and payable.

- (e) If at any time the Equivalent Amount in Canadian Dollars of the Operating Borrowings exceeds the sum of the Operating Facility Borrowing Base as at the date of the most recently delivered Borrowing Base Certificate (an “**Operating Facility Borrowing Base Shortfall**”), the Borrower shall within 30 Business Days repay such Operating Borrowings as is required to eliminate such Operating Facility Borrowing Base Shortfall. The Borrower will apply such payments *pro rata* amongst the Lenders under the Operating Facility and in the following order thereunder: (A) first against Prime Loans and U.S. Base Rate Loans, (B) second to repay Bankers’ Acceptances, and (C) third to repay Libor Loans, in each case, subject to Section 4.7, until such Operating Facility Borrowing Base Shortfall has been eliminated.
- (f) If at any time the Equivalent Amount in Canadian Dollars of the WIP Borrowings exceeds the WIP Facility Borrowing Base as at the date of the most recently delivered Borrowing Base Certificate (a “**WIP Facility Borrowing Base Shortfall**”), the Borrower shall within 30 Business Days repay such WIP Borrowings as is required to eliminate such WIP Facility Borrowing Base Shortfall. The Borrower will apply such payments *pro rata* amongst the Lenders under the WIP Facility and in the following order thereunder: (A) first against Prime Loans and U.S. Base Rate Loans, (B) second to repay Bankers’ Acceptances, and (C) third to repay Libor Loans, in each case, subject to Section 4.7, until such WIP Facility Borrowing Base Shortfall has been eliminated.

3.4 Purpose

- (a) **Term, Operating, WIP and Swingline Facilities:** The Term Facility, Operating Facility, WIP Facility and Swingline Facility shall be used by the Borrower for general corporate purposes of the Loan Parties.
- (b) **LC Facility:** The LC Facility shall be used for general corporate purposes of the Loan Parties.

3.5 Accommodations

- (a) **Term Facility:** The Term Accommodation outstanding under the Original Credit Agreement on the Effective Date shall, on the Effective Date, be deemed to be outstanding hereunder as a Term Accommodation under the Term Facility.
- (b) **WIP Facility:** Subject to the provisions of this Agreement (including Section 3.5(c)), the Borrower may borrow, repay and re-borrow by way of WIP Accommodations from each WIP Lender pursuant to the WIP Facility up to the amount of such Lender’s WIP Facility Commitment by:
 - (i) **Prime Loans:** by borrowing Prime Loans in minimum aggregate amounts of Cdn.\$500,000 and in integral multiples of Cdn.\$100,000 thereafter, upon at least one Business Day prior written notice;
 - (ii) **U.S. Base Rate Loans:** by borrowing U.S. Base Rate Loans in minimum aggregate amounts of U.S.\$500,000 and in integral multiples of U.S.\$100,000 thereafter, upon at least one Business Day prior written notice;
 - (iii) **Bankers’ Acceptances:** by issuing Bankers’ Acceptances in minimum aggregate amounts of Cdn.\$500,000 and in integral multiples of Cdn.\$100,000 thereafter, upon at least two Business Days prior written notice; and

- (iv) **Libor Loans:** by borrowing Libor Loans in minimum aggregate amounts of U.S.\$500,000 and in integral multiples of U.S.\$100,000 thereafter, upon at least three Business Days prior written notice,

each such notice to be given to the Agent at or prior to 10:00 a.m. on the last day on which such notice can be given pursuant to this Section 3.5(b) and to be substantially in the form of Schedule B. Any such notice may be given by telephone and if so, shall be followed by delivery of written notice, substantially in the form of Schedule B, by no later than 2:00 p.m. on the same day.

- (c) **Operating Facility:** Subject to the provisions of this Agreement, the Borrower may borrow, repay and re-borrow by way of Operating Accommodations from the Operating Lenders pursuant to the Operating Facility up to the amount of such Operating Facility Commitment by:
 - (i) **Prime Loans:** by borrowing Prime Loans from the Operating Lenders upon at least one Business Day's prior written notice in minimum aggregate amounts of Cdn.\$100,000 and in integral multiples of Cdn.\$100,000;
 - (ii) **U.S. Base Rate Loans:** by borrowing U.S. Base Rate Loans from the Operating Lenders upon at least one Business Day's prior written notice in minimum amounts of U.S.\$100,000 and in integral multiples of U.S.\$100,000;
 - (iii) **Bankers' Acceptances:** by issuing Bankers' Acceptances in minimum aggregate amounts of Cdn.\$100,000 and in integral multiples of Cdn.\$100,000 thereafter, upon at least one Business Day's prior written notice; and
 - (iv) **Libor Loans:** by borrowing Libor Loans in minimum aggregate amounts of U.S.\$100,000 and in integral multiples of U.S.\$100,000 thereafter, upon at least three Business Days' prior written notice.

With respect to each Operating Accommodation, the Borrower shall advise the Agent of applicable allocations as between the Operating Accommodations in Canadian Dollars and those in U.S. Dollars. Any such advice may be given by telephone by no later than 10:00 a.m. on the same day.

Each Operating Accommodation (other than Swingline Loans) shall require delivery of a Borrowing Notice to the Operating Lenders at or prior to 10:00 a.m. on the last day on which such notice can be given pursuant to this Section 3.5, substantially in the form of Schedule B. Any such notice may be given by telephone and if so, shall be followed by delivery of written notice, substantially in the form of Schedule B, by no later than 2:00 p.m. on the same day.

- (d) **LC Facility.**
 - (i) Subject to the provisions of this Agreement, the Borrower may borrow, repay and re-borrow from each LC Lender pursuant to the LC Facility up to the amount of such Lender's LC Facility Commitment by way of Letters of Credit in Canadian Dollars, U.S. Dollars or Euros issued by a Fronting Lender upon at least three Business Days' prior written notice, each such notice to be given to the Agent at or prior to 10:00 a.m. on the last day on which such notice can be given pursuant to this Section 3.5(d) and to be substantially in the form of Schedule B. Any such notice may be given by telephone and if so, shall be followed by delivery of written notice, substantially in the form of Schedule B, by no later than 2:00 p.m. on the same day.

- (ii) No individual Letter of Credit may be issued hereunder in a face amount exceeding EUR7,000,000 or the Equivalent Amount in Canadian Dollars or US Dollars.
- (iii) From and after delivery of the renewed EDC Guarantee pursuant to Section 9.2(w), no Letter of Credit shall be issued under the LC Facility unless the Agent and the Lenders are satisfied that such Letter of Credit is guaranteed under the EDC Guarantee. All existing Letters of Credit under the LC Facility shall remain insured under the EDC Guarantee.

3.6 Selection of Libor Interest Periods

If the Borrower elects to borrow by way of a Libor Loan pursuant to Section 3.5, elects to convert a Borrowing into a Libor Loan pursuant to Section 3.17 or elects to Rollover a Libor Loan pursuant to Section 3.18, the Borrower shall, prior to the beginning of the Libor Interest Period applicable to such Libor Loan, in accordance with the same period of notice required for the initial Drawdown of a Libor Loan as set forth in Section 3.5, select and notify the Agent by delivery of a Borrowing Notice, Conversion Notice or Rollover Notice, as the case may be, of the Libor Interest Period (which shall begin and end on a Business Day) applicable to such Libor Loan. If the Borrower fails to give to the Agent a notice as aforesaid prior to the date of maturity of a Libor Loan in accordance with the same period of notice required for the original Borrowing, then the amount of such Libor Loan shall be either converted on its maturity to a U.S. Base Rate Loan pursuant to Section 3.17 or repaid.

3.7 Conditions Applicable to Bankers' Acceptances and BA Equivalent Advances

- (a) **Acceptance of Bankers' Acceptances:** Subject to the terms and conditions of this Agreement, each Applicable Lender hereby agrees to accept its Lender's Proportion of Bankers' Acceptances as requested by the Borrower pursuant to a Borrowing Notice, Conversion Notice or Rollover Notice delivered under Sections 3.5, 3.17 or 3.18. Each such Lender shall purchase such Bankers' Acceptances at the applicable Discount Rate and shall deliver the Discount Proceeds thereof (less any BA Acceptance Fees payable to such Lender in respect thereof) for the account of the Borrower through the Agent's Account for Payments. Notwithstanding the foregoing, no Applicable Lender shall be obligated to purchase a Bankers' Acceptance which is not for a Standard Term, unless each Applicable Lender has consented thereto.
- (b) **Payment to Borrower:** On the Drawdown Date, Conversion Date or Rollover Date relating to any issue of Bankers' Acceptances:
 - (i) on any Drawdown Date, each Applicable Lender shall deliver the Discount Proceeds thereof (less any BA Acceptance Fees payable to such Lender in respect thereof), for the account of the Borrower through the Agent at the Agent's Account for Payments;
 - (ii) on any Rollover Date relating to any Rollover of Bankers' Acceptances, the Borrower shall be liable to the Applicable Lenders for the face amount of maturing Bankers' Acceptances. In order to satisfy the continuing liability of the Borrower to reimburse the Applicable Lenders for the face amount of the maturing Bankers' Acceptances, each Applicable Lender shall receive and retain for its own account the Discount Proceeds from the purchase by such Applicable Lender of such new Bankers' Acceptances and the Borrower shall on the maturity date of the maturing Bankers' Acceptances pay to the Agent, for the benefit of such Applicable Lender, an amount equal to the difference between the principal amount of the maturing Bankers' Acceptances and the Discount Proceeds from the purchase by such Applicable Lender of such new Bankers'

Acceptances together with the BA Acceptance Fees to which such Applicable Lender is entitled pursuant to Section 5.4; and

(iii) on any Conversion Date relating to Bankers' Acceptances:

(A) in the case of a Conversion from a Prime Loan, in order to satisfy the continuing liability of the Borrower to the Applicable Lenders for the amount of the converted Borrowing, each Applicable Lender shall receive for its own account the Discount Proceeds from the purchase by such Applicable Lender of such Bankers' Acceptances and the Borrower shall on the Conversion Date pay to the Agent for the benefit of such Applicable Lender the difference between the principal amount of the converted Borrowing and the Discount Proceeds from such Bankers' Acceptances together with the BA Acceptance Fees to which such Applicable Lender is entitled pursuant to Section 5.4; and

(B) in the case of a Conversion from a Bankers' Acceptance, in order to satisfy the continuing liability of the Borrower to reimburse the Applicable Lenders for an amount equal to the face amount of such Bankers' Acceptance, the Agent shall record the obligation of the Borrower to each Applicable Lender as a Borrowing of the type into which the maturing Bankers' Acceptance has been converted.

(c) **Waiver of Presentment and Other Conditions:** The Borrower waives presentment for payment and, except to the extent of the negligence or wilful misconduct of a Lender referred to in Section 3.7(g), any other defence to payment of any amounts due to a Lender in respect of a Bankers' Acceptance accepted and, if applicable, purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers' Acceptance being held, at the maturity thereof, by such Lender in its own right and the Borrower agrees not to claim any days of grace if such Lender as holder sues the Borrower on the Bankers' Acceptance for payment of the amount payable by the Borrower thereunder. On the specified maturity date of a Bankers' Acceptance, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrower shall, subject to Section 3.7(f), pay the Agent on behalf of the Lender that has accepted such Bankers' Acceptance, the full face amount of such Bankers' Acceptance through payment to the Agent or conversion of such Bankers' Acceptance into a Prime Loan pursuant to Section 3.17.

(d) **Terms of Each Bankers' Acceptance:** Each Bankers' Acceptance shall:

- (i) have a maturity date which shall be on a Business Day;
- (ii) have a Standard Term (excluding days of grace) or, subject to availability and with the consent of each Applicable Lender, have a term which is not a Standard Term but which does not exceed six (6) months (excluding days of grace);
- (iii) be denominated in whole multiples of Cdn.\$100,000;
- (iv) have a term which does not extend beyond the Maturity Date; and
- (v) be in the standard form of each Applicable Lender.

It is the intention of the parties that, pursuant to the Depository Bills and Notes Act ("DBNA"), all Bankers' Acceptances accepted by the BA Purchasing Lenders under this Agreement shall be issued in the form of a "depository bill" (as defined in the DBNA),

deposited with, and made payable to a "clearing house" (as defined in the DBNA) including The Canadian Depository for Securities Limited or its nominee, CDS & Co. The Agent and the BA Purchasing Lenders, as applicable, shall, *inter alia*, effect the following and, subject to the approval of the Borrower, establish and notify the Borrower and the Applicable Lenders of any additional procedures, consistent with the terms of this Agreement and the quarterly requirements of the DBNA, as are reasonably necessary to accomplish such intention including:

- (A) the instruments or drafts held by the Agent for the purposes of effecting Bankers' Acceptances will include a notation to the effect that they are issued pursuant to the DBNA;
 - (B) any reference to authentication of the Bankers' Acceptance will be removed; and
 - (C) any reference to "bearer" will be removed.
- (e) **Power of Attorney - Bankers' Acceptances:** As a condition precedent to each BA Purchasing Lender's obligation to accept and purchase Bankers' Acceptances hereunder and, subject to the DBNA compliance requirements set forth in Section 3.7(d), the Borrower agrees to the Power of Attorney Terms - Bankers' Acceptances set out in Schedule H-2 and hereby grants to each BA Purchasing Lender a power of attorney on the terms set out in Schedule H-2, provided that if the Borrower revokes such power of attorney, a BA Purchasing Lender shall not be obliged to accept and purchase Bankers' Acceptances unless the Borrower, the Agent and all of the BA Purchasing Lenders have agreed on amendments to this Agreement which the BA Purchasing Lenders may require to again accept and purchase Bankers' Acceptances.
- (f) **Failure to Give Notice of Repayment:** If the Borrower fails to give notice to the Agent of the method of repayment of a Bankers' Acceptance prior to the date of maturity of such Bankers' Acceptance in accordance with the same period of notice required for the original acceptance of such Bankers' Acceptance as set forth in Section 3.5(b)(iii), the face amount of such Bankers' Acceptance shall be converted on its maturity to a Prime Loan from the Applicable Lender pursuant to Section 3.17.
- (g) **Unlawful Issue or Use:** The Borrower shall pay on demand to the Agent on behalf of each BA Purchasing Lender the face amount of any bankers' acceptance form presented to such BA Purchasing Lender for payment and paid by such Lender that has been unlawfully issued or used or put into circulation fraudulently or without authority, and shall indemnify such BA Purchasing Lender against any loss, cost, damage, expense or claim regardless of by whomsoever made that such BA Purchasing Lender may suffer or incur by reason of any fraudulent, unauthorized or unlawful issue or use of any such bankers' acceptance form, other than as is caused by the negligence or wilful act or omission of such BA Purchasing Lender or any of its officers, employees, agents or representatives failing to use the same standard of care in the custody of such bankers' acceptance forms as it uses in the custody of its own property of a similar nature.
- (h) **BA Equivalent Advances:** Notwithstanding Sections 3.5(b)(iii) and 3.5(b)(iii), the foregoing provisions of this Section 3.7, and any other provision hereof to the contrary, a Non-Acceptance Lender shall, in lieu of accepting Bankers' Acceptances, make a BA Equivalent Advance. The amount of each BA Equivalent Advance shall be equal to the Discount Proceeds which would be realized from a hypothetical sale of those Bankers' Acceptances which, but for this Section 3.7(h), such Lender would otherwise be required to accept and purchase as part of such an Accommodation by way of Bankers' Acceptances. To determine the amount of such Discount Proceeds, the hypothetical sale shall be deemed to take place at the Non-Acceptance Discount Rate. Any BA Equivalent

Advance shall be made on the relevant Drawdown Date, Conversion Date or Rollover Date, as the case may be, and shall remain outstanding for the term of the Bankers' Acceptances issued concurrently therewith. Concurrently with the making of a BA Equivalent Advance, a Non-Acceptance Lender shall be entitled to deduct therefrom an amount equal to the BA Acceptance Fee which, but for this Section 3.7(h), such Lender would otherwise be entitled to receive as part of such issue of Bankers' Acceptances. The BA Equivalent Advance shall accrue interest at a rate per annum equal to the Non-Acceptance Discount Rate for such Bankers' Acceptance for the term of such BA Equivalent Advance. Upon the maturity date for such Bankers' Acceptances, the Borrower shall pay to each Non-Acceptance Lender, in satisfaction of the BA Equivalent Advance and interest accrued thereon, an amount equal to the face amount of the Bankers' Acceptance which, but for this Section 3.7(h), such Lender would otherwise have been required to accept as part of the applicable Accommodation by way of Bankers' Acceptance, failing which such amount shall be converted to a Prime Loan.

All BA Equivalent Advances made by a Non-Acceptance Lender shall, if requested by such Lender, be evidenced by promissory notes of the Borrower in form and substance satisfactory to such Lender, acting reasonably.

As a condition precedent to each Non-Acceptance Lender's obligation to make a BA Equivalent Advance hereunder, the Borrower agrees to the Power of Attorney Terms – BA Equivalent Advances set out in Schedule H-1 and hereby grants to each Non-Acceptance Lender a power of attorney on the terms set out in Schedule H-1, provided that if the Borrower revokes such power of attorney, it shall not be entitled to obtain BA Equivalent Advances unless the Borrower, the Agent and all of the Non-Acceptance Lenders have agreed on amendments to this Agreement which would again allow the Borrower to obtain BA Equivalent Advances.

3.8 Agent's Duties re Bankers' Acceptances

- (a) **Advice to the Lenders:** The Agent, promptly following receipt of a Borrowing Notice for an Accommodation by way of Bankers' Acceptances, of a Conversion Notice for Conversion of a Borrowing to a Bankers' Acceptance or of a Rollover Notice for a Rollover of a Bankers' Acceptance, shall:
 - (i) advise the Borrower of the allocation of Bankers' Acceptances and BA Equivalent Advances, as applicable, to each Applicable Lender such that the aggregate amount of Bankers' Acceptances required to be accepted or BA Equivalent Advances to be made by such Applicable Lender hereunder is in a whole multiple of Cdn.\$100,000; and
 - (ii) advise each BA Purchasing Lender of the face amount of each Bankers' Acceptance to be purchased or the amount of the BA Equivalent Advances to be made by it and the term thereof, which term shall be identical for all BA Purchasing Lenders. Promptly on each Drawdown Date, Conversion Date or Rollover Date on which BA Purchasing Lenders are required to purchase Bankers' Acceptances hereunder, the Agent shall determine the applicable CDOR Rate in respect of such Bankers' Acceptances.
- (b) **Bankers' Acceptances Being Purchased:** Promptly on the Drawdown Date, Rollover Date or Conversion Date relating to all Bankers' Acceptances to be purchased by the BA Purchasing Lenders on such date, the Agent shall provide either written or telephone advice to the Borrower and each BA Purchasing Lender confirming the particulars with respect to such Bankers' Acceptances. Such advice shall be confirmed in writing by the Agent on or prior to 2:30 p.m. on such Drawdown Date, Rollover Date or Conversion Date. Upon receipt of any such notice, each BA Purchasing Lender is thereupon

authorized to complete and sign Bankers' Acceptances on behalf of the Borrower in accordance with the Power of Attorney Terms - Bankers' Acceptances or the Power of Attorney Terms - BA Equivalent Advances, as the case may be, and the particulars advised by the Agent.

3.9 Fronted Letters of Credit Under the LC Facility

- (a) **Issuance:** If, pursuant to a Borrowing Notice, the Borrower has requested a Fronted Letter of Credit from a Fronting Lender under the LC Facility, such Fronting Lender shall, subject to the terms of this Agreement, issue such Fronted Letter of Credit for the account of the Borrower on any day on or after the Effective Date and before the Maturity Date. No Fronted Letter of Credit shall be issued by any Fronting Lender, whether on original issue, or by renewal or extension (automatic or otherwise), where any LC Lender may have liability because:
- (i) such Fronted Letter of Credit expires after the Maturity Date; or
 - (ii) after giving effect to such Fronted Letter of Credit, the amount of LC Obligations under Fronted Letters of Credit issued by a Fronting Lender exceeds the LC Facility Commitment of such Fronting Lender.

Each Fronted Letter of Credit shall be substantially in the form of the applicable Fronting Lender's standard form with modifications thereto consistent with the applicable provisions of this Agreement which such Fronting Lender shall determine in good faith and on a commercially reasonable basis does not materially increase the obligations, or diminish the rights, of any LC Lender.

- (b) **Conditions Precedent:** No Fronting Lender shall be required to issue any Fronted Letter of Credit if, on the Issue Date for such Fronted Letter of Credit, the Agent or the Fronting Lender determines that any of the following conditions has not been satisfied:
- (i) the Agent, on behalf of the Fronting Lender, shall have received a Borrowing Notice requesting that a Fronted Letter of Credit be issued, such Borrowing Notice to be accompanied by an originally executed LC Application satisfactory to the applicable Fronting Lender, specifying:
 - (A) the proposed Issue Date (which shall be a Business Day at least three Business Days following the date of such request);
 - (B) the purpose for which such Fronted Letter of Credit is to be used, and, if the Agent, acting reasonably, determines that the requested Fronted Letter of Credit will constitute a Financial LC, the Borrower has agreed with such characterization; for the avoidance of doubt, if the Borrower does not agree with such characterization, such Fronted Letter of Credit shall not be issued;
 - (C) the expiry date which shall not extend beyond the Maturity Date;
 - (D) the name and address of the beneficiary;
 - (E) the face amount and currency of such Fronted Letter of Credit; and
 - (F) the terms and conditions of the requested Fronted Letter of Credit and other relevant details (provided that no Fronted Letter of Credit that provides for the automatic extension thereof unless notice is given to the

beneficiary thereof shall be issued which requires that notice of the non-extension of the expiry date thereof be given more than 60 days prior to the scheduled expiry thereof, unless otherwise agreed by the Fronting Lender); and

- (ii) the Fronting Lender, through the Agent, shall have received such other customary administrative documents as the Fronting Lender, through the Agent, shall have reasonably requested as a condition to the issuance of such Fronted Letter of Credit; provided that in the event of any conflict between the terms of such other documents and this Agreement, the terms of this Agreement shall prevail and further provided that the Borrower's obligations in respect of Fronted Letters of Credit shall be determined solely by reference to the provisions of this Agreement.
- (c) **Notice to LC Lenders:** Promptly upon the issuance of a Fronted Letter of Credit, the Agent shall notify each LC Lender thereof, which notice shall also specify each LC Lender's share of the amount of such Fronted Letter of Credit based upon the Lender's Proportion of such LC Lender.
- (d) **Liability for Fronted Letters of Credit:** Each Fronting Lender will exercise and give the same care and attention to each Fronted Letter of Credit issued by it hereunder as it gives to its other letters of credit and similar obligations, and such Fronting Lender's sole liability to each LC Lender shall be to promptly return to the Agent for the account of the LC Lenders, each LC Lender's Proportion of any payments made to such Fronting Lender by the Borrower hereunder, excluding the Fronting Fee. Each Fronting Lender agrees that, in paying any drawing under a Fronted Letter of Credit, such Fronting Lender shall not have any responsibility to obtain any document (other than as expressly required by such Fronted Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of any Person delivering any such document. No Fronting Lender nor any of its representatives, officers, employees or agents shall be liable to any LC Lender for:
 - (i) any action taken or omitted to be taken in connection herewith at the request or with the approval of the Lenders;
 - (ii) any action taken or omitted to be taken in connection with any Fronted Letter of Credit in the absence of gross negligence or wilful misconduct; or
 - (iii) the execution, effectiveness, genuineness, validity, or enforceability of any Fronted Letter of Credit or any other document contemplated thereby.

No Fronting Lender shall incur any liability by acting in reliance upon any notice, consent, certificate, statement or other writing (which may be a bank wire, telex or similar writing) believed by it to be genuine or to be signed by or on behalf of the proper Person.

- (e) **Auto-Renewal of Letters of Credit:** A Fronted Letter of Credit may, if the Borrower so requests, contain an automatic extension of the expiry date thereof pursuant to which the expiration date is automatically extended or renewed for a period of up to one year unless the applicable Fronting Lender notifies the beneficiary thereof that it shall not be extended or renewed within a certain period of time (not to exceed 60 days prior to the then current expiry date) (such lead date being herein called the "**Renewal Notification Date**"). For each such Fronted Letter of Credit, the Borrower shall notify the Agent and the applicable Fronting Lender, at least 10 Business Days prior to the Renewal Notification Date, if the Borrower wishes such Fronted Letter of Credit to expire in accordance with its current expiry date, and not automatically renew, in which event the applicable Fronting Lender shall so notify the beneficiary. If the Borrower fails to provide

such notification to the Agent and applicable Fronting Lender, such Fronting Lender shall (subject to the next sentence) permit the Fronted Letter of Credit to automatically renew or extend in accordance with its terms. Nothing in this Section 3.9(e) shall permit the Borrower to have outstanding any Fronted Letter of Credit where any LC Lender has liability in respect thereof that expires after the Maturity Date.

- (f) **Records:** The Agent and each Fronting Lender shall maintain records showing the undrawn and unexpired amount of each Fronted Letter of Credit outstanding hereunder and each LC Lender's share of such amount and showing for each Fronted Letter of Credit issued hereunder:

- (i) the Issue Date and expiration date thereof;
- (ii) the amount thereof; and
- (iii) the date and amount of all payments made thereunder.

With respect to any Fronted Letter of Credit issued hereunder, the Agent and the applicable Fronting Lender shall make copies of such records available to the Borrower or any LC Lender upon its request.

3.10 Fronted Letter of Credit Payments

- (a) **LC Drawdown:** The Borrower and each LC Lender hereby authorize each Fronting Lender to review on its behalf each draft and other document presented under each Fronted Letter of Credit. The determination of a Fronting Lender as to the conformity of any documents presented under a Fronted Letter of Credit to the requirements of such Fronted Letter of Credit shall, in the absence of such Fronting Lender's gross negligence or wilful misconduct, be conclusive and binding on the Borrower and each LC Lender. Each Fronting Lender shall, within a reasonable period of time following its receipt thereof, examine all documents purporting to represent a demand for payment under any Fronted Letter of Credit. Such Fronting Lender shall promptly after such examination:

- (i) notify the Agent and the Borrower by telephone (confirmed in writing) of such demand for payment;
- (ii) deliver to the Agent a copy of each document purporting to represent a demand for payment under such Fronted Letter of Credit; and
- (iii) notify the Agent and the Borrower whether said demand for payment was properly made under such Fronted Letter of Credit.

- (b) **LC Disbursement:** In the event that any LC Disbursement shall be made under any Fronted Letter of Credit (the date any such LC Disbursement is made being the "Participation Date"):

- (i) the applicable Fronting Lender shall promptly notify the Agent who shall promptly notify the Borrower of such payment and of the amount thereof;
- (ii) each LC Disbursement shall constitute the making of:
 - (A) a Prime Loan in the amount of such LC Disbursement in the case of a Fronted Letter of Credit in Canadian Dollars;

- (B) a U.S. Base Rate Loan in the amount of such LC Disbursement in the case of a Fronted Letter of Credit in U.S. Dollars; and
- (C) a U.S. Base Rate Loan in the Equivalent Amount in US Dollars of such LC Disbursement in the case of a Fronted Letter of Credit in Euros,

to the Borrower by the applicable Fronting Lender on the Participation Date (without limiting each LC Lender's obligations hereunder to such Fronting Lender in respect of any such Loan and notwithstanding the otherwise pro-rata nature of Accommodations hereunder), even if any condition precedent to the making of such a Loan shall not have been satisfied.

- (iii) the Agent shall notify each LC Lender by facsimile or by telephone (confirmed by facsimile) of such LC Disbursement and the amount payable by such LC Lender to the Agent for the account of such Fronting Lender based on the applicable Lender's Proportion; and
 - (iv) immediately upon receipt of such notice, each LC Lender shall make its Lender's Proportion of such Loan in Cdn. Dollars or U.S. Dollars, as applicable, available to the Agent for the account of such Fronting Lender by wire transfer of immediately available funds to the Agent's Branch of Account for the account of such Fronting Lender. If any LC Lender fails to make any such payment on the Participation Date, then interest shall accrue and be payable by such LC Lender on such LC Lender's obligation to make such payment during the period from such Business Day to the day such LC Lender makes such payment at the Default Rate.
- (c) **Lenders' Participation:** Each Fronting Lender irrevocably grants, and, in order to induce each Fronting Lender to issue its Fronted Letters of Credit hereunder, each LC Lender irrevocably accepts and hereby purchases from such Fronting Lender on the terms and conditions hereinafter stated, for its own account and risk, an undivided interest (equal to such LC Lender's Proportion) in such Fronting Lender's obligations and rights under each Fronted Letter of Credit issued by it and the amount of each draft paid by such Fronting Lender thereunder and the deemed Prime Loan or U.S. Base Rate Loan made hereunder to the Borrower on the Participation Date.
- (d) **Absolute Obligation:** Each LC Lender acknowledges that its obligations to each Fronting Lender in respect of any Fronted Letter of Credit issued by it, including the obligation to purchase and fund a participation in the obligations and rights of a Fronting Lender under each Fronted Letter of Credit and any drafts paid by it and the deemed Prime Loan or U.S. Base Rate Loan made hereunder by such Fronting Lender on the Participation Date, are absolute and unconditional and shall not be affected by any circumstance whatsoever, including:
- (i) the occurrence and continuance of any Default or Event of Default;
 - (ii) any failure or inability of any other LC Lender to purchase or fund such a participation hereunder; or
 - (iii) any other failure by any other LC Lender to fulfil its obligations hereunder.

Each payment by an LC Lender to a Fronting Lender shall be made, without any offset, compensation, abatement, withholding or reduction whatsoever.

3.11 Obligations Absolute re Letters of Credit

- (a) **Absolute Obligation:** The obligations of the Borrower under this Agreement in respect of Letters of Credit shall be absolute, unconditional and irrevocable under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment which any Person may have or have had against the Agent, any LC Lender, any Fronting Lender or any beneficiary of a Letter of Credit.
- (b) **No Defences:** The obligations of the Borrower in respect of Letters of Credit shall not be affected by:
- (i) any lack of validity or enforceability of any Letter of Credit;
 - (ii) any draft, demand, certificate or any other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
 - (iii) a Default or an Event of Default that has occurred and is continuing;
 - (iv) any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred;
 - (v) any claims, compensation, set-off, defence or other right whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee;
 - (vi) payment under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit;
 - (vii) the non-perfection of any Security Interest granted to, or in favour of, the Agent, any of the LC Lenders, or any Fronting Lender as security for any of the reimbursement obligations referred to in Section 3.10;
 - (viii) the existence of any Insolvency Event with respect to any Loan Party; or
 - (ix) any other event or circumstance whatsoever that might, but for the provisions of this Section 3.11(b), constitute a legal or equitable discharge of the obligations of the Borrower hereunder or in respect of any Letter of Credit;

save and except only for payment under a Letter of Credit other than in compliance with the terms thereof in all material respects or other than as a result of the Agent's or, if applicable, the applicable Fronting Lender's gross negligence or wilful misconduct.

- (c) **Notice Delays:** Neither the Agent nor any Fronting Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except, as to any such Person, for errors or omissions caused by such Person's gross negligence or wilful misconduct.
- (d) **Uniform Customs:** The Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce (the "**Uniform Customs**") shall in all respects apply to each Letter of Credit unless expressly provided to the contrary therein and shall be deemed for such purpose to be a part of this Agreement as if fully incorporated herein. In the event of any conflict or inconsistency between the Uniform Customs and the governing law of this Agreement, the Uniform

Customs shall, to the extent permitted by Applicable Law, prevail to the extent necessary to remove the conflict or inconsistency.

- (e) **Action Binding:** Any action taken or omitted by the Agent or any Fronting Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or wilful misconduct and in accordance with the standards of care specified in the Uniform Customs, shall be binding on the Borrower and shall not result in any liability of the Agent or any Fronting Lender to the Borrower.
- (f) **General:** Without limiting the generality of the foregoing:
 - (i) a Fronting Lender may accept documents that appear on their face to be in compliance with the terms of a Letter of Credit in all material respects without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in compliance with the terms of such Letter of Credit in all material respects;
 - (ii) a Fronting Lender shall have the right, in its discretion acting reasonably, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit;
 - (iii) this Section 3.11, together with Section 3.10, shall establish the standard of care to be exercised by each Fronting Lender when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing); and
 - (iv) in the event of any conflict or inconsistency between the provision of any LC Application and this Agreement, the provisions of this Agreement shall prevail.
- (g) **Consequential Damages:** Notwithstanding anything to the contrary contained herein, none of the Agent, any Lender or any Fronting Lender shall be liable to the Borrower for any consequential, indirect, punitive or exemplary damages with respect to action taken or omitted to be taken by it under any Letter of Credit.

3.12 Expenses re Letters of Credit

- (a) **LC Expenses:** The Borrower shall pay and reimburse the Agent, each Fronting Lender and each LC Lender for all Taxes and reasonable, customary and documented fees, charges and other costs and expenses (other than Letter of Credit Fees and Fronting Fees) incurred by the Agent, such LC Lender or such Fronting Lender in connection with any LC Disbursement ("**LC Expenses**"), as notified by the Agent (on its own behalf and on behalf of the LC Lenders) or a Fronting Lender to the Borrower through the Agent. Each payment in respect of LC Expenses shall be due and payable within 10 Business Days after the date on which the Agent or a Fronting Lender, as the case may be, notifies the Borrower of the amount of such LC Expenses and shall accrue interest if not paid on such date at the Default Rate.
- (b) **Other Costs:** The Borrower shall pay to the Agent each Fronting Lender and each LC Lender its:
 - (i) reasonable, customary and documented set-up fees, cable charges and other miscellaneous charges in respect of the issue of Letters of Credit and upon the

amendment or transfer of each Letter of Credit and each drawing made thereunder; and

- (ii) reasonable, customary and documented documentary and administrative charges for amending, transferring or drawing under, as the case may be, Letters of Credit of a similar amount, term and risks.

3.13 Indemnification; Nature of Lender's Duties

- (a) **Indemnity:** In addition to amounts payable as elsewhere provided for in this Section 3.13, the Borrower hereby agrees to protect, indemnify, pay and save each Lender harmless from and against any and all claims or losses (including reasonable legal fees and expenses) which such Lender may incur or be subject to as a consequence, direct or indirect, of:

- (i) the application for or issuance of or drawing under any Letter of Credit; or
- (ii) the failure of such Lender to honour a drawing under any Letter of Credit as a result of any present or future Governmental Action prohibiting the payment of such drawing,

in each case, other than to the extent (i) not otherwise satisfied by or reimbursed by the payment of interest on sums pursuant to this Agreement or (ii) a result of the gross negligence or wilful misconduct of such Lender as determined by a court of competent jurisdiction, provided that such Lender acts in good faith.

- (b) **Misuse:** As between the Borrower and each Lender, the Borrower assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the beneficiary of such Letter of Credit. Except to ensure compliance with the applicable Letter of Credit, the Lenders shall not have any responsibility for:

- (i) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for, issuance of or drawing under any Letter of Credit (even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged);
- (ii) the validity or sufficiency of any instrument transferring or assigning (or purporting to transfer or assign) any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;
- (iii) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph or otherwise (whether or not they are in cipher);
- (iv) errors in interpretation of technical terms;
- (v) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof;
- (vi) the misapplication by the beneficiary of any Letter of Credit or of the proceeds of any drawing under such Letter of Credit; and
- (vii) any consequences arising from causes beyond the control of the Lenders, including any Governmental Actions.

None of the above shall affect, impair, or prevent the vesting of any of the Lenders' powers hereunder. Any action taken or omitted by any Lender under or in connection with any Letter of Credit issued by it or the related certificates if taken or omitted in good faith, shall not put such Lender under any resulting liability to the Borrower provided that such Lender acts without gross negligence and has not engaged in wilful misconduct.

- (c) **No Liability:** The Borrower shall have no obligation to indemnify a Lender in respect of any liability incurred by such Lender arising out of the gross negligence or wilful misconduct of such Lender as determined by a court of competent jurisdiction, or out of the wrongful dishonour by such Lender of a proper demand for payment made under any Letter of Credit issued by it.

3.14 Repayments re Letters of Credit

If:

- (a) the Agent delivers an Acceleration Notice or an Insolvency Event occurs;
- (b) the Borrower shall be required to repay Borrowings to a Lender pursuant to Article 4; or
- (c) any Letter of Credit is the subject matter of any order, judgment, injunction or other such determination (a "**Judicial Order**") restricting payment under and in accordance with such Letter of Credit or extending a Fronting Lender's or an LC Lender's liability, as the case may be, beyond the expiration date stated in such Letter of Credit;

then the Borrower shall pay to the Agent an amount, in the currency in which the Letter of Credit is denominated, equal to the maximum amount available to be drawn under any unexpired Letter of Credit in respect of all of the Lenders in the case of paragraphs (a) and (c) and in respect of each Lender whose Lender Outstandings are required to be repaid in accordance with Article 4 in the case of paragraph (b). Any such amounts paid by the Borrower to the Agent shall be held by the Agent in a Cash Collateral Account as continuing collateral security for the obligations of the Borrower to reimburse the Lenders for LC Disbursements made in respect of any such Letter of Credit. Such Cash Collateral Accounts shall be assigned to the Agent as security for the obligations of the Borrower in relation to such Letters of Credit and the Security Interest of the Agent thereby created in such cash collateral shall rank in priority to all other Security Interests and adverse claims against such cash collateral. Such cash collateral shall be applied to satisfy the obligations of the Borrower for such Letters of Credit as LC Disbursements are made thereunder. Amounts held in such Cash Collateral Accounts may not be withdrawn by the Borrower; however, interest on such deposited amounts (at the rates and in accordance with the then prevailing practices of the Agent for accounts of such type) shall be for the account of the Borrower and may be withdrawn by the Borrower from time to time so long as no Event of Default is then continuing.

The Agent shall release to the Borrower any amount remaining in the Cash Collateral Accounts after applying the amounts necessary to discharge all LC Obligations of the Borrower relating to such Letters of Credit, upon the later of:

- (i) the date on which any final and non-appealable Judicial Order has been rendered or issued either terminating any applicable Judicial Order or permanently enjoining the Fronting Lender from paying under such Letter of Credit;

- (ii) the earlier of:
 - (A) the date on which either the original counterpart of such Letter of Credit is returned to the Fronting Lender for cancellation or the Fronting Lender is released by the beneficiary thereof from any other obligation in respect of such Letter of Credit; and
 - (B) the expiry of such Letter of Credit; and
- (iii) if an Event of Default has occurred and is continuing, the payment and satisfaction of all indebtedness and liabilities of the Borrower hereunder and cancellation or termination of the Facilities.

3.15 Notice of Repayment

The Borrower shall give the Agent prior written notice substantially in the form of Schedule C of each repayment of Borrowings in accordance with the same period of notice required pursuant to Section 3.5 for the initial drawdown of the Borrowing being repaid. Notwithstanding the foregoing, a Bankers' Acceptance shall only be repaid on its maturity date and a Libor Loan may only be repaid on the last day of the Libor Interest Period applicable to such Libor Loan unless the Borrower makes payment of the amounts payable in respect thereof pursuant to Section 11.5.

3.16 Pro-Rata Treatment of Borrowings

- (a) **Pro-Rata Borrowings:** Subject to Section 3.16(b) 3.16(c), each Borrowing under a Facility and each basis of Borrowing shall be made available by each Applicable Lender under such Facility and all repayments and reductions in respect thereof shall be made and applied in a manner so that the Borrowings and each basis of Borrowing outstanding hereunder to each Applicable Lender will, to the extent possible, thereafter be in its Lender's Proportion. The Agent is authorized by the Borrower and each Lender to determine, in its sole and unfettered discretion, the amount of Borrowings and each basis of Borrowing to be made available by each Lender and the application of repayments and reductions of Borrowings to give effect to the provisions of this Section 3.16(a) and Section 7.2; provided that, subject to Section 3.16(b), no Lender shall, as a result of any such determination, have Borrowings outstanding in an amount which is in excess of the amount of its Operating Facility Commitment, Term Facility Commitment, WIP Facility Commitment or LC Facility Commitment, as applicable.
- (b) **Agent's Discretion on Allocation:** If it is not practicable to allocate Bankers' Acceptances to each Lender such that the aggregate amount of Bankers' Acceptances required to be purchased by such Lender hereunder is in a whole multiple of Cdn.\$100,000, the Agent is authorized by the Borrower and each Lender to make such allocation as the Agent determines in its sole and unfettered discretion may be equitable in the circumstances. In no event shall the outstanding Borrowings of a Lender exceed its Lender's Proportion by more than Cdn.\$100,000 as a result of such exercise of discretion by the Agent. In the event it is not practicable to allocate each basis of Borrowing in accordance with Section 3.16(a) by reason of the occurrence of circumstances described in Sections 11.2, 11.3 or 11.4, the Agent is authorized by the Borrower and each Lender to make such allocation as the Agent determines in its sole and unfettered discretion may be equitable in the circumstances, but no Lender shall, as a result of any such allocation, have any Borrowings outstanding in an amount which is in excess of the amount of its Operating Facility Commitment, Term Facility Commitment, its WIP Facility Commitment or LC Facility Commitment, as applicable.

- (c) **Further Assurances:** To the extent reasonably possible, the Borrower and each Lender agrees to be bound by and to do all things necessary or appropriate to give effect to the provisions of this Section 3.16.

3.17 Conversion Option

The Borrower may, during the term of this Agreement, upon giving the Agent at the Agent's Branch of Account a Conversion Notice in accordance with the period of prior notice and other requirements set out in Section 3.5 (other than delivery of a Borrowing Notice) in respect of the type of Accommodation to which any Accommodation is being converted, convert any Accommodation to another type of Accommodation. Notwithstanding the foregoing, a Bankers' Acceptance may only be converted on its maturity date and a Libor Loan may only be converted on the last day of the Libor Interest Period applicable to such Libor Loan or on any other day if the Borrower pays all amounts payable in respect thereof pursuant to Section 4.7. A Letter of Credit may not be converted. If the requested Conversion is into Libor Loans or Bankers' Acceptances, then:

- (a) if a Default has occurred and is continuing, the Borrower, without limiting its rights to convert any Borrowing into a Prime Loan or a U.S. Base Rate Loan, as applicable, shall only be entitled to request a Conversion into a Libor Loan with a Libor Interest Period of one month or into a Bankers' Acceptance with a term to maturity of one month or less as provided for herein; and
- (b) if an Event of Default has occurred and is continuing, such Conversion shall not be permitted and all Libor Loans in respect of which any such Conversion has been requested shall be converted to a U.S. Base Rate Loan on the last day of the Libor Interest Period applicable thereto and all Bankers' Acceptances in respect of which any such Conversion has been requested shall be converted to a Prime Loan on the maturity of such Bankers' Acceptances.

On each Conversion Date, the Borrower shall be required to repay to the Agent the basis of Accommodation which is being converted and, subject to the provisions of this Agreement, the Lenders shall be required to make available to the Borrower the Accommodations into which such basis of Accommodation is being converted.

3.18 Rollovers

The Borrower may, during the term of this Agreement, Rollover all or any portion of a Bankers' Acceptance on its maturity date or all or any portion of a Libor Loan for an additional Libor Interest Period subsequent to the initial or any subsequent Libor Interest Period or extend the expiry date of a Letter of Credit, upon giving the Agent at the Agent's Branch of Account a Rollover Notice in accordance with the period of notice and other requirements set out in Section 3.5 applicable to Bankers' Acceptances or Libor Loans or Letters of Credit (other than delivery of a Borrowing Notice), unless immediately prior to the issuance of any Bankers' Acceptances or Letter of Credit or the commencement of any subsequent Libor Interest Period, a Default or an Event of Default shall have occurred and be continuing, in which event the Borrower shall not be entitled to Rollover such Letter of Credit and, in the case of a Default, shall only be entitled to request a Bankers' Acceptance with a term to maturity of one month or less as provided for herein or a Libor Interest Period of one (1) month and, in the case of an Event of Default, (i) shall be deemed to have converted any Bankers' Acceptance to a Prime Loan and any such Libor Loan to U.S. Base Rate Loan, in each case pursuant to Section 3.17 on the maturity date of the Bankers' Acceptance or the last day of the Libor Interest Period applicable thereto, and (ii) shall be deemed to have notified the Agent and applicable Fronting Lender to cancel any automatic renewal of a Letter of Credit under Section 3.9(e). In the event a Rollover Notice in respect of an existing Bankers' Acceptance or Libor Loan is not given pursuant to this Section 3.18 or a Conversion Notice in respect of such existing Bankers' Acceptance or Libor Loan is not given pursuant to Section 3.17, any such Bankers' Acceptance shall be converted to a Prime Loan on the maturity date of such Bankers' Acceptance and any such Libor Loan shall be converted to a U.S. Base Rate Loan on the last day of the

Libor Interest Period applicable to such existing Libor Loan and the provisions of the last sentence of Section 3.17 shall apply to any such conversion.

3.19 Notices Irrevocable

All notices delivered or deemed to be delivered by the Borrower pursuant to this Article 3 shall be irrevocable and shall oblige the Borrower to take the action contemplated on the date specified therein.

3.20 Lender Swaps

- (a) **Swaps:** Subject to the terms and conditions hereof (and specifically Section 9.3(k)), each of the Lenders (or an Affiliate of such Lender) may from time to time enter into Swaps with any Loan Party during the term of this Agreement. Prior to engaging in any Lender Swaps, the applicable Loan Party shall enter into an ISDA Master Agreement with the applicable Swap Lender, or a confirmation that incorporates by reference the terms of an ISDA Master Agreement.
- (b) **Secured Obligations:** The parties agree that all Permitted Swap Indebtedness shall be secured by the Security on a *pari passu* basis and shall rank *pari passu* with the Obligations, the Cash Management Obligations and the Creditcard Obligations. All Swap Indebtedness of a Loan Party to any Swap Lender, other than Permitted Swap Indebtedness, shall, as to the Security, rank junior and be subordinate in every respect to the Obligations, the Cash Management Obligations, the Creditcard Obligations and the Permitted Swap Indebtedness.
- (c) **Determination of Permitted Swaps:** A Lender Swap shall be deemed to be a Permitted Swap (and the indebtedness thereunder Permitted Swap Indebtedness) if it is entered into by a Swap Lender without actual notice or knowledge that such Lender Swap is not a Permitted Swap.

3.21 Swingline Accounts

The Swingline Lender will establish at the Swingline Lender's Branch of Account a Canadian Dollar account and a U.S. Dollar account of the Borrower, referred to herein as the "**Swingline Accounts**". The Swingline Accounts shall record the day to day banking business of Borrower conducted through the Swingline Lender.

3.22 Creditcard Facilities

Any Creditcard Lender may provide Creditcard Facilities to any Loan Party and any Loan Party may incur Creditcard Obligations from any Creditcard Lender, subject to the limitations in respect thereof set out in the definition of Permitted Debt, from time to time. The parties agree that all Creditcard Obligations shall be secured by the Security on a *pari passu* basis and shall rank *pari passu* with the Borrowings, the Permitted Swap Indebtedness and the Cash Management Obligations, notwithstanding that they do not form part of the Borrowings.

3.23 Cash Management Facilities

Any Cash Management Lender may provide Cash Management Services to any Loan Party from time to time. The parties agree that all obligations of a Loan Party with respect to Cash Management Services shall be secured by the Security on a *pari passu* basis and shall rank *pari passu* with the Borrowings, the Permitted Swap Indebtedness and the Creditcard Obligations, notwithstanding that they do not form part of the Borrowings.

3.24 Extension of the Maturity Date

- (a) The Commitment of each Lender under the Facilities will expire on the Maturity Date, unless extended by a Lender in its sole discretion at the request of the Borrower for a further period of 364 days in accordance with this Section 3.24(a). The Borrower will deliver to the Agent by June 30th in advance of the Maturity Date (the “**Current Maturity Date**”), a notice in which the Borrower requests each Lender to extend its respective Commitment for an additional one year period after the Current Maturity Date. On the date that such notice is received by the Agent from the Borrower, the Agent will deliver a copy thereof to each Lender. Each such Lender must provide notice to the Agent, and a copy to the Borrower, not more than 30 days after receipt of such notice from the Agent either (a) to authorize and direct the Agent to make an irrevocable offer to the Borrower (which may be accepted with effect on the Current Maturity Date) to extend its Commitment for an one year period, with effect from the Current Maturity Date, or (b) to advise the Agent that it declines to approve the requested extension. If all the Lenders approve the requested extension, the Facilities will be extended for a further on year from the Current Maturity Date.
- (b) If Lenders having, in aggregate, Commitments equal to at least 66 2/3% of the aggregate Commitments under the Facilities approve the requested extension, the Borrower may elect to either:
- (i) arrange for the assignment, pursuant to Section 13.1 and Schedule F, of the outstanding indebtedness and obligations owing to a Dissenting Lender to one or more Lenders that have approved such request (a “**Consenting Lender**”) and who has agreed to accept an assignment of such indebtedness and obligations or a new Lender (such Consenting Lender or new Lender, the “**Assignee Lender**”) and the assumption by the Assignee Lender of the Dissenting Lender’s Commitment under the Facilities, and/or
 - (ii) repay the Dissenting Lenders, whose indebtedness and obligations are not assigned in accordance with (a) above, their *pro rata* share of indebtedness and obligations under the Facilities, cancel their respective Commitments under the Facilities and continue the Facilities with the maximum availability thereunder reduced by the amount of such repayment,

in which case the then Current Maturity Date as it relates to the Consenting Lenders and Assignee Lenders will be extended for a further one year from the first day following the then Current Maturity Date.

- (c) If Lenders having in aggregate Commitments of less than 66 2/3% of the aggregate Commitments under the Facilities approve the requested extension, or if no request for an extension of the Current Maturity Date is received, the Facilities will terminate on the Current Maturity Date.

3.25 Advances and Obligations under Original Credit Agreement

- (a) Concurrently with this Agreement becoming effective on the Effective Date:
- (i) Fronted Letters of Credit issued under the Original Operating Facility or the Original WIP Facility shall be deemed to be outstanding as LC Borrowings under this Agreement;

- (ii) Borrowings (other than Fronted Letters of Credit) made under the Original WIP Facility up to the amount of the Total WIP Facility Commitment shall be deemed to be outstanding as WIP Borrowings under this Agreement; and
 - (iii) Borrowings (other than Fronted Letters of Credit) made under the Original Operating Facility together with Borrowings made under the Original WIP Facility in excess of the Total WIP Facility Commitment shall be deemed to be outstanding as Operating Borrowings under this Agreement.
- (b) Concurrently with this Agreement becoming effective on the Effective Date, each Lender Swap which remains outstanding and which was previously entered into by the Borrower with a Swap Lender shall be deemed to be continuing as a Permitted Swap hereunder.
- (c) The Borrower, the Agent and the Lenders acknowledge and agree that on the Effective Date, the Borrowings under the Term Facility, Operating Facility, WIP Facility and LC Facility may not be outstanding in accordance with each Lender's Proportion of such Facility, and the Lenders hereby agree to take all steps and actions and to execute and deliver all agreements and other documents as may be required by the Agent or any of the Lenders (including the assignment of interests in, or the purchase of participations in, existing Borrowings) to give effect to the revised Commitments.

ARTICLE 4 REPAYMENT AND PREPAYMENT

4.1 Reduction of Commitment

On the Maturity Date, the Borrower shall repay all Obligations, all Creditcard Obligations, all Cash Management Obligations (unless otherwise agreed by the Cash Management Lender in its sole discretion) and all accrued and unpaid interest and fees then outstanding to each Lender and its Affiliates, and the Commitment of each Lender shall be reduced to zero. The Borrower shall ensure that Libor Loans, Bankers' Acceptances and Letters of Credit made by, accepted by or issued on behalf of or for the account of each Lender mature on or prior to the Maturity Date.

4.2 Mandatory Repayments of the Term Facility – Scheduled Payments

- (a) On the last day of the Fiscal Quarter ending December 31, 2019, the Borrower shall pay US\$250,000 to the Agent for the account of the Term Lenders to repay Term Borrowings.
- (b) On the last day of the Fiscal Quarter ending March 31, 2020 and on the last day of each Fiscal Quarter thereafter, the Borrower shall pay US\$725,715 to the Agent for the account of the Term Lenders to repay Term Borrowings.
- (c) Any remaining Lender Outstandings owing under the Term Facility are due and payable on the Maturity Date.

4.3 Mandatory Repayments from Sales, Insurance, Etc.

So long as any amounts under the Term Facility remain outstanding, within three Business Days of the receipt thereof (subject to the proviso below):

- (a) all net cash proceeds in excess of Cdn.\$500,000 in any Fiscal Year received by any Loan Party from any property and casualty insurance claims relating to any of their Property;
- (b) all net cash proceeds (net of expenses) in excess of Cdn.\$2,500,000 in any Fiscal Year of any Disposition(s) by any Loan Party that are not Permitted Dispositions;

- (c) all net cash proceeds (net of expenses) of any issuance of debt by a Loan Party (excluding Permitted Debt) and notwithstanding, and without prejudice to, the Default that would result therefrom; and
- (d) all net cash proceeds (net of expenses) of any issuance of equity by a Loan Party (other than pursuant to a management incentive plan or similar compensation plan) and other than if issued to another Loan Party or used to fund Permitted Acquisitions,

shall be applied by the Borrower as a permanent prepayment of (i) firstly, the Term Facility (in inverse order of maturity) with a corresponding permanent reduction in the Total Term Facility Commitment as provided in Section 4.6, (ii) secondly, the WIP Facility, (iii) thirdly, the Operating Facility, and (iv) fourthly, the LC Facility. With respect to proceeds referred to in (a) and (b) above, such prepayment shall not be required if such proceeds are reinvested, or committed to being reinvested pursuant to a binding obligation, in capital assets used in carrying on the Business of the Loan Parties within 180 days of receipt thereof.

4.4 Mandatory Repayments of Excess Cash Flow Amount

So long as any amounts under the Term Facility remain outstanding, within fifteen days after the earlier of the date on which (i) the Borrower delivers, or (ii) is required to deliver, its annual financial statements for the Fiscal Year ending December 31, 2019 to the Agent pursuant to Section 9.4(b), the Borrower shall pay an amount (not less than zero) equal to the Excess Cash Flow Amount that shall be applied as a permanent prepayment of the Term Facility (in inverse order of maturity) with a corresponding permanent reduction in the Total Term Facility Commitment as provided in Section 4.6.

4.5 Principal Repayments Affecting Bankers' Acceptances and Libor Loans

If, on any day on which prepayments are required to be made under Sections 4.2, 4.3, or 4.4, the Borrowings then outstanding include Libor Loans or Bankers' Acceptances in an amount such that the prepayment would require the Borrower to be liable under the funding indemnity contained in Section 11.5 or to pay a Bankers' Acceptance prior to its maturity date, that portion of the prepayment which would otherwise be applied against any such Libor Loan or Bankers' Acceptance may, at the option of the Borrower, be paid to the Agent for deposit into a Cash Collateral Account in accordance with Section 10.4. The Agent shall hold such cash collateral for the purpose of repaying, and shall apply such cash collateral (and interest earned on such amounts) to repay, such Bankers' Acceptances and Libor Loans as they mature, except if an Event of Default has occurred and is continuing, and in such case, the Agent may apply such cash collateral at such time or times, and to such of the other obligations, as provided in Section 10.7. Interest earned on such amounts while on deposit in a Cash Collateral Account shall be paid to the Borrower if no Default or Event of Default has occurred and is continuing after the payment of the amounts required pursuant to Sections 4.2, 4.3, or 4.4, if any.

4.6 Cancellation of Commitment and Prepayment

The Borrower may, without penalty or premium, at any time during the term of this Agreement, upon at least 5 Business Days' prior written notice to the Agent (and shall, if so required by Sections 4.3 or 4.4) cancel and repay all of the Term Facility Commitment or cancel the WIP Facility Commitment, the Operating Facility Commitment or the LC Facility Commitment, or any portion of any of them in minimum amounts of Cdn.\$1,000,000 and whole multiples of Cdn.\$1,000,000 thereafter (such minimum amount not to apply to a reduction required by Sections 4.3 or 4.4); provided that on or prior to the last day of such notice period the Borrower has:

- (a) **Application to Facility:** identified in writing the amount of the cancellation (and repayment in respect of the Term Facility Commitment) to be applicable to the Term Facility Commitment and/or the WIP Facility Commitment and/or the Operating Facility

Commitment and/or the LC Facility Commitment and, in the case of any prepayment of the Term Facility, directing how the prepayment is to be applied to the Term Facility (and amounts owing thereunder), which direction may be made in the sole and absolute discretion of the Borrower, provided that if no such direction is provided, the prepayment shall be applied in direct order of maturity;

- (b) **Prepaid Borrowings:** prepaid or otherwise reduced Borrowings outstanding to each Lender under the applicable Facility in an amount equal to the amount by which Borrowings outstanding to such Lender are in excess of its Term Facility Commitment, WIP Facility Commitment, Operating Facility Commitment or LC Facility Commitment, as applicable, immediately after any such cancellation of the Commitments provided for in such notice; and
- (c) **Paid Interest:** paid all accrued interest and other charges and fees in respect of the Borrowings being repaid or reduced as aforesaid.

Any such notice of cancellation is irrevocable and the amount of the Commitment of each Lender so cancelled and reduced may not be reinstated hereunder.

4.7 Early Repayment of Libor Loans, Letters of Credit and Bankers' Acceptances

The Borrower shall not cancel all or any portion of the Commitment of any Lender pursuant to Section 4.6 if the Borrowings required to be repaid to such Lender as a result thereof include Letters of Credit with an expiry date falling subsequent to the date of such cancellation, Libor Loans with the last day of a Libor Interest Period falling subsequent to the date of such cancellation or Bankers' Acceptances accepted by such Lender with a maturity date falling subsequent to the date of such cancellation unless, on the date of such cancellation, the Borrower has paid to the Agent at the Agent's Account for Payments, for the account of such Lender (a) in respect of Libor Loans, the amount required to be paid pursuant to Section 11.5, (b) in respect of Letters of Credit, the undrawn amount thereof, and (c) in respect of Bankers' Acceptances, the face amount thereof, in each case to be held in a Cash Collateral Account pursuant to Section 10.4.

4.8 Evidence of Indebtedness

Each of the Agent and the Swingline Lender, as applicable, shall open and maintain accounts on the books of the Agent at the Agent's Branch of Account and on the books of the Swingline Lender at the Swingline Lender's Branch of Account evidencing the Term Borrowings, the WIP Borrowings, the Operating Borrowings, the Swingline Loans and the LC Borrowings, respectively, and other amounts owing by the Borrower to the Lenders under this Agreement. The Agent and the Swingline Lender, as applicable, shall debit therefrom the amount of such Term Borrowings, WIP Borrowings, Operating Borrowings, Swingline Loans and LC Borrowings, respectively, and shall enter therein each payment of principal of and interest on the applicable Borrowings and fees and other amounts payable pursuant to this Agreement and shall record the Bankers' Acceptances purchased by the Lenders and the Letters of Credit issued by the Fronting Lenders and all other amounts becoming due to the Agent and each Lender under this Agreement. The accounts of the Agent and the Swingline Lender, as applicable, so kept shall constitute, in the absence of manifest error, prima facie evidence of the indebtedness of the Borrower to the Agent, the Term Lenders, the WIP Lenders, the Operating Lenders, the Swingline Lender and the LC Lenders under the Facilities, the date each such Lender made each Borrowing available to the Borrower and the amounts the Borrower has paid from time to time on account of the principal and interest on the Borrowings, fees payable pursuant to this Agreement and other amounts owing hereunder.

ARTICLE 5 PAYMENT OF INTEREST AND FEES

5.1 Interest on Prime Loans

The Borrower shall pay interest in Canadian Dollars on each Prime Loan made by each Lender at the Agent's Account for Payments, in the case of the Operating Facility, the Term Facility and the WIP Facility, and at the Swingline Lender's Account for Payments, in the case of the Swingline Facility, in each case at a rate per 365 days equal to the Prime Rate plus the Applicable Margin applicable to such Prime Loan. A change in the Prime Rate or the Applicable Margin will simultaneously cause a corresponding change in the interest payable on each Prime Loan. Such interest shall accrue daily based on the Prime Rate and Applicable Margin in effect on each day and is payable monthly in arrears on each Interest Date for the period commencing on and including the immediately prior Interest Date up to but not including the Interest Date on which such interest is to be paid and shall be calculated on a daily basis and on the basis of the actual number of days elapsed in a year of 365 days. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 5.1 are equivalent, are the rates so determined multiplied by the actual number of days in the relevant calendar year and divided by 365.

5.2 Interest on U.S. Base Rate Loans

The Borrower shall pay interest in U.S. Dollars on each U.S. Base Rate Loan made by each Lender at the Agent's Account for Payments, in the case of the Operating Facility, the Term Facility and the WIP Facility, and at the Swingline Lender's Account for Payments, in the case of the Swingline Facility, at a rate per 365 day period equal to the U.S. Base Rate plus the Applicable Margin applicable to such U.S. Base Rate Loan. A change in the U.S. Base Rate or the Applicable Margin will simultaneously cause a corresponding change in the interest payable on each U.S. Base Rate Loan. Such interest shall accrue daily based on the U.S. Base Rate and Applicable Margin in effect on each day and is payable monthly in arrears on each Interest Date for the period commencing on and including the immediately prior Interest Date up to but not including the Interest Date on which such interest is to be paid and shall be calculated on a daily basis and on the basis of the actual number of days elapsed in a year of 365 days. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 5.2 are equivalent, are the rates so determined multiplied by the actual number of days in the relevant calendar year and divided by 365.

5.3 Interest on Libor Loans

The Borrower shall pay interest in U.S. Dollars on each Libor Loan made by each Lender at the Agent's Account for Payments for the period commencing on and including the first day of the Libor Interest Period applicable to such Libor Loan up to but not including the last day of such Libor Interest Period at a rate equal to the sum of Libor plus the Applicable Margin applicable to such Libor Loan and which is in effect on the first day of the Libor Interest Period applicable to such Libor Loan. A change in the Applicable Margin will simultaneously cause a corresponding change in the interest payable on each Libor Loan. Such interest shall accrue daily based on Libor and the Applicable Margin in effect on each day and is payable on each Libor Interest Date applicable to such Libor Interest Period and shall be calculated on a daily basis and on the basis of the actual number of days elapsed in the period for which such interest is payable (including the first day of such period but excluding the date on which such interest is payable) divided by 360. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 5.3 are equivalent, are the rates so determined multiplied by the actual number of days in the relevant calendar year and divided by 360.

5.4 Bankers' Acceptance Fees

The Borrower shall pay acceptance fees in Canadian Dollars at the Agent's Account for Payments forthwith upon the acceptance by each Lender of each Bankers' Acceptance issued by the Borrower at a rate per 365 day period equal to the BA Acceptance Fee applicable to and in effect on the

date of acceptance of such Bankers' Acceptance calculated on the face amount of such Bankers' Acceptance and on the basis of the number of days in the term of such Bankers' Acceptance divided by 365. Acceptance fees payable to the Agent, pursuant to this Section 5.4 shall be paid in the manner specified in Section 3.7. All fees payable pursuant to this Section 5.4 on any date in respect of any issuance of Bankers' Acceptances shall be calculated by the Agent and be payable by the Borrower based on the BA Acceptance Fee in effect on such date (and taking into account such issuance), provided that if during the term of any such Bankers' Acceptance a change in the BA Acceptance Fee occurs, the fees paid by the Borrower in respect of such Bankers' Acceptance shall be adjusted, effective upon the change in the BA Acceptance Fee occurring, to reflect the BA Acceptance Fee for the remaining term (if any) of the Bankers' Acceptance, and the Borrower, in the case of an increase in the BA Acceptance Fee, shall no later than three Business Days after receipt of a notice from the Agent, make such payments to the Agent at the Agent's Account for Payments for the account of each Applicable Lender as are necessary to reflect such change, and each Applicable Lender, in the case of a decrease in the BA Acceptance Fee, shall credit any amount which would otherwise be refundable to the Borrower against amounts in respect of interest or fees accruing hereunder in relation to the Borrower.

5.5 Letter of Credit Fees

- (a) **Fronted Letters of Credit:** In consideration of each LC Lender's commitment to be liable for its Lender's Proportion of Fronted Letters of Credit under this Agreement, the Borrower shall pay to the Agent, for the rateable account of each LC Lender (in proportion to such LC Lender's share of the undrawn and unexpired amounts of all outstanding Letters of Credit), a fee equal to the Letter of Credit Fee then in effect on the date of payment of such fee. Such Letter of Credit Fees shall be payable quarterly in arrears on the third Business Day following each calendar quarter commencing with the calendar quarter in which the applicable Letter of Credit was issued (and on the Maturity Date) and shall be calculated based on the number of days during which any such Letter of Credit was outstanding during any such calendar quarter (the "**LC Payment Period**") divided by 365. For any Letter of Credit that is issued in Canadian Dollars, such Letter of Credit Fees shall be paid in Canadian Dollars. For any Letter of Credit that is issued in US Dollars, such Letter of Credit Fees shall be paid in US Dollars. For any Letter of Credit that is issued in Euros, such Letter of Credit Fees shall be paid in Canadian Dollars and the face amount of such Letter of Credit shall for the purposes of determining an Equivalent Amount on such day be notionally converted to the Equivalent Amount in Canadian Dollars using the rate of exchange for Canadian interbank transactions established by the Bank of Canada at the close of business on the first Business Day of each calendar month for converting Euros to Canadian Dollars for any calculation with respect to each month in the calculation period. Letter of Credit Fees shall be calculated on the basis of the daily maximum undrawn amount of such Letter of Credit outstanding during each LC Payment Period.
- (b) **Fronting Fees:** In consideration of a Fronting Lender agreeing to issue Fronted Letters of Credit under the LC Facility, the Borrower shall pay a fronting fee (the "**Fronting Fee**") directly to the Fronting Lender forthwith upon the issuance by such Fronting Lender of each Fronted Letter of Credit equal to the Fronting Fee Rate applicable thereto calculated on the face amount of such Fronted Letter of Credit. For any Fronted Letter of Credit that is issued in Canadian Dollars, such Fronting Fees shall be paid in Canadian Dollars. For any Fronted Letter of Credit that is issued in US Dollars, such Fronting Fees shall be paid in US Dollars. For any Fronted Letter of Credit that is issued in Euros, such Fronting Fees shall be paid in Canadian Dollars and the face amount of such Fronted Letter of Credit shall for the purposes of determining an Equivalent Amount on such day be notionally converted to the Equivalent Amount in Canadian Dollars using the rate of exchange for Canadian interbank transactions established by the Bank of Canada at the close of business on the first Business Day of each calendar month for converting Euros to Canadian Dollars for any calculation with respect to each month in the calculation period. Such Fronting Fees shall be payable quarterly in arrears on the third Business

Day of each calendar quarter commencing in the calendar quarter in which the applicable Letter of Credit was issued (and on the Maturity Date) and shall be calculated based on the applicable LC Payment Period divided by 365. Such Fronting Fees shall also be payable in respect of any renewal (including auto-renewal) or extension of a Fronted Letter of Credit. If Fronting Fees are overpaid due to a Fronted Letter of Credit being returned to the Fronting Lender undrawn prior to its original expiry date, or due to a Fronted Letter of Credit being drawn upon prior to its original expiry date, the Fronting Lender shall refund such overpayment to the Borrower (or if an Event of Default then exists, the Fronting Lender (if not the Agent) shall pay such amount to the Agent for credit to outstanding Obligations).

5.6 Creditcard and Cash Management Fees

The Borrower shall pay fees to the Creditcard Lenders in respect of Creditcard Facilities, and to the Cash Management Lenders in respect of Cash Management Services, as provided in the agreements entered into by a Loan Party in connection therewith.

5.7 Interest on Overdue Amounts

Notwithstanding any other provision hereof, in the event that any amount due hereunder (including any interest payment) is not paid when due (whether by acceleration or otherwise), the Borrower shall and hereby agrees to pay to the Applicable Lenders interest on such unpaid amount (including interest on interest), if and to the fullest extent permitted by Applicable Law, from the date that such amount is due until the date that such amount is paid in full (but excluding the date of such payment if the payment is made before 11:00 a.m. Calgary time), and such interest shall accrue daily, be calculated and compounded on the last Business Day of each calendar month and be payable in the currency of the relevant Borrowing on demand, as well after as before maturity, default and judgment, at a rate per annum that is equal to:

- (a) if such amount is payable in Canadian Dollars, the interest rate applicable to Prime Loans outstanding from time to time hereunder whether or not any Prime Loans are then outstanding (including for certainty, the Applicable Margin) plus 2% per annum; and
- (b) if such amount is payable in U.S. Dollars, the interest applicable to U.S. Base Rate Loans outstanding from time to time hereunder whether or not any U.S. Base Rate Loans are then outstanding (including for certainty, the Applicable Margin) plus 2% per annum.

The Borrower hereby waives, to the fullest extent it may do so under Applicable Law, any provisions of Applicable Law, including the *Interest Act* (Canada) and the *Judgment Interest Act* (Alberta), which may be inconsistent with this Agreement.

5.8 Agent's Fees

The Borrower shall pay an agency fee to the Agent (for the Agent's sole account) at the Agent's Account for Payments, in an amount as agreed from time to time between the Agent and the Borrower on the Effective Date and on each annual anniversary of the Effective Date and such fees shall, for purposes of this Agreement, be deemed to be an amount payable pursuant to this Agreement.

5.9 Commitment Fees

Concurrently with the execution and delivery of this Agreement, the Borrower shall pay to the Agent for and on behalf of the Lenders (in accordance with the Lender's Proportion of the Total Commitment) (i) an amendment fee of 25 bps on the Commitments existing under the Original Credit Agreement immediately prior to the Effective Date, (ii) an upfront commitment fee of 50 bps on the aggregate Commitments in excess of the Commitments existing under the Original Credit Agreement

immediately prior to the Effective Date, and (iii) an extension fee of 10 bps on the Commitments existing under the Original Credit Agreement immediately prior to the Effective Date. For greater certainty, the fees provided for in this Section 5.9 are earned and payable on the Effective Date and are in addition to any other fees payable in connection with the Facilities.

5.10 Maximum Rate Permitted by Law

No interest or fee to be paid hereunder shall be paid at a rate exceeding the maximum rate permitted by Applicable Law. In the event any such interest or fee exceeds such maximum rate, such interest or fee shall be reduced or refunded, as the case may be, so as to be payable at the highest rate recoverable under Applicable Law.

5.11 Interest Generally

The theory of deemed reinvestment shall not apply to the calculation of interest or payment of fees or other amounts hereunder, notwithstanding anything contained in this Agreement or in any other Loan Document now or hereafter granted to or taken by the Agent or any Lender and all interest and fees payable by the Borrower to a Lender shall accrue from day to day and be computed as described herein in accordance with the "nominal rate" method of interest calculation and for the purposes of the *Interest Act* (Canada), the principle of deemed reinvestment of interest will not apply to any interest calculation under the Loan Documents. To the extent permitted by Applicable Law, the provisions of the *Judgment Interest Act* (Alberta) will not apply to the Loan Documents and are hereby expressly waived by the Borrower.

5.12 Standby Fees on WIP Facility, Operating Facility and LC Facility

Until the Maturity Date, the Borrower shall pay standby fees in Canadian Dollars to the Agent on behalf of each WIP Lender, Operating Lender and LC Lender on its own behalf, calculated quarterly in arrears to and including the last day of each calendar quarter, and payable on the third Business Day following each such calendar quarter, and on the Maturity Date. Each payment of standby fees shall be calculated for the period commencing on and including the Effective Date or the last date on which such standby fees were payable hereunder, as the case may be, up to and including the last day of the calendar quarter for which such standby fees are to be paid or the Maturity Date (whichever is earlier) and shall be in an amount equal to the Standby Fee Rate in effect on each day during such period of calculation multiplied by the difference, if positive, obtained by subtracting the WIP Borrowings, Operating Borrowings or LC Borrowings, as applicable, outstanding from such Lender for each day in the period of the calculation, from the amount of such Lender's WIP Facility Commitment, Operating Facility Commitment or LC Facility Commitment, as applicable, in effect on each such day. Such standby fees shall be calculated on a daily basis and on the basis of a 365 day year. For purposes of calculating standby fees payable pursuant to this Section 5.12: (a) the amount of Borrowings outstanding from time to time in U.S. Dollars under the WIP Facility or the Operating Facility on each day during the period for which such standby fees are payable shall for the purposes of determining an Equivalent Amount on such day be notionally converted to the Equivalent Amount in Canadian Dollars using the rate of exchange for Canadian interbank transactions established by the Bank of Canada at the close of business on the first Business Day of each calendar month for converting U.S. Dollars to Canadian Dollars for any calculation with respect to each month in the calculation period; and (b) the amount of Borrowings outstanding from time to time in U.S. Dollars and Euros under the LC Facility on each day during the period for which such standby fees are payable shall for the purposes of determining an Equivalent Amount on such day be notionally converted to the Equivalent Amount in Canadian Dollars using the rate of exchange for Canadian interbank transactions established by the Bank of Canada at the close of business on the first Business Day of each calendar month for converting U.S. Dollars or Euros, as applicable, to Canadian Dollars for any calculation with respect to each month in the calculation period.

ARTICLE 6 SECURITY

6.1 Security at Effective Date

To secure the payment and performance of all of the Secured Obligations, on the Effective Date, the Borrower shall execute and deliver, or cause to be executed and delivered (as applicable), the following documents each in form and substance satisfactory to the Agent, acting reasonably (collectively, together with all amendments, restatements, supplements or other modifications thereto and all other security documents, agreements and assurances required to be delivered by any Loan Party to the Agent pursuant to this Article 6, the “**Security**”):

- (a) a Loan Party Guarantee from each of the Loan Parties in favour of the Agent for the benefit of the Secured Parties guaranteeing the Secured Obligations; *[in hand]*
- (b) a limited guarantee from TriWest Capital Partners V, L.P. with liability limited to the sum of Cdn.\$2,082,000 and a limited guarantee from TriWest Capital Partners V (US), L.P. with liability limited to the sum of Cdn.\$418,000 (collectively, the “**TriWest Guarantee**”); *[to be delivered]*
- (c) a general security agreement from each of the Loan Parties in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*
- (d) a limited recourse guarantee from each of TriEmissions LP and TriEmissions US LP in favour of the Agent for the benefit of the Secured Parties guaranteeing the Secured Obligations; *[in hand]*
- (e) a share pledge from each of the Borrower, TriEmissions LP, TriEmissions US LP, Innova LP, Innova Operating and 1938247 in favour of the Agent pledging of all shares of the Loan Parties and certain promissory notes, together with delivery of original share certificates and corresponding transfer powers of attorney and original promissory notes and corresponding allonges; *[in hand]*
- (f) a U.S.-law governed security agreement from each of the US Loan Parties in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*
- (g) a Mexican-law governed security agreement from each of the Mexican Loan Parties in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*
- (h) a Dutch-law governed security agreement from each of the Dutch Loan Parties in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*
- (i) a UK-law governed security agreement from the UK Loan Party in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*
- (j) an Australian-law governed security agreement from the Australian Loan Party in favour of the Agent creating a first priority ranking security interest (subject only to Permitted Encumbrances) over all of the present and future property of such Loan Party; *[in hand]*

- (k) a subordination and postponement agreement between, *inter alios*, Export Development Canada, TriEmissions LP, TriEmissions US LP and the Agent (the “**Subordination Agreement**”); *[in hand]*
- (l) a first amendment to the Subordination Agreement; *[to be delivered]*
- (m) a limited recourse guarantee from each Innova Managementco and Innova Employeeco in favour of the Agent for the benefit of the Secured Parties guaranteeing the Secured Obligations; *[in hand]*
- (n) a share pledge from each Innova Managementco and Innova Employeeco in favour of the Agent pledging of all shares of the Loan Parties, together with delivery of original share certificates and corresponding transfer powers of attorney; *[in hand]*
- (o) a subordination agreement from any surety or bonding company in favour of the Agent in respect of any amounts owing by the Loan Parties to such surety or bonding company; *[in hand]*
- (p) a deposit account control agreement in respect of all accounts held in the name of the Loan Parties at The Bank of Nova Scotia listed in Schedule J, except those accounts described in Section 9.3(r); *[in hand]*
- (q) an assignment by the each Loan Party of all Material Agreements in favour of the Agent for the benefit of the Secured Parties and consents to assignment from applicable counterparties; *[in hand]*
- (r) the EDC Guarantee *[renewal to be provided as set out in Section 9.2(w)]*; and
- (s) such other documents as the Agent may now or hereafter reasonably require, in all relevant jurisdictions, to give effect to, register and perfect the security interests created by the documents referred to in this Section 6.1.

For certainty, the Security shall create, in favour of the Agent, a first fixed mortgage and charge on the Real Estate, subject to Permitted Encumbrances, now owned or hereafter acquired by the Borrower and each other Loan Party.

6.2 Form of Security

Without limiting the foregoing, the Security will be in such form or forms as will be required by the Agent, acting reasonably, and will be registered in such offices in the provinces of Canada and any other jurisdiction as the Agent may from time to time reasonably require to protect the Security Interests created thereby. Should the Agent determine at any time and from time to time that the form and nature of the then existing Security is deficient in any way or does not fully provide the Secured Parties with the Security Interests and priority to which each is entitled hereunder and provides written notice of such determination to Borrower, the Borrower will forthwith execute and deliver or cause to be executed and delivered to the Agent, at the Borrower's expense, such amendments to the Security or provide such new security as the Agent may reasonably request.

6.3 Loan Party Guarantees and Subsidiary Security

Forthwith upon a Subsidiary becoming a Material Subsidiary (and in any event within 30 days thereof or such later date as may be agreed to by the Agent, acting reasonably) and to secure the payment and performance of all Secured Obligations, the Borrower shall cause the following Security to be executed and delivered (to the extent not already provided):

- (a) a Loan Party Guarantee (or joinder thereto) of such Material Subsidiary in favour of the Agent for the benefit of the Secured Parties guaranteeing the Secured Obligations of each other Loan Party under the Loan Documents; and
- (b) a security agreement in favour of the Agent for the benefit of the Secured Parties creating a Security Interest over all of its present and after acquired property, subject to Permitted Encumbrances;

together with such other security agreements, assignments and pledges as the Agent shall reasonably require and together with certified copies of constating documents and resolutions, a certificate of incumbency, a legal opinion of outside counsel with respect to the Material Subsidiary and the Security provided by it and such other documents as the Agent may reasonably require, all in a form substantially similar to those provided by the Borrower and, if applicable, the other Loan Parties on the Effective Date, with such changes as may be approved by the Agent, acting reasonably.

6.4 Registrations and Renewals

The Borrower shall, and shall cause each Guarantor, at the Borrower's sole cost and expense, to do all such commercially reasonable acts, execute all such instruments and provide such further assurances as the Agent may reasonably request from time to time (subject, in the case of the Real Estate, to Section 6.14) to ensure that the priority of the Security Interests created by all of the Security executed and delivered to the Agent as contemplated hereby is duly protected and perfected by registration, filing or recordation of such Security or a caution, caveat, security notice or other appropriate instrument at all offices where necessary to the protection or perfection thereof and to cooperate with the Agent and the Agent's counsel in renewing or refiling any registration, filing or recordation required hereby in order to preserve, protect and maintain the priority of such Security Interests, from time to time. The Agent may, at the Borrower's sole cost and expense, effect any or all such registrations, filings and recordings should the Borrower fail to do so forthwith upon the Agent's request as aforesaid.

All security registrations in respect of which ATB is the secured party and the Borrower or any Subsidiary of the Borrower (or any predecessor of any of them) is the debtor shall (if not discharged by ATB), be held by it solely for the benefit of the Secured Parties hereunder.

6.5 Security Effective Notwithstanding Date of Advance

The Security Interests constituted by the Security shall be effective against the Loan Parties, and the Security Interests in any Security shall be continuing, whether any of the Accommodations hereunder are utilized before or after or at the same time as the creation of any such Security Interests or before or after or upon the date of execution of this Agreement, and shall not be affected by the Secured Obligations fluctuating from time to time or the accounts established by the Agent or any Lender ceasing to be in debit balance.

6.6 Extensions, Etc.

Subject to the terms hereof, the Lenders may directly, or through the Agent or other duly authorized representatives, grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower, any Guarantor or any other Persons, sureties or securities as the Lenders, in their sole discretion, may see fit, all without prejudice to the liability of any Loan Party under the Loan Documents or the Credit Documents or the rights of the Lenders under the Loan Documents or the Credit Documents.

6.7 Notice of Name Change

The Borrower shall notify the Agent of any details, as soon as available, of any proposal to change the name of any Loan Party or the location of its chief executive office, and in any event not

less than 10 Business Days prior to any such change. Upon receiving such information, the Agent may, at the Borrower's sole cost and expense, effect any or all such registrations, filings and recordings with respect to such name or chief executive office change at any applicable personal property registry office and the Borrower shall and shall cause each other Loan Party, at the Borrower's sole cost and expense, to do all such commercially reasonable acts, execute all such instruments and provide such further information and assurances as the Agent may require to promptly effect all such registrations, filings and recordings.

6.8 Registration in Additional Jurisdictions

The Agent may, at the Borrower's sole cost and expense, effect any or all such registrations, filings and recordings in such additional jurisdictions at any applicable personal property registry office and obtain local counsel opinions in respect thereof and the Borrower shall and shall cause each other Loan Party, at the Borrower's sole cost and expense, to do all such commercially reasonable acts, execute all such instruments and provide such further information and assurances as the Agent may require to promptly effect all such registrations, filings and recordings.

6.9 No Merger

The taking of any Security Interest as provided under any Loan Document shall not operate by way of merger of any of the Secured Obligations of the Borrower or any Guarantor under this Agreement or any other Loan Document, or of any Security Interest, Guarantee, indemnity, contract, promissory note, bill of exchange or security in any other form, whether or not similar to the foregoing, and no judgment recovered by the Agent on behalf of the Secured Parties shall operate by way of merger or in any way affect the Security Interest provided for in the Loan Documents, which shall be in addition to and not in substitution for any other Security Interest now or hereafter held by the Secured Parties whether for Secured Obligations hereunder or under any Loan Document. For greater certainty, no judgment recovered by the Secured Parties shall operate by way of merger or in any way affect the obligation of the Borrower to pay interest, fees and other amounts at the rates, times and manner as provided in this Agreement.

6.10 Further Assurances

The Borrower shall, forthwith and from time to time on the reasonable request of the Agent, grant and shall cause each Guarantor to grant to the Agent on behalf of the Secured Parties all such further rights and Security Interests necessary or of advantage to the Agent to permit it to operate the Business in a liquidation of the Property or as a going concern following the occurrence of an Event of Default. In addition, the Borrower shall, and shall cause each Guarantor to forthwith and from time to time on the reasonable request of the Agent, execute and do or cause to be executed and done all assurances and things which in the opinion of the Agent may be necessary or of advantage to give the Secured Parties the Security Interests and the priority intended to be created by the Security.

6.11 Release and Amendment of Security

No Lender shall, during the term of this Agreement, discharge, surrender, amend or otherwise modify any Security without the prior written consent of all of the Lenders, provided that the Agent shall discharge Security provided hereunder with respect to Permitted Dispositions, and provided the Agent may, in connection with its acceptance of supplemented Security Interests in accordance with Section 6.14, release the charge of the Security as against real property interests no longer intended to be subjected to the charge created thereby. The Lenders hereby irrevocably authorize the Agent to execute and deliver such releases and no-interest letters as may be required in connection with any Permitted Dispositions and dispositions contemplated by Section 4.3(b) by any Loan Party or Permitted Encumbrances in respect of which the Agent has received an officer's certificate of the Borrower certifying that such Disposition or Security Interest, as applicable, is permitted under this Agreement, together with any other information from the Borrower reasonably required by the Agent, if any, to satisfy itself that any such Disposition or Security Interest, as applicable, is permitted under this Agreement.

The Lenders hereby authorize the Agent, and the Agent hereby agrees, to discharge the Security at the Borrower's sole cost and expense, forthwith after all of the Secured Obligations have been unconditionally and irrevocably paid or performed in full and the Facilities and all Lender Swaps have been terminated or collateralized to the satisfaction of the Agent and the Swap Lenders, acting reasonably.

6.12 Permitted Encumbrances and Permitted Debt

Notwithstanding that a Loan Party is permitted to create or suffer to exist any Permitted Encumbrance or Permitted Debt, nothing herein contained shall in any manner, nor in any cause or proceeding, directly or indirectly, be taken to constitute a subordination of any Security Interest created pursuant to the Loan Documents to any Permitted Encumbrance or to any other Security Interest or other obligation whatsoever, or that the Secured Obligations are in any way subordinate or junior in right of payment to any Permitted Debt.

6.13 Serial Number Collateral Information and Registrations

From time to time upon the reasonable request of the Agent, within 30 days of such request, the Borrower shall, at the Borrower's sole cost and expense, deliver, and shall cause each other Loan Party to deliver, a listing of each of the "serial number goods" (as defined in the *Personal Property Security Act* (Alberta)) for such collateral owned by the Loan Parties and the location of such serial number goods or certificate of title collateral; but only to the extent that such assets are included in the Operating Facility Borrowing Base. Upon the occurrence and continuation of a Default or an Event of Default, the Agent may, at the Borrower's sole cost and expense, effect any or all such registrations, filings and recordings with respect to such serial number goods or certificate of title collateral at any applicable personal property registry office and the Borrower shall and shall cause each other Loan Party, at the Borrower's sole cost and expense, to do all such commercially reasonable acts, execute all such instruments and provide such further information and assurances as the Agent may require to promptly effect all such registrations, filings and recordings.

6.14 Fixed Charge Supplements and Registration

From time to time upon the reasonable request of the Agent, within 30 days of such request, the Borrower shall, at the Borrower's sole cost and expense, execute and deliver, and shall cause each other Loan Party to execute and deliver, such additional or supplemental Security Interests (including by way of a fixed charge supplemental debenture to any debenture referred to in Sections 6.1 and 6.3) as the Agent may reasonably request in order to ensure that all Real Estate held by the Loan Parties are validly subjected to first fixed charge Security Interests in favour of the Agent for the benefit of the Secured Parties, subject only to Permitted Encumbrances, and in connection therewith shall provide to the Agent a land schedule in form satisfactory to the Agent detailing all Real Estate then held by the Loan Parties. Upon the occurrence and continuation of a Default or an Event of Default, the Agent may, at the Borrower's sole cost and expense, effect any or all such registrations, filings and recordings with respect to the Real Estate at any applicable land registry office and the Borrower shall and shall cause each other Loan Party, at the Borrower's sole cost and expense, to do all such commercially reasonable acts, execute all such instruments and provide such further information and assurances as the Agent may require to promptly effect all such registrations, filings and recordings.

ARTICLE 7 PAYMENT AND TAXES

7.1 Time, Place and Currency of Payment

Payments of principal, interest, fees and all other amounts payable by the Borrower pursuant to this Agreement shall be paid in the currency in which it is due for value at or before 11:00 a.m. on the day such payment is due. If any such day is not a Business Day, such amount shall be

deemed for all purposes of this Agreement to be due on the Business Day next following such day and any such extension of time shall be included in the computation of the payment of any interest or fees payable under this Agreement. All payments in respect of the Operating Facility, the Term Facility, the WIP Facility and the LC Facility shall be made at the Agent's Account for Payments and all payments made in respect of the Swingline Facility shall be made at the Swingline Lender's Account for Payments.

7.2 Application of Payments

Except as otherwise provided in the Agreement, or except as agreed to by all of the Lenders in their sole discretion, all payments made by or on behalf of the Borrower pursuant to this Agreement, so long as no Default or Event of Default has occurred and is continuing, shall be applied by the Agent as so instructed by the Borrower.

7.3 Taxes

- (a) The Borrower shall make all payments to the Agent on behalf of the Lenders without set-off or counterclaim, free and clear of, and without deduction for or on account of, any Tax. If the Borrower shall be required by Applicable Law to deduct any Taxes from such payments, then: (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 7.3) the Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made; (ii) the Borrower shall make such deductions; and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.
- (b) If the Agent or the Lenders are entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement, it shall use commercially reasonable efforts to deliver to the Borrower, at the time or times prescribed by Applicable Law, such properly completed and executed documentation prescribed by Applicable Law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at such reduced rate. Without limiting the foregoing, if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Each Lender shall promptly advise the Borrower and the Agent when it becomes aware of any non-compliance.
- (c) If the Agent or the applicable Lender receives a refund from a taxing authority in respect of a payment by the Borrower of Taxes, such Agent or Lender, as the case may be, thereupon shall make commercially reasonable efforts to repay the Borrower the amount with respect to such refund actually obtained by such Agent or Lender (net all reasonable out-of-pocket expenses related thereto); provided that, the Borrower shall, upon a request by the Agent or the applicable Lender, return such refund to such party if such party is required to repay such amount to the applicable taxing authority.

7.4 Account Debit Authorization

The Borrower authorizes and directs the Agent and the Swingline Lender, as applicable, in its discretion, to automatically debit, by mechanical, electronic or manual means, the bank accounts of the Borrower maintained with ATB (for so long as ATB is the Agent hereunder), for all amounts payable under the Loan Documents including in respect of principal, interest and fees payable under this Agreement and recoverable expenses due and payable hereunder or under any Loan Document.

ARTICLE 8 CONDITIONS PRECEDENT TO ACCOMMODATIONS

8.1 Conditions Precedent to Effective Date:

The obligation of the Lenders to make Accommodations under the Facilities is subject to and conditional upon the satisfaction (or waiver by all of the Lenders) of the following conditions precedent:

- (a) **No Default:** as of the Effective Date, there shall exist no Default or Event of Default and the Agent shall have received a certificate from the Borrower certifying the same;
- (b) **Representations and Warranties:** the representations and warranties contained in Section 2.1 shall be true and correct in all material respects as of the Effective Date and the Agent shall have received a certificate from the Borrower certifying the same;
- (c) **Receipt of Documentation:** the Agent shall have received the following, in form and substance satisfactory to the Agent and the Lenders, acting reasonably:
 - (i) a duly executed original of this Agreement for the Agent and each Lender;
 - (ii) duly executed originals of the Security from all Loan Parties as required by Section 6.1;
 - (iii) a duly executed post-closing matters agreement;
 - (iv) such confirmations of guarantee and security from each of the Loan Parties, the Innova Managementcos, the Innova Employeecos, TriEmissions LP and TriEmissions US LP with respect to the Security delivered pursuant to Section 6.1 as the Agent may reasonably require;
 - (v) a Borrowing Notice completed and signed by the Borrower;
 - (vi) a certificate of status or comparable document in respect of each of the Loan Parties, TriEmissions LP and TriEmissions US LP issued under the laws of its jurisdiction of incorporation, amalgamation or formation;
 - (vii) a certified copy of the constating documents in respect of each of the Loan Parties, TriEmissions LP and TriEmissions US LP, certified as of the Effective Date;
 - (viii) a certified copy of a directors' or partners' resolution, as applicable, of each of the Loan Parties, TriEmissions LP and TriEmissions US LP with respect to the Loan Documents to which it is a party, certified as of the Effective Date;

- (ix) a certificate of each of the Loan Parties, TriEmissions LP and TriEmissions US LP setting forth specimen signatures of the individuals who will be executing the Loan Documents on its behalf;
 - (x) an updated Organizational Chart certified by the Borrower satisfactory to the Agent and the Lenders;
 - (xi) a combined consolidated financial forecast of the Borrower for the Fiscal Year ending 2019 on a quarterly basis, including a combined consolidated balance sheet, a combined consolidated statement of income (loss) and deficit, and a combined consolidated statement of cash flows, together with a detailed capital expenditure budget, projected calculations of the Financial Covenants and summary of required letters of credit, all of which shall be satisfactory to the Agent and the Lenders;
 - (xii) a pro forma Compliance Certificate dated as of the Effective Date;
 - (xiii) a pro forma Borrowing Base Certificate dated as of the Effective Date;
 - (xiv) an updated 13-week cash flow;
 - (xv) an updated cost reduction plan;
 - (xvi) evidence of insurance as required by Section 9.2(g), including an insurance certificate listing the Agent as additional insured and first loss payee;
 - (xvii) evidence of the registration of the Security as required hereunder;
 - (xviii) evidence satisfactory to the Agent that the maturity dates of the Subordinated Debt have been extended for such period and on terms and conditions acceptable to the Agent;
 - (xix) such opinions of counsel to the Loan Parties addressed to the Agent and the Lenders as may be required by the Agent in form and substance satisfactory to the Agent;
 - (xx) comfort satisfactory to the Agent from Export Development Canada and Intact Insurance regarding ongoing bonding support for the Borrower;
 - (xxi) satisfactory completion of the Agent and the Lenders' due diligence; and
 - (xxii) such other documents and documentation which the Agent may reasonably request;
- (d) **Capital Injection:** the Sponsor (or an Affiliate thereof), Export Development Canada and the other shareholders of the Borrower shall have injected no less than an aggregate of C\$5,000,000 of capital into the Borrower on terms and conditions satisfactory to the Agent and the Lenders acting reasonably with such capital used to repay Operating Borrowings;
- (e) **Fees:** the Agent shall have received payment of all amendment, upfront, extension and other fees of the Agent and each Lender required hereunder, including without limitation (i) the 5 bps consent fee payable in connection with the consent of the lenders provided pursuant to the Agent's advisement dated August 13, 2018, and (ii) all fees and disbursements of counsel to the Agent and the Lenders in connection herewith;

- (f) **Know-Your-Client Confirmations:** the Agent shall have received from each Lender confirmation that it has obtained from the Borrower all such information and evidence as such Lender requested of the Borrower prior to the Effective Date in respect of the matters set forth in Section 14.2, including any information required pursuant to subsection 11.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and related to the ownership details of the Sponsor or, if any natural Person owns or controls, directly or indirectly, 25% or more of a Loan Party; the names and addresses of all persons who own or Control, directly or indirectly, 25% or more of the entity; and in all cases, information establishing the ownership, Control and structure of the entity; and
- (g) **Material Adverse Effect:** as of such time, no circumstance or event shall have occurred which would reasonably be expected to have a Material Adverse Effect (nor have the Lenders become aware of any fact or facts not previously known, which would reasonably be expected to have a Material Adverse Effect), since December 31, 2016 except as disclosed in writing to the Agent prior to the Effective Date;

together with the additional conditions precedent set forth in Section 8.2.

8.2 Conditions Precedent to All Accommodations

The obligation of the Lenders to make available any Accommodations pursuant to Section 3.5 or to make any Conversion pursuant to Section 3.17 or to make a Rollover pursuant to Section 3.18 (except in the case of Conversions or Rollovers where this Agreement deems such Conversion or Rollover to have occurred), is subject to and conditional upon the satisfaction (or waiver by the Majority Lenders) of the following conditions precedent:

- (a) receipt of the appropriate Borrowing Notice, Conversion Notice or Rollover Notice;
- (b) on each Drawdown Date, Conversion Date or Rollover Date, as applicable, no Default or Event of Default exists or would reasonably be expected to result therefrom; and
- (c) on each Drawdown Date, the representations and warranties in Section 2.1, other than those stated to be made as at a specific date, are true and correct in all material respects with the same effect as if made as of such date.

8.3 Waiver of a Condition Precedent

The terms and conditions of Sections 8.1 to 8.2 are inserted for the sole benefit of the Agent and the Lenders and may be waived by the Majority Lenders, in whole or in part with or without terms or conditions, in respect of all or any portion of the Accommodations, without affecting the right of the Lenders to assert such terms and conditions in whole or in part in respect of any other Accommodations.

ARTICLE 9 COVENANTS

9.1 Financial Covenants

The Borrower covenants and agrees with each of the Lenders and the Agent that until the termination of all of the Commitments and payment in full of the Obligations:

- (a) **Term Debt to EBITDA Ratio:** Commencing with the Fiscal Quarter ending December 31, 2019, the Term Debt to EBITDA Ratio will not at any time exceed 2.00:1.00, provided that, for the purpose of calculating the Term Debt to EBITDA Ratio for any period, any

amount outstanding under the EUR Letter of Credit Facility for such period which is guaranteed by Export Development Canada on terms acceptable to the Agent will be excluded from Term Debt.

- (b) **Working Capital Ratio:** Commencing with the Fiscal Quarter ending December 31, 2019, the Working Capital Ratio will not at any time be less than 1.20:1.00.
- (c) **Fixed Charge Coverage Ratio:** the Fixed Charge Coverage Ratio will not as at the end of any Fiscal Quarter be less than 1.10:1.00. Compliance with the Fixed Charge Coverage Ratio is waived until the Maturity Date.
- (d) **Minimum EBITDA:** EBITDA for the following periods will not be less than the following amounts:
 - (i) January 1 to March 31, 2019, US\$2,000,000;
 - (ii) January 1 to June 30, 2019, US\$4,236,000;
 - (iii) January 1 to September 30, 2019, US\$5,670,000; and
 - (iv) Fiscal Year ending December 31, 2019, US\$8,027,000.
- (e) **Capital Expenditures:** Capital Expenditures for the following periods will not exceed the following amounts:
 - (i) Effective Date until December 31, 2018, C\$300,000; and
 - (ii) Fiscal Year ending December 31, 2019, C\$1,200,000.
- (f) **Equity Cure.** In the event of any Event of Default resulting from a failure to meet the financial covenant set out in Section 9.1(a) or the financial covenant set out in Section 9.1(d) (together, the "**Curable Covenants**"), any proceeds from:
 - (i) the issuance of equity or Debt by the Borrower within fifteen (15) Business Days after the occurrence of such Event of Default; or
 - (ii) any payment made under the TriWest Guarantee within fifteen (15) Business Days after a demand therefor by the Agent pursuant to Section 11(a) of the TriWest Guarantee,

will, at the written request of the Borrower, be included in the calculation of EBITDA solely for the purposes of determining compliance with the Curable Covenants at the end of the applicable Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity or Debt contribution or payment under the TriWest Guarantee, a "**Cure Action**"); provided that:

- (iii) the amount of any Cure Action and the use of proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with the Curable Covenants;
- (iv) all Cure Actions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents;
- (v) there shall be no more than two (2) Cure Actions made during the term of this Agreement;

- (vi) a Cure Action may not be made in two successive Fiscal Quarters;
- (vii) Cure Actions made by way of Debt may not exceed \$2,500,000 in the aggregate and
- (viii) the proceeds of all Cure Actions must actually be received by the Borrower or, with respect to a payment under the TriWest Guarantee, the Agent and the Lenders and used to repay Operating Borrowings.

The Borrower shall provide prior written notice to the Agent of its intention to cause to be made a Cure Action. If, after giving effect to the recalculations set forth in this Section 9.1(f), the Borrower shall then be in compliance with the Curable Covenants, the Borrower shall be deemed to have satisfied the requirements of the Curable Covenants and the applicable breach or default of the Curable Covenants that had occurred shall be deemed cured for the purposes of this Agreement. Nothing contained herein shall be interpreted to restrict the Agent and the Lenders from accelerating the Obligations pursuant to Section 10.2 or taking any other steps as a result of the occurrence of any Event of Default other than that addressed by a Cure Action hereunder.

9.2 Positive Covenants

The Borrower covenants and agrees with each of the Lenders and the Agent that until the termination of all of the Commitments and payment in full of the Obligations:

- (a) **Payment and Performance of Indebtedness:** the Borrower shall, and shall cause each other Loan Party to, pay duly and punctually all Lender Outstandings as and when due by it under the Loan Documents and shall pay and perform all other Obligations on its part to be performed under the terms of the Loan Documents at the times and places and in the manner provided for therein;
- (b) **Existence:** except as otherwise permitted herein, the Borrower shall, and shall cause each other Loan Party to, maintain its corporate or partnership existence, as applicable, in good standing under the laws of its jurisdiction of incorporation, amalgamation, creation or formation, as the case may be, and duly register and qualify and remain duly registered and qualified as an extra provincial corporation or partnership, as applicable, under the laws of each jurisdiction in which the nature of any business transacted by it or the character of any Property owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect;
- (c) **Conduct of Business:** the Borrower shall, and shall cause each other Loan Party to, carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; carry on the business currently being carried on by it as of the Effective Date; and operate its business in a reasonable manner, in each case, unless failing to do so would reasonably be expected to have a Material Adverse Effect;
- (d) **Access to Information:** the Borrower shall, and shall cause each other Loan Party to, provide the Agent with all information reasonably requested by the Agent for and on behalf of the Lenders from time to time concerning its financial condition and Property, and during normal business hours and from time to time upon reasonable notice, permit representatives of the Agent and the Lenders 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 data banks and computer

software systems, and to discuss its financial affairs, its business or any part of its Property with its senior officers and (in the presence of such of its representatives as it may designate) its auditors;

- (e) **Maintain Records:** the Borrower shall, and shall cause each other Loan Party to, maintain adequate books, accounts and records in accordance with GAAP, and all material records related to the Loan Parties' Account Receivables shall be located at the chief executive office of the Borrower as identified in Schedule N, as the same may be updated from time to time;
- (f) **Payment of Taxes:** the Borrower shall, and shall cause each other Loan Party to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (other than Taxes the amounts of which are immaterial and do not constitute a Security Interest on a Loan Party's Property that ranks *pari passu* or prior to the Security Interests granted in favour of the Lenders) and file all tax returns in respect thereof; provided, however that it shall not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and record;
- (g) **Insurance:** the Borrower shall, and shall cause each other Loan Party to, maintain or cause to be maintained with reputable insurers, coverage against risk of loss or damage to its Property (including public liability and damage to property of third parties), fire and extended peril insurance, boiler and machinery insurance and all such other insurance of such types and in such coverage amounts as is customary for and would be maintained by a reasonable and prudent corporation engaged in the same or similar business in similar locations and, provide to the Agent, on request, evidence of such coverage. The Borrower shall, prior to the expiry or replacement of any insurance policy, notify the Agent of the renewal or replacement and at the Agent's request provide evidence of such renewal replacement. The Agent on behalf of the Lenders shall be indicated in all insurance policies, as applicable, as first loss payee in respect of property insurance and additional insured in respect of liability insurance, and all property insurance policies shall contain such standard mortgage clauses as the Agent shall reasonably require for the Lenders' protection;
- (h) **Defend Title to Assets:** the Borrower shall, and shall cause each other Loan Party to, maintain, protect and defend title to the Property and take all such acts and steps as are necessary or advisable at any time and from time to time to retain its ownership and that of any other Loan Party in the Property in good standing (other than Permitted Title Defects and Permitted Encumbrances); if the Security Interests granted in any Loan Document or the title to or the rights of the Agent in or to any Property or any part thereof shall be endangered or shall be attacked, directly or indirectly, or if any legal proceedings are instigated against any Loan Party with respect thereto, the Borrower shall (other than with respect to Permitted Title Defects) promptly give written notice thereof to the Agent and the Borrower shall and shall cause each applicable Loan Party to take such action as is commercially reasonable to the prosecution or defence of litigation with the view to the release or discharge of claim made against the title to any such properties;
- (i) **Maintain Bank Accounts:** the Borrower shall, and shall cause each Loan Party to, maintain all of its bank accounts and Cash Management Services with a Cash Management Lender, except for (i) accounts for which a deposit account control agreement in form and substance acceptable to the Agent acting reasonably has been obtained in favour of the Agent, and (ii) those accounts identified in Section 9.3(r), (s), (t) and 0;

- (j) **Notice of Default or Event of Default:** the Borrower shall promptly notify the Agent of any Default or Event of Default that would apply to it or to any Loan Party of which it becomes aware;
- (k) **Notice of Material Adverse Effect:** the Borrower shall promptly notify the Agent of any Material Adverse Effect of which it becomes aware;
- (l) **Notice of Litigation:** the Borrower shall promptly notify the Agent on becoming aware of the occurrence of any litigation, dispute, arbitration or proceeding the result of which would reasonably be expected to result in (a) a judgment or award against it in excess of Cdn.\$1,000,000 or (b) a Material Adverse Effect, and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any such proceeding;
- (m) **Notice of Certain Events:** the Borrower shall provide the Agent with prompt written notice of the following when a senior officer of the Borrower has (or would reasonably be expected to have) knowledge of the same:
 - (i) any Environmental Liability in respect of any Property of any Loan Party in excess of Cdn.\$1,000,000;
 - (ii) the entering into of any Material Agreement promptly upon the execution and delivery thereof and any termination (other than in accordance with its terms and not as a result of a default) or suspension of, material amendments to or replacements of, or waivers of material breaches in respect of, the Material Agreements (or any notices received or sent by a Loan Party in respect of any of the foregoing);
 - (iii) the discovery of any material title defect in respect of any Property other than such Property that have become obsolete or that are non-essential to the normal course of business operations of any Loan Party, and other than a Permitted Title Defect;
 - (iv) any change to the Organizational Chart or the information set out in Schedule N;
 - (v) the receipt of insurance proceeds by any Loan Party in excess of Cdn.\$1,000,000;
 - (vi) the commencement of an insurance claim by any Loan Party in excess of Cdn.\$1,000,000; or
 - (vii) any Material Adverse Effect affecting any of the Loan Parties;
- (n) **Other Notices:** the Borrower shall, upon reasonable request of the Agent, provide the Agent with prompt written notice of the following:
 - (i) all information in respect of any material Intellectual Property of the Loan Parties, including the creation or acquisition of any new material Intellectual Property;
 - (ii) all information in respect of Swaps outstanding of the Loan Parties;
 - (iii) all environmental information relating to the Loan Parties;
 - (iv) the location of Real Estate (which such notice shall be deemed to update Schedule M) and leased property, including warehouses; and

- (v) any new surety or bonding agreement entered into by a Loan Party or the amendment, renewal or replacement of any such agreement;
- (o) **Maintenance and Operation of Assets:** the Borrower shall, and shall cause each other Loan Party to, maintain and operate all Property in accordance with good industry practice and shall pay or cause to be paid all rents, royalties and other obligations to pay money validly imposed upon it, or upon the Property or any part thereof as required to maintain such Property other than such Property that have become obsolete or that are non-essential to the normal course of business operations of a Loan Party and, in each case, except where failure to do so, or cause to be done, would reasonably be expected to have a Material Adverse Effect;
- (p) **Landlord Consents:** the Borrower shall use commercially reasonable efforts to obtain a consent agreement from each landlord of premises that are leased at any time by any Loan Party at which inventory, Equipment and other capital assets of the Loan Parties with a fair market value of Cdn.\$1,000,000 or more are located (as measured at the last day of each Fiscal Quarter) and for which value has been attributed in the Operating Facility Borrowing Base; such landlord agreement to be in form and substance reasonably satisfactory to the Agent and which shall include the following provisions (except to the extent otherwise agreed by the Agent in its discretion): such landlord consents to the granting of a Security Interest in property of the applicable Loan Party located at such leased property by the applicable Loan Party which is a tenant thereunder in favour of the Agent, agrees to give written notice to the Agent in respect of and a reasonable opportunity to cure any default before terminating the lease, and agrees to waive (or subordinate and defer the enforcement of) its rights and remedies and any security it may hold in respect of any assets owned by the applicable Loan Party located on or affixed to such leased property;
- (q) **Use of Credit Facilities:** the Borrower shall, and shall cause each other Loan Party to, use the proceeds of the Facilities for the purposes described in Section 3.4;
- (r) **Loan Party Guarantees and Security:** the Borrower shall ensure that each Material Subsidiary has provided the Security required by Article 6;
- (s) **Maintain Permits and Compliance with Laws and Regulations:** the Borrower shall, and shall cause each other Loan Party to:
 - (i) obtain and preserve and keep in full force and effect all franchises, licenses, privileges and Authorizations necessary to enable each Loan Party to operate and conduct its business in accordance with good industry practice;
 - (ii) observe and comply with all requirements of any Governmental Authority, including Governmental Actions, relative to any of its Property and all covenants, terms and conditions of all agreements upon or under which any of its Property are held;
 - (iii) comply with and manage and operate the Property in compliance with all Applicable Law, rules, regulations and orders of Governmental Authorities, including Environmental Laws;
 - (iv) store, treat, transport or otherwise handle and dispose of all Hazardous Substances and waste owned, managed or controlled by the applicable Loan Party in compliance with all Environmental Laws,

except, in any case, to the extent failure to do so would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect;

- (t) **Additional Information:** the Borrower shall, and shall cause each other Loan Party to, furnish to the Agent on a confidential basis any additional information regarding the business, affairs, operations and financial condition of each Loan Party as the Agent shall reasonably request;
- (u) **Intellectual Property:** the Borrower shall, and shall cause each other Loan Party to, maintain and defend all of its Intellectual Property;
- (v) **Security:** the Borrower shall provide the Agent, or cause to be provided to the Agent, the Security required from time to time pursuant to Article 6 in accordance with the provisions of such Article, accompanied with supporting resolutions, certificates, opinions in form and substance satisfactory to the Agent, acting reasonably, and do all such further acts and execute and deliver all such documents and instruments as may from time to time be requested by the Agent, acting reasonably, to ensure that the Security constitutes at all times valid, enforceable, and perfected first priority encumbrances (subject only to Permitted Encumbrances).
- (w) **EDC Guarantee.** The Borrower shall deliver to the Agent by no later than 60 days from the Effective Date a renewal of the EDC Guarantee on such terms and conditions as are satisfactory to the Agent and the Lenders acting reasonably.
- (x) **EUR Letter of Credit Facility.** The Borrower shall deliver to the Agent by no later than 60 days from the Effective Date a renewal of the EUR Letter of Credit Facility on such terms and conditions as are satisfactory to the Agent and the Lenders acting reasonably.
- (y) **U.S. Bank Accounts.** Within one year of the Effective Date, all bank accounts maintained by the Loan Parties in the United States shall: (i) be moved to Canadian Imperial Bank of Commerce and satisfactory evidence thereof delivered to the Agent and the Lenders; or (ii) a deposit account control agreement in form and substance acceptable to the Agent and the Lenders acting reasonably has been obtained in favour of the Agent.
- (z) **Accounts Receivable Insurance.** The Borrower shall deliver to the Agent by no later than 30 days from the Effective Date confirmation of renewed accounts receivable insurance on an all accounts basis from Export Development Canada on terms and conditions satisfactory to the Agent and the Lenders acting reasonably assigned to the Agent by way of security.

9.3 Negative Covenants

The Borrower covenants and agrees with each of the Lenders and the Agent that it shall not, and shall ensure that each other Loan Party shall not until the termination of all of the Commitments and payment in full of the Obligations:

- (a) **Change to Business:** change the Business in any material respect;
- (b) **Amalgamation, Consolidation, Etc.:** consolidate, amalgamate or merge with any other Person, export a corporation into a jurisdiction outside of Canada, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution unless prior written consent has been provided by the Majority Lenders in their sole and absolute discretion and such documentation as

is required by Agent is delivered concurrently with such transaction. Notwithstanding the foregoing, a Loan Party may consolidate, amalgamate or merge with another Loan Party or liquidate, wind-up or dissolve itself into another Loan Party;

- (c) **Debt:** create, incur, assume or permit any Debt of a Loan Party to remain outstanding, other than Permitted Debt;
- (d) **Security Interests:** create, incur, assume or permit to exist any Security Interest upon any of its Property, except Permitted Encumbrances;
- (e) **Dispositions:** except for Permitted Dispositions and dispositions contemplated by Section 4.3(b), sell, convey, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its Property, whether now owned or hereafter acquired;
- (f) **Acquisitions:** directly or indirectly make, or enter into any binding agreement to make, any Acquisitions other than Permitted Acquisitions;
- (g) **Financial Assistance and Investments:** make, directly or indirectly, any Investment or give any Financial Assistance to any Person other than: (i) to the extent permitted by Section 9.2(y)(c); (ii) Investments in Cash Equivalents, (iii) Investments or Financial Assistance to or in favour of another Loan Party;
- (h) **Distributions:** make any Distribution except Permitted Distributions;
- (i) **Material Agreements:** amend or restate or otherwise alter the Material Agreements in any manner that would reasonably be expected to materially and adversely affect the rights of the Agent and the Lenders under the Loan Documents;
- (j) **Unfunded Capital Expenditures:** directly or indirectly make any Unfunded Capital Expenditures in any Fiscal Year in excess of Cdn.\$2,000,000;
- (k) **Swaps:** enter into any Swap outside the ordinary course of its business; provided that, without limiting the generality of the foregoing, the following shall be considered to be Swaps entered into outside of the ordinary course of business:
 - (i) any Swap that is entered into for any purpose other than managing commodity risk, interest rate risk or currency risk, or is otherwise entered into for speculative purposes (determined, where relevant, by reference to GAAP);
 - (ii) any Swap having a term from its inception to maturity exceeding four years;
 - (iii) any Swap entered into with a counterparty that is not a Swap Lender; and
 - (iv) any Swap in respect of which a Security Interest (other than the Security) is granted to secure the Secured Obligations of a Loan Party;
- (l) **Sale or Discount of Receivables:** sell with recourse, or discount (other than to the extent of finance and interest charges included therein) or otherwise sell for less than face value thereof, any of its Accounts Receivable;
- (m) **Terrorism Sanction Regulations:** engage in any dealings or transactions with any Canadian Sanctions Designated Person or US Sanctions Designated Person;

- (n) **Shares of Subsidiaries:** issue any share, share rights, partnership interests or other securities of any Material Subsidiary to any Person, other than to another Loan Party;
- (o) **Change of Fiscal Year:** change its Fiscal Year end from December 31 or the basis on which the financial records of a Loan Party are now maintained, subject to Section 1.6;
- (p) **Transactions with Affiliates:** engage in any material transaction with any Affiliate (other than another Loan Party) that are not on arm's length terms, other than those that are otherwise specifically permitted under this Agreement;
- (q) **Subordinated Debt:** repay any TriEmissions Subordinated Debt or the Braden Permanent Notes, unless the Term Debt to EBITDA Ratio is less than 1.50:1 and the outstanding balance under the Term Facility is less than U.S.\$15,000,000;
- (r) **Mexican Accounts:** at no time will the Loan Parties hold more than U.S.\$200,000 (or the equivalent amount in Mexican pesos) in aggregate in the following bank accounts:

Shelf Company No. 79,S de R.L. de C.V.

| | | | | | |
|----------------------------|-------------|-----|-------------------|--------|---------------------------|
| Bank of Nova Scotia Mexico | 14509673199 | MXP | Operating Account | active | General Operation Account |
| Bank of Nova Scotia Mexico | 14500022470 | USD | Operating Account | active | General Operation Account |

Shelf Company No. 82,S de R.L. de C.V.

| | | | | | |
|----------------------------|-------------|-----|-------------------|--------|---------------------------|
| Bank of Nova Scotia Mexico | 14509898263 | MXP | Operating Account | active | General Operation Account |
| Bank of Nova Scotia Mexico | 14500022497 | USD | Operating Account | active | General Operation Account |

- (s) **Wells Fargo Accounts:** at no time will the Loan Parties hold more than U.S.\$500,000 in any of the following bank accounts:

Innova Global Inc.

| | | | | | |
|-------------|-------------|-----|----------------------------|--------|--|
| Wells Fargo | 614-5752371 | USD | Salary Account/Tax Account | active | ADP Payroll for US Employees and Tax Remittances |
|-------------|-------------|-----|----------------------------|--------|--|

Innova Global LLC

| | | | | | |
|-------------|-------------|-----|----------------------------|--------|--|
| Wells Fargo | 022-1717663 | USD | Salary Account/Tax Account | active | ADP Payroll for US Employees and Tax Remittances |
|-------------|-------------|-----|----------------------------|--------|--|

Braden Manufacturing, L.L.C.

| | | | | | |
|-------------|--------------|-----|-------------------|--------|---------------------------|
| Wells Fargo | 412-1538-078 | USD | Operating Account | Active | General Operating Account |
| Wells Fargo | 412-1538-086 | USD | Operating Account | Active | A/P Operating Account |

| | | | | | |
|-------------|--------------|-----|-------------------|--------|---------|
| Wells Fargo | 412-1538-094 | USD | Operating Account | Active | Payroll |
|-------------|--------------|-----|-------------------|--------|---------|

- (t) **Australian Account:** at no time will the Loan Parties hold more than U.S.\$100,000 (or the Equivalent Amount in Australian dollars) in the following bank account:

Innova Global Australia Pty Limited

| | | | | | |
|---------|---------------|-----|-------------------|--------|---------------------------|
| Westpac | 032143 383674 | AUD | Operating Account | Active | General Operating Account |
|---------|---------------|-----|-------------------|--------|---------------------------|

- (u) **Other Foreign Accounts:** at no time will the Loan Parties hold more than EUR750,000 in aggregate in the following bank accounts:

Braden-Europe B.V.

| | | | | |
|--------------|----------------------------------|------|--------|-------------|
| BRD Bank | 10317154410 | RON | Active | |
| Raiffeisen | 77-1750-0009-0000-0000-1255-1867 | PLN | Active | |
| Raiffeisen | 771750000900000000012551878 | EURO | Active | |
| Raiffeisen | 96-1750-0009-0000-0000-3906-9288 | PLN | Active | VAT Account |
| Bangkok Bank | 030-8-122373 | THB | Active | |

- (v) **Subordinated Debt:** permit the terms of any Subordinated Debt to be amended, renewed, extended, modified, supplemented, replaced or restated without the prior written consent of the Agent.

9.4 Reporting Covenants

The Borrower covenants and agrees with the Agent and each of the Lenders as follows until the termination of all of the Commitments and payment in full of the Obligations:

- (a) **2017 Annual Financial Statements:** the Borrower shall furnish to the Agent within 45 days after the Effective Date, the annual audited financial statements of the Borrower for the Fiscal Year ended December 31, 2017 audited by a reputable accounting firm, which financial statements shall not differ materially from the draft annual financial statements of the Borrower for the Fiscal Year ended December 31, 2017 previously delivered by the Borrower to the Agent;
- (b) **Annual Financial Statements:** the Borrower shall furnish to the Agent as soon as available and in any event within 90 days after the end of each Fiscal Year, the annual audited financial statements of the Borrower audited by a reputable accounting firm, including an audited combined consolidated balance sheet, a combined consolidated statement of income (loss) and deficit, and a combined consolidated statement of cash flows, setting forth in comparative form the corresponding figures of the preceding Fiscal Year;
- (c) **Quarterly Financial Statements:** the Borrower shall furnish to the Agent as soon as available and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter), quarterly unaudited combined consolidated financial statements of the Borrower including an unaudited combined consolidated balance sheet, a combined consolidated statement of income (loss) and

deficit, and a combined consolidated statement of cash flows, all prepared in accordance with GAAP consistently applied;

- (d) **Monthly Balance Sheet and Income Statement:** the Borrower shall furnish to the Agent as soon as available and in any event within 30 days after the end of each calendar month a monthly unaudited combined consolidated balance sheet and combined consolidated statement of income (loss) and deficit, each showing comparison to forecast;
- (e) **Backlog Report:** the Borrower shall furnish to the Agent as soon as available and in any event within 30 days after the end of each calendar month a monthly summarized backlog report (split between firm sales and high probability (>90%) sales) including: customer name, project name, start date, end date, dollar amount of project including any letter of credit bonding requirements, update on projects that were completed, lost or postponed during the relevant period and analysis of high probability sales from prior periods converted to firm sales during the relevant period;
- (f) **EBITDA Reporting:** the Borrower shall furnish to the Agent (i) as soon as available and in any event within 30 days after the end of each calendar month a monthly breakdown showing details of EBITDA addbacks and normalization, corresponding to addback buckets in the definition of "EBITDA", and (ii) by April 15, 2019, an updated financial model for the remainder of the term of this Agreement forecasting normalized EBITDA;
- (g) **Borrowing Base Certificate:** the Borrower shall furnish to the Agent as soon as available and in any event within 30 days after the end of each calendar month, a Borrowing Base Certificate setting out the calculation of (i) the Operating Facility Borrowing Base as of the last day of such month and including an inventory listing and a detailed listing of accounts payable, and (ii) the WIP Facility Borrowing Base as of the last day of such month and including a calculation of Good Unbilled Revenue, which Borrowing Base Certificate shall be satisfactory to the Lenders in their sole discretion.
- (h) **Compliance Certificate:** the Borrower shall furnish to the Agent, concurrently with the provision of the financial statements pursuant to Sections 9.4(b) and 9.4(c), a duly executed and completed Compliance Certificate showing calculation of the Financial Covenants as of the last day of such Fiscal Quarter or Fiscal Year (as the case may be).
- (i) **Management Discussion and Analysis:** the Borrower shall furnish to the Agent, concurrently with the provision of the financial statements pursuant to Sections 9.4(b) and 9.4(c), a management discussion and analysis report for such Fiscal Year or Fiscal Quarter (which shall include a detailed variance to budget and historical performance and a description of backlog of work), and such additional or supporting information as the Agent may reasonably request;
- (j) **Financial Forecasts:** the Borrower shall furnish to the Agent as soon as available and in any event no later than 120 days after the commencement of each Fiscal Year a combined consolidated financial board approved budget for the period until the Maturity Date demonstrating Financial Covenant calculations and including a combined consolidated balance sheet, a combined consolidated statement of income (loss) and deficit and a combined consolidated statement of cash flows for such period, detailed on a quarterly basis;
- (k) **Excess Cash Flow and Prepayment Calculation Certificate:** the Borrower shall furnish to the Agent as soon as available and in any event no later than 120 days after the commencement of each Fiscal Year a duly executed and completed certificate executed by any senior officer of the Borrower detailing its calculation of Excess Cash

Flow attributable to the prior Fiscal Year, and its calculations in respect of any repayments of the Facilities required by Section 4.3 and/or Section 4.4;

- (l) **13-Week Cash Flow:** until February 28, 2019, the Borrower shall furnish to the Agent each week (i) a 13-week cash flow variance report with an explanation of any cumulative differences to budget of over 10%, and (ii) if such variance report shows cumulative differences to budget of over 10%, an updated 13-week cash flow forecast;
- (m) **Swap Information:** the Borrower shall, upon request of the Agent, furnish to the Agent reports detailing all hedging activities occurring during the most recently completed Fiscal Quarter, detailing the position and market value of all Swaps in effect as of the end of such quarter, and demonstrating compliance with all hedging limitations required herein; and
- (n) **Provision of Information:** the Borrower shall, upon request of the Agent, furnish to the Agent such other reports or information reasonably requested by a Lender to the Agent from time to time.

9.5 Material Subsidiaries

- (a) **Designation of Material Subsidiaries:** The Borrower shall, from time to time, designate such Material Subsidiaries as it shall determine as Material Subsidiaries and shall notify the Agent that such Person has become a Material Subsidiary and furnish the Agent with the name, date and jurisdiction of formation, description of business and principal place of business address of each Material Subsidiary and shall cause each Material Subsidiary to provide to the Agent for the benefit of the Lenders, within 30 days (or such later date as the Agent may agree to, acting reasonably) of it becoming a Material Subsidiary, the Security contemplated by Section 6.3, together with the additional documentation contemplated in such Section 6.3 in relation thereto.
- (b) **Release of Material Subsidiary Security:** The Borrower shall be entitled to request that a Material Subsidiary which is, or has been designated, a Material Subsidiary no longer be a Material Subsidiary. Upon providing an officer's certificate of the Borrower confirming that no Default or Event of Default has occurred and is continuing (excluding, for certainty, any Default or Event of Default which would no longer exist as a result of such redesignation) and no Default or Event of Default would result from giving effect to such request and the Agent determining that no Default or Event of Default would result from giving effect to such request, the Agent shall confirm in writing the redesignation of such Material Subsidiary as a Non-Material Subsidiary and shall cancel, release and, if applicable, return the Security granted by such Subsidiary.
- (c) **Subsidiary Ownership:** If a Subsidiary becomes a Material Subsidiary, the Borrower shall ensure at all times that it beneficially owns either directly or indirectly through one or more Material Subsidiaries, all of the issued and outstanding shares, partnership interests or other economic and voting interests in the capital stock of each such Material Subsidiary.

ARTICLE 10 EVENTS OF DEFAULT

10.1 Events of Default

The occurrence of any one or more of the following events or circumstances constitutes an Event of Default under this Agreement:

- (a) **Failure to Pay Principal:** the failure of the Borrower to make any payment of any principal amount when due hereunder;
- (b) **Failure to Pay Interest or Fees:** the failure of any Loan Party to make any payment of any interest, fees or any other amount due under any Loan Document when due hereunder and such default shall remain unremedied for a period of three Business Days after such amount is due;
- (c) **Certain Covenants:** the failure of the Borrower or any Loan Party to comply with any of the Financial Covenants (unless cured by a Cure Action) or any of the covenants set out in Sections 9.3(b), (c), (d), (e), (h) or (k);
- (d) **Covenants:** if there is a breach or failure of due performance or observance by any Loan Party of any covenant or provision of this Agreement or any of the Loan Documents (other than those otherwise dealt with in this Section 10.1), unless such breach or failure is cured to the satisfaction of the Majority Lenders, acting reasonably, within 20 Business Days after written notice thereof by the Agent to the Borrower;
- (e) **Misrepresentations:** if any representation or warranty made by any Loan Party in this Agreement, any other Loan Document or in any certificate or other document at any time delivered hereunder to the Agent or the Lenders shall prove to have been incorrect in any material respect when made or deemed to be made or repeated hereunder or thereunder; provided that if the matter, defect or deficiency which is the subject matter of the misrepresentation is capable of correction or remedy (and not merely by changing the representation made), then if it is not corrected or remedied to the satisfaction of the Majority Lenders, acting reasonably, on and as of the date thereof and the Borrower shall have failed to remedy such default (if such default is capable of being cured) within 20 Business Days from the date of the occurrence of such event;
- (f) **Cross Default:** if any Loan Party (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt which in the aggregate principal amount then outstanding is in excess of Cdn.\$1,000,000 and such payment is not made within any applicable cure or grace period; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt to any Person which in the aggregate principal amount then outstanding is in excess of Cdn.\$1,000,000 or contained in any instrument or agreement evidencing, securing or relating thereto and such default is not waived or cured within any applicable cure or grace period; or (iii) or any other event shall occur or condition exist, the effect of which event or other condition is to cause, or to permit the holder of such Debt which in the aggregate principal amount then outstanding is in excess of Cdn.\$1,000,000 to cause, such Debt to become due prior to its stated maturity date;
- (g) **Cease to Carry on Business:** except as otherwise permitted herein, if any Loan Party ceases or threatens to cease to carry on business generally; provided that for certainty, temporary stoppages of work (including, without limitation, due to statutory or other recognized holidays, inclement weather, seasonal nature of work within the Business or as a result of an accident, explosion, other safety incident or other event that is beyond

the control of the Loan Parties) shall not in and of themselves be considered to be "ceasing to carry on business";

- (h) **Voluntary Insolvency:** if any Loan Party becomes insolvent, makes any assignment in bankruptcy or makes any other similar assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;
- (i) **Involuntary Insolvency:** if any proceeding or filing shall be instituted or made against any Loan Party seeking to have an order for relief entered against such Loan Party as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada)), or seeking appointment of a receiver, trustee, custodian or other similar official for such Loan Party or for any substantial part of its properties or assets unless the same (i) is being contested actively and diligently in good faith by appropriate and timely proceedings and (ii) is dismissed, vacated or permanently stayed within 20 Business Days of institution;
- (j) **Change in Control:** if, at any time, a Change of Control occurs;
- (k) **Judgments:** if a final judgment, execution, writ of seizure and sale, sequestration or decree for the payment of money due shall have been obtained or entered against any Loan Party in an amount in excess of Cdn.\$1,000,000 (individually or in the aggregate for all Loan Parties) and such judgment, execution, writ of seizure and sale, sequestration or decree shall not have been and remain vacated, satisfied, discharged or stayed pending appeal within the applicable appeal period;
- (l) **Encumbrancers:** if creditors of any Loan Party having a Security Interest against or in respect of the Property thereof, or any part thereof, realize upon or enforce any such security against such property and assets or any part thereof having an aggregate fair market value in excess of Cdn.\$1,000,000 (or the equivalent thereof in any other currency) and such realization or enforcement shall continue in effect and not be released, discharged or stayed within the lesser of 20 Business Days and the period of time prescribed under Applicable Law for the completion of the sale of or realization against the assets subject to such seizure or attachment;
- (m) **Denial of Loan Documents:** if any Loan Party denies its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;
- (n) **Invalid Loan Documents/Failure of Security:** if any material provision of any Loan Document is invalid or unenforceable in whole or in a material part, or any of the Security Interests in and to any material Property constituted by the Security fails to attach thereto or to have the priority intended thereby, and, in either case, the same is not cured within 10 Business Days of the Borrower being notified of such fact;

- (o) **Lender Swaps:** if any Loan Party breaches or is in default under any Lender Swap and such breach or default is not remedied within any applicable cure period in the relevant agreement with respect thereto;
- (p) **Qualified Auditor's Report:** if any audited financial statement of the Borrower is qualified by the auditor in any material respect as a "going concern" and such qualification is not removed from such financial statements within 20 Business Days after written notice is given by the Agent to the Borrower to remove same;
- (q) **Default under Material Agreement:** the occurrence of a default under any Material Agreement which, in the opinion of all of the Lenders, would reasonably be expected to have a Material Adverse Effect and, if capable of remedy, such default shall not be either waived or remedied within the applicable cure period permitted in respect thereof; and
- (r) **Material Adverse Effect:** if an event shall occur which, in the opinion of the Majority Lenders, would reasonably be expected to have a Material Adverse Effect and, if capable of remedy, such event shall not be remedied within a period of 15 Business Days from the date of written notice by the Agent to the Borrower of such event.

10.2 Acceleration

Upon the occurrence and during the continuance of any Event of Default, the Agent on behalf of the Lenders, and with the approval of the Majority Lenders, shall be entitled to, without limiting or restricting other remedies or rights under contract, at law or in equity, as the Agent and the Majority Lenders may in their sole and unfettered discretion determine:

- (a) **Terminate Commitment:** cease to make or continue any Borrowings hereunder, notwithstanding any prior receipt by the Agent of a Borrowing Notice, Conversion Notice or a Rollover Notice or any other event and the Agent may, by written notice to the Borrower, declare the Total Commitment and the right of the Borrower to apply for further Accommodations to be terminated; and
- (b) **Acceleration Notice:** by written notice to the Borrower (an "**Acceleration Notice**"), declare all Borrowings (including the face amount of all Bankers' Acceptances and the undrawn amount of all outstanding Letters of Credit) and other liabilities and indebtedness (whether matured or unmatured) of the Borrower to the Agent, the Lenders and the Creditcard Lenders hereunder and under the other Loan Documents and the Bilateral Financial Services Agreements to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by the Borrower;

provided that upon the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i) the Commitment shall automatically terminate and all Borrowings (including the face amount of all Bankers' Acceptances and the undrawn amount of all outstanding Letters of Credit) and other indebtedness and liabilities hereunder and under the other Loan Documents and the Bilateral Financial Services Agreements shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower. Immediately upon the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i) or at the time stated in an Acceleration Notice, the Borrower shall pay to the Agent on behalf of the Lenders and the Creditcard Lenders all amounts owing or payable in respect of all Borrowings (including the face amount of all Bankers' Acceptances and the undrawn amount of all outstanding Letters of Credit) and other indebtedness and liabilities hereunder and under the other Loan Documents and the Bilateral Financial Services Agreements, failing which all rights and remedies of the Agent and the Lenders under the Loan Documents and the Bilateral Financial Services Agreements shall thereupon become enforceable.

10.3 Demands for Repayment

- (a) **Lender Demands:** If the Agent, on behalf of the Majority Lenders, delivers an Acceleration Notice, each Swap Lender may, within three Business Days, deliver (to the extent applicable to it) a Swap Demand for Repayment.
- (b) **Termination Event:** If a Termination Event has occurred and all of the Lender Outstandings are not thereafter due and payable, each Lender and Swap Lender shall, within three Business Days, deliver such Demands for Repayment as may be necessary to ensure that all Lender Outstandings are thereafter due and payable under the Credit Documents.
- (c) **Swap Demand:** If any Swap Lender proposes to deliver a Swap Demand for Repayment, such Lender shall notify the Agent of its determination, and the Agent, within a further five Business Days after receipt of the aforesaid notice, shall notify all Swap Lenders whether the Agent, on behalf of the Majority Lenders, proposes to deliver an Acceleration Notice hereunder. If the Agent does not so advise the Swap Lenders within such five Business Day period it shall be deemed to have advised that the Majority Lenders do not propose to deliver an Acceleration Notice. If the Agent does notify the Swap Lenders that the Majority Lenders propose to deliver an Acceleration Notice, all Demands for Repayment shall be delivered concurrently by the Agent and the Swap Lenders. If the Agent does notify the Swap Lenders that the Majority Lenders do not propose, or the Agent is deemed to have advised that the Majority Lenders do not propose, to deliver an Acceleration Notice, the Swap Lender which delivered the notice to the Agent may at any time within 30 Business Days thereafter deliver the Swap Demand for Repayment. If the Swap Lender delivering any such Demand for Repayment does not receive the amount so demanded on or prior to the time stated in such Swap Demand for Repayment, such Swap Lender shall so notify the Agent and the Agent and each other Lender and Swap Lender shall forthwith concurrently deliver such Demands for Repayment as may be necessary to ensure that all Lender Outstandings are thereafter due and payable under the Credit Documents.
- (d) **No Sharing:** Any amounts which are lawfully received by any Swap Lender under a Swap prior to the earlier of the delivery by the Agent of a Demand for Repayment or the occurrence of a Termination Event hereunder are not required to be shared pursuant to the provisions of Section 10.7.
- (e) **Lender Affiliates:** If a Lender Swap is entered into with an Affiliate of a Lender, that Lender shall cause such Affiliate to deliver all Swap Demands for Repayment as required by this Section 10.3 and such obligations shall survive such Lender (at any time after any such Lender Swap was entered into) ceasing to be a Lender hereunder.

10.4 Cash Collateral Accounts

Upon the occurrence of:

- (a) a Termination Event or delivery of an Acceleration Notice; or
- (b) an event referred to in Section 4.5 where the Borrower is required to make payment to a Cash Collateral Account of the required amount,

the Borrower shall forthwith pay to the Agent, for deposit into a Cash Collateral Account, an amount equal to the Lender's maximum potential liability under then outstanding Bankers' Acceptances, Letters of Credit and (unless the Borrower makes payment of the amount required pursuant to Section 11.5) Libor Loans (collectively, the "**Escrow Funds**"). The Escrow Funds shall, in the case of paragraph (a) above,

be held by the Agent for set-off against future indebtedness owing by the Borrower to the Lenders in respect of such Bankers' Acceptances, Letters of Credit and (unless the Borrower makes payment of the amount required pursuant to Section 11.5) Libor Loans, or, in the case of paragraph (b) above, be applied as provided in Section 4.5.

10.5 Remedies on Default

After an Event of Default:

- (a) **Majority Lenders Instructions:** if the Majority Lenders provide directions or instructions to the Agent, the Agent, on behalf of all Lenders and Swap Lenders, shall take such actions and commence such proceedings as the Majority Lenders in their sole discretion may determine and may enforce or otherwise realize upon any Security, all without any obligation to marshal any Security Interests and without additional notice, presentation, demand or protest, all of which the Borrower hereby expressly waives (to the extent such rights may be waived under Applicable Law). The rights and remedies of the Agent and the Lenders under the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law. If, from time to time, there are no Lenders other than Swap Lenders, the Majority Lenders for the purposes of this Agreement shall be calculated by revising paragraph (a) of the definition of "Majority Lenders" to change the references to "Borrowings" to "Lender Outstandings" and deleting the words "under the Facilities"; and
- (b) **General Remedies:** the rights and remedies of the Agent and each Lender and Swap Lender under the Loan Documents and the Credit Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law. The Agent may, on behalf of all Lenders and Swap Lenders, and shall, if so required by the Majority Lenders, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:
 - (i) **Specific Performance:** the specific performance of any covenant or agreement contained in the Loan Documents and the Credit Documents;
 - (ii) **Injunction:** enjoining a violation of any of the terms of the Loan Documents and the Credit Documents;
 - (iii) **Assistance:** aiding in the exercise of any power granted by the Loan Documents and the Credit Documents or by law; or
 - (iv) **Judgment:** obtaining and recovering judgment for any and all amounts due in respect of the Borrowings or amounts otherwise due hereunder or under the Loan Documents and the Credit Documents.

10.6 Right of Set-Off

Upon the occurrence and during the continuance of any Event of Default, and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Agent and each Lender is authorized at any time and from time to time thereafter, without notice to the Borrower or to any other Person (any such notice being expressly waived by the Borrower), to combine, consolidate or merge all or any of the Borrower's accounts with, and liabilities, to it and to set-off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness (other than Swap Indebtedness which is not Permitted Swap Indebtedness) at any time held by or owing by it to or for the credit of or the account of the Borrower against and on account of the Secured Obligations (including the face amount of all Bankers' Acceptances) and other liabilities and indebtedness of the Borrower to the Agent or such Lender under

this Agreement and the other Loan Documents, including all claims of the Agent or any Lender of any nature or description arising out of or connected with this Agreement and the other Loan Documents, irrespective of whether or not the Agent or any Lender has made any demand under this Agreement or any of the other Loan Documents and although such obligations, liabilities or claims of the Borrower or any of them are contingent or unmatured. Notwithstanding the provisions of any Swap, the Lenders and Swap Lenders shall not effect or purport to effect any set-off of Swap Indebtedness that is not Permitted Swap Indebtedness against or on account of any Secured Obligations owed to it until all other Secured Obligations have been repaid.

10.7 Application and Sharing of Payments Following Acceleration

Except as otherwise agreed to by all of the Lenders in their sole discretion, all monies and property received by the Lenders (in their capacity as Lenders and, if applicable, Swap Lenders, Creditcard Lenders or Cash Management Lenders) for application in respect of the Secured Obligations subsequent to the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i) (including all monies received as a result of a realization upon the Security or the exercise of a right of set-off), shall be applied and distributed to the Lenders (in their capacity as Lenders and, if applicable, Swap Lenders, Creditcard Lenders and Cash Management Lenders) in the manner set forth below, each such application to be made in the following order with any balance remaining after application in respect of each category to be applied to the next succeeding category:

- (a) firstly, in or towards payment of any fees or expenses then due and payable to the Agent hereunder or under any other Loan Document;
- (b) secondly, *pro rata* among the Term Lenders, the WIP Lenders, the Operating Lenders, the Swingline Lender and the LC Lenders in respect of amounts due and payable to such Lenders as and by way of recoverable expenses hereunder or under any of the Security;
- (c) thirdly, *pro rata* among the Term Lenders, the WIP Lenders, the Operating Lenders, the Swingline Lender and the LC Lenders in respect of amounts due and payable to such Lenders by way of interest pursuant to Sections 5.1, 5.2 and 5.3, acceptance fees pursuant to Section 5.4, Letter of Credit Fees pursuant to Section 5.5, Creditcard Facility or Cash Management Services fees pursuant to Section 5.6, interest on overdue amounts pursuant to Section 5.7 and standby fees pursuant to Section 5.12;
- (d) fourthly, *pro rata* among the Term Lenders, the WIP Lenders, the Operating Lenders, the Swingline Lender and the LC Lenders in respect of any other amount (other than Lender Outstandings, Creditcard Obligations and Cash Management Obligations) not hereinbefore referred to in this Section 10.7 which are then due and payable to any of them by the Borrower hereunder or under any other Loan Document;
- (e) fifthly, *pro rata* among the Term Lenders, the WIP Lenders, the Operating Lenders, the Swingline Lender, the LC Lenders, the Swap Lenders, the Creditcard Lenders and the Cash Management Lenders in or towards repayment of the Lender Outstandings, Creditcard Obligations and Cash Management Obligations; and
- (f) *sixthly*, in accordance with Applicable Law.

To the extent that a Lender Swap is entered into by an Affiliate of a Lender, that Lender shall cause such Affiliate to comply with the provisions of this Section 10.7 and such obligation shall survive such Lender (at any time after any such Lender Swap was entered into) ceasing to be a Lender hereunder.

10.8 Adjustments

In the event that:

- (a) **Contingent Liabilities:** at the Adjustment Time, a portion of the Borrowings is outstanding as Letters of Credit and it is subsequently determined that the issuing Lender is not required to make payment under any one or more such instruments; or
- (b) **Notice Periods:** any of the Lenders are required by Applicable Law to continue to make advances or other amounts available to the Borrower subsequent to the Adjustment Time by reason of a requirement in Applicable Law to give the Borrower a reasonable period of notice prior to terminating such Lender's obligation to make such advances or other amounts available;

then, whenever and so often as that occurs:

- (i) **Sharing Adjustment:** the terms "rateable" and "rateably" shall, *ipso facto*, as at the Adjustment Time be redetermined by excluding from the determination of the amount of Lender Outstandings any payments not required to be made as a result of the occurrence of an event described in Section 10.8(a) and by including in the determination of the amount of Lender Outstandings any amount required to be made available pursuant to Section 10.8(b); and
- (ii) **Lender Outstandings:** Lender Outstandings shall be redetermined by excluding from the determination of the amount of Lender Outstandings any payments not required to be made as a result of the occurrence of an event described in Section 10.8(a) and by including in the determination of Lender Outstandings any amount required to be made available pursuant to Section 10.8(b);

and the Lenders shall thereupon make all such payments and adjustments as may be necessary to ensure amounts outstanding to the Lenders are thereafter outstanding in accordance with the provisions of Section 12.12.

10.9 Calculations as at the Adjustment Time

For the purposes of this Agreement, if:

- (a) **Swap Demand:** a Swap Demand for Repayment has been delivered; or
- (b) **Termination Event:** a Termination Event has occurred under any Credit Document evidencing a Swap;

then, for the purposes of calculations to be made at the Adjustment Time, any Termination Amount which is payable by any Loan Party under such Swap in settlement of obligations arising thereunder as a result of the early termination of the Swap shall be deemed to have become payable at the time of delivery of such Swap Demand for Repayment or the time of occurrence of such Termination Event as the case may be, notwithstanding that the amount payable by any Loan Party is to be subsequently calculated and notice thereof given to such Loan Party in accordance with such Swap. For the purposes of the foregoing, the Agent shall make all determinations of the applicable Termination Amounts in accordance with the applicable ISDA Master Agreements, and for such purposes each Lender shall provide details to the Agent of its own calculations of the applicable Termination Amounts.

10.10 Agent May Perform Covenants

If any Loan Party shall fail to perform any of its obligations under any covenant contained in any of the Loan Documents within the time permitted for the performance of any such covenant or for the cure of any default thereof, the Agent may, on behalf of the Lenders and with the approval of the Majority Lenders and with prior notification to the Borrower, perform any such covenant capable of being performed by it and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds on behalf of the Lenders. If the Agent elects to effect such observance or performance, neither the Agent nor any Lender shall be liable for any failure or deficiency in effecting such observance or performance, nor for the payment of any bills, invoices or accounts incurred or rendered in connection therewith, except to the extent the Agent or such Lender is grossly negligent or acts with wilful misconduct. All amounts so paid by any Lender or the Agent hereunder shall be repaid by the Borrower on demand therefor, and shall bear interest at the rate set forth in Section 5.7 from and including the date paid by the Agent hereunder to but excluding the date such amounts are repaid in full by the Borrower and shall be secured by the Security.

10.11 Waiver of Defaults

- (a) All Defaults and Events of Default which occurred and were continuing under the Original Credit Agreement and the Loan Documents, including without limitation those referred to in the notice letters from the Agent to the Borrower dated July 13, 2018, August 7, 2018, September 12, 2018 and October 4, 2018, are hereby waived by the Agent and the Lenders effective as of the Effective Date. Without limiting the generality of the preceding sentence, such waiver shall be limited precisely as written and nothing in this Section 10.11(a) shall be deemed to (i) constitute a waiver of compliance by the Borrower or any other Loan Party with respect to any term, provision or condition of this Agreement or, after the Effective Date, any other Loan Document, or any other instrument or agreement referred to therein, (ii) constitute a waiver of any Default or Event of Default which may occur under this Agreement or, after the Effective Date, any other Loan Document, or (iii) prejudice any right or remedy that the Agent or any Lender may now have or may have in the future under or in connection with this Agreement or, after the Effective Date, any other Loan Document, or any other instrument or agreement referred to therein.
- (b) Any single or partial exercise by any Lender or Swap Lender, the Agent or by the Agent on behalf of any Lender or Swap Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in the Loan Documents or the Credit Documents shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy to which the Agent or such Lender or Swap Lender may be lawfully entitled for the same default or breach.
- (c) Any waiver by any Lender or Swap Lender, the Agent or by the Agent on behalf of any Lender or Swap Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement contained in the Loan Documents or the Credit Documents, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. To the extent permitted by Applicable Law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which are inconsistent with the Agent's or a Lender's or Swap Lender's rights or remedies under the Loan Documents and the Credit Documents.

10.12 Sharing Repayments

Each Lender agrees that, subsequent to the Adjustment Time, it will at any time and from time to time upon the request of the Agent purchase portions of the Borrowings and make any other adjustments which may be necessary or appropriate in order that amounts which remain outstanding under the Loan Documents to each Lender or thereafter outstanding, as adjusted pursuant to this Section 10.12, are in accordance with the provisions of Section 10.7. The Borrower agrees to do all things

reasonably necessary or appropriate to give effect to any and all purchases and other adjustments by and between the Lenders pursuant to this Section 10.12.

ARTICLE 11 EXPENSES AND INDEMNITIES

11.1 Reimbursement of Expenses

All statements, reports (including environmental reports), certificates, opinions and other documents or information required to be furnished to the Agent or the Lenders by the Borrower under this Agreement shall be supplied by the Borrower without cost to the Agent or the Lenders. In addition, the Borrower agrees to pay promptly to the Agent on demand, all reasonable and documented legal fees and other usual and customary reasonable and documented out-of-pocket expenses (including travel, publicity and syndication expenses) incurred or which may hereafter be incurred from time to time by the Agent or the Lenders in respect of the documentation, preparation, registration, negotiation, execution and administration of the Loan Documents (including any stamp taxes or other Taxes payable in connection with the execution, delivery or enforcement of the Loan Documents) and all legal fees (on a solicitor and own client basis) and other reasonable and documented out-of-pocket expenses which are incurred from time to time by the Agent or the Lenders in respect of the enforcement of the Loan Documents, which for the avoidance of doubt, in the case of legal fees and expenses, should be limited to the fees and expenses of one separate law firm for Agent and the Lenders unless such representation by the same legal counsel would be inappropriate due to actual or potential differing interests or the employment thereof has been specifically authorized by the Borrower in writing and such firm or firms shall be designated in writing by the Agent on behalf of each Lender.

11.2 Increased Cost

If, after the date hereof, the introduction of, any change in or the implementation of any Applicable Law (including any capital adequacy requirement but excluding any Excluded Taxes), regulation, treaty or official directive now or hereafter in effect (whether or not having the force of law) or any change in the interpretation or application thereof by any court or by any judicial or Governmental Authority charged with the interpretation or administration thereof, or if compliance by any Lender with any request from any central bank or other fiscal, monetary or other authority (whether or not having the force of law) (individually, a **"Circumstance"**):

- (a) subjects a Lender to any Tax, or changes the basis of taxation of payments due to a Lender or increases any existing Tax, on payments of principal, interest or other amounts payable by the Borrower to a Lender under this Agreement;
- (b) imposes, modifies or deems applicable any reserve, special deposit, capital adequacy, regulatory or similar requirement against assets or liabilities held by a Lender, or deposits of or for the account of a Lender, or loans by a Lender, or any other acquisition of funds for loans by a Lender or commitments by a Lender to fund loans or obligations of a Lender in respect of bankers' acceptances accepted by such Lender; or
- (c) imposes on a Lender any other condition with respect to this Agreement;

and the result of (a), (b) or (c) is to increase the cost to such Lender or to reduce the income receivable by such Lender in respect of an Accommodation, such Lender shall promptly notify the Agent. The Agent shall promptly notify the Borrower and the Borrower shall pay to the Agent for the benefit of such Lender that amount which compensates such Lender for such additional cost or reduction in income (except to the extent such increase in costs or reduction in income is reflected in or recovered by an increase in the Prime Rate or the U.S. Base Rate) (**"Additional Compensation"**) on the next Libor Interest Date in the case of a Libor Loan, the date of issuance of any Bankers' Acceptances or on the next Interest Date in

any other case unless such Lender knew, on the date of execution of this Agreement, of such Circumstance and the likely result thereof.

The Borrower shall not be obligated to pay any portion of such Additional Compensation accruing under this Section 11.2 for any period prior to the date which is 90 days prior to the date on which the Agent, on behalf of such Lender, gives notice to the Borrower that such Additional Compensation is so accruing or if such Lender is not generally collecting amounts which are equivalent to Additional Compensation from other borrowers in similar circumstances to the Borrower where it is contractually entitled to do so. A photocopy of the relevant law, regulation, treaty, official directive or regulatory requirement (or, if it is impracticable to provide a photocopy, a written summary of the same) and a certificate by a duly authorized officer of such Lender (prepared in good faith) setting forth the amount of the Additional Compensation and the basis for it must be submitted by the Agent to the Borrower and is conclusive evidence, in the absence of manifest error, of the amount of the Additional Compensation. If the Agent notifies the Borrower that Additional Compensation is owed, the Borrower shall pay such Additional Compensation to the Agent for the account of such Lender within ten Business Days of receipt of such notification and the Borrower shall have the right, upon irrevocable prior notice of at least three Business Days to the Agent at the Agent's Branch of Account, to make payment in full to the Agent for the account of such Lender in respect of the applicable Accommodation on the date specified in such notice together with accrued but unpaid interest and fees in respect of such Accommodation or to convert such Accommodation into another basis of Accommodation available under this Agreement.

Notwithstanding anything herein to the contrary, (i) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all regulations, requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, Canadian or other regulatory authorities, in each case pursuant to Basel III ((i) and (ii) being the "**New Rules**"), shall in each case be deemed to be a change in law for the purposes of this Section 11.2, regardless of the date enacted, adopted or issued, in each case to the extent that such New Rules are materially different from any Applicable Law which are in full force and effect on the date of this Agreement and that such New Rules have general application to substantially all banks or their Affiliates which are subject to the New Rules in question.

11.3 Illegality

If the introduction of or any change in Applicable Law, regulation, treaty, official directive or regulatory requirement now or hereafter in effect (whether or not having the force of law) or any change in the interpretation or application thereof by any court or by any judicial or Governmental Authority charged with the interpretation or administration thereof makes it unlawful or prohibited for a Lender (acting reasonably and in good faith) to make, to fund or to maintain the Accommodations or a portion of the Accommodations or to perform its obligations under this Agreement, such Lender may by notice to the Borrower through the Agent terminate its obligations under this Agreement to make such affected Accommodations or perform such obligations and the Borrower shall prepay such affected Accommodations within fifteen Business Days (or such longer grace period, if any, as may be permitted by such Applicable Law) together with all accrued but unpaid interest and fees as may be applicable to the date of payment or convert by notice to the Agent such affected Accommodation forthwith into another basis of Accommodation available under this Agreement.

11.4 Substitute Basis of Accommodation

- (a) **Libor Loans:** Notwithstanding anything to the contrary herein contained, if at any time subsequent to the giving of a Borrowing Notice, a Conversion Notice or a Rollover Notice to the Agent by the Borrower with regard to any requested Libor Loan:
 - (i) the Agent (acting reasonably and in good faith) determines that by reason of circumstances affecting the London Interbank Eurodollar Market, adequate and

fair means do not exist for ascertaining the rate of interest with respect to, or deposits are not available in sufficient amounts in the ordinary course of business at the rate determined hereunder to fund, a requested Libor Loan during the ensuing Libor Interest Period selected;

- (ii) the Agent (acting reasonably and in good faith) determines that the making or continuing of the requested Libor Loan by the Lenders has been made impracticable by the occurrence of an event which materially adversely affects the London Interbank Eurodollar Market generally; or
- (iii) the Agent is advised by two or more Lenders, acting reasonably and in good faith, holding, in aggregate, at least 25% of the Total Commitment by written notice (each, a **"Lender Libor Suspension Notice"**), such notice to be received by the Agent no later than 12:00 noon on the third Business Day prior to the date of the requested Drawdown, Rollover or Conversion, as the case may be, that such Lenders have determined (acting reasonably and in good faith) that Libor will not or does not represent the effective cost to such Lenders of U.S. Dollar deposits in the London Interbank Eurodollar Market for the relevant Libor Interest Period,

then the Agent shall give notice thereof to the Lenders and the Borrower as soon as possible after such determination or receipt of such Lender Libor Suspension Notice, as the case may be, and the Borrower shall, within one Business Day after receipt of such notice and in replacement of the Borrowing Notice, Conversion Notice or Rollover Notice, as the case may be, previously given by the Borrower, give the Agent a Borrowing Notice or a Conversion Notice, as the case may be, which specifies the Drawdown of any other Accommodation or the Conversion of the relevant Libor Loan on the last day of the applicable Libor Interest Period into any other Accommodation which would not be affected by the notice from the Agent pursuant to this Section 11.4(a).

In the event the Borrower fails to give, if applicable, a valid replacement Conversion Notice or Rollover Notice with respect to the maturing Libor Loans which were the subject of a Conversion Notice or Rollover Notice, such maturing Libor Loans shall be converted on the last day of the applicable Libor Interest Period into U.S. Base Rate Loans as if a valid replacement Conversion Notice had been given to the Agent by the Borrower pursuant to the provisions hereof. In the event the Borrower fails to give, if applicable, a valid replacement Borrowing Notice with respect to a Drawdown originally requested by way of a Libor Loan, then the Borrower shall be deemed to have requested a Drawdown by way of a U.S. Base Rate Loan in the amount specified in the original Borrowing Notice and, on the originally requested Drawdown Date, the Lenders (subject to the other provisions hereof) shall make available the requested amount by way of a U.S. Base Rate Loan.

(b) Bankers' Acceptances: If:

- (i) the Agent (acting reasonably and in good faith) makes a determination, which determination shall be conclusive and binding upon the Borrower, and notifies the Borrower, that there no longer exists an active market for bankers' acceptances accepted by the Lenders; or
- (ii) the Agent is advised by two or more Lenders holding, in aggregate, at least 25% of the Total Commitment acting reasonably and in good faith by written notice (each, a **"Lender BA Suspension Notice"**) that such Lenders have determined (acting reasonably) that the Discount Rate will not or does not accurately reflect the cost of funds of such Lenders or the discount rate which would be applicable to a sale of Bankers' Acceptances accepted by such Lenders in the market;

then:

- (A) the right of the Borrower to request Bankers' Acceptances from any Lender shall be suspended until the Agent (acting reasonably and in good faith) determines that the circumstances causing such suspension no longer exist, and so notifies the Borrower and the Lenders;
- (B) any outstanding Borrowing Notice requesting an Accommodation by way of Bankers' Acceptances shall be deemed to be a Borrowing Notice requesting a Prime Loan in the amount specified in the original Borrowing Notice;
- (C) any outstanding Conversion Notice requesting a Conversion of a U.S. Base Rate Loan or Libor Loan into a Bankers' Acceptance shall be deemed to be a Conversion Notice requesting a Conversion of such Loan into a Prime Loan; and
- (D) any outstanding Rollover Notice requesting a Rollover of a Bankers' Acceptance shall be deemed to be a Conversion Notice requesting a Conversion of such Bankers' Acceptances into a Prime Loan.

The Agent shall promptly notify the Borrower and the Lenders of any suspension of the Borrower's right to request Bankers' Acceptances and of any termination of any such suspension. A Lender BA Suspension Notice shall be effective upon receipt of the same by the Agent if received prior to 12:00 noon on a Business Day and if not, then on the next following Business Day, except in connection with a Borrowing Notice, Conversion Notice or Rollover Notice previously received by the Agent, in which case the applicable Lender BA Suspension Notice shall only be effective with respect to such previously received Borrowing Notice, Conversion Notice or Rollover Notice if received by the Agent prior to 12:00 p.m. two Business Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date (as applicable) applicable to such previously received Borrowing Notice, Conversion Notice or Rollover Notice, as applicable.

11.5 Funding Indemnity

If, for any reason whatsoever and whether or not required or permitted pursuant to the provisions of this Agreement, the Borrower repays, prepays, converts or cancels a Libor Loan other than on the last day of a Libor Interest Period applicable to such Libor Loan, or fails for any reason to borrow, convert, Rollover or otherwise act in accordance with a notice given hereunder pursuant to Schedule B or Schedule C, the Borrower shall indemnify the Lender for any out-of-pocket loss or expense actually incurred by such Lender as a direct result thereof including any loss of profit or expenses such Lender incurs by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to maintain the Libor Loan or any increased interest or other charges payable to lenders of funds borrowed in order to maintain such Libor Loan together with any other reasonable out-of-pocket charges, costs or expenses incurred by such Lender relative thereto. A certificate of such Lender (acting reasonably and prepared in good faith) submitted by the Agent setting out the basis for the determination of the amount necessary to indemnify such Lender shall be, in the absence of manifest error, prima facie evidence thereof.

11.6 General Indemnity

The Borrower shall at all times hereafter keep the Agent and each Lender indemnified and held harmless from and against all suits (whether founded or unfounded), actions, proceedings, judgments, demands or claims instituted or made against the Agent or such Lender, and all costs, losses, liabilities, damages and expenses (including all reasonable and documented legal fees on a solicitor and

his own client basis) incurred by the Agent or such Lender in any way relating to, arising out of, or incidental to any Default or Event of Default, excluding any such costs, losses, liabilities, damages or expenses to the extent arising (a) from the bad faith, gross negligence or wilful misconduct of the Agent, such Lender or other indemnified party (as determined by a final and non-appealable judgment of a court of competent jurisdiction), (b) in connection with disputes among the Agent, the Lenders and their respective Affiliates, to the extent not arising from any action of the Borrower or (c) from the breach by the Agent or any Lender of any provision of this Agreement or any other Loan Document (as determined by a final and non-appealable judgment of a court of competent jurisdiction) to the extent not arising from any action of the Borrower. The Borrower shall not, in connection with any suits, actions, proceedings, judgments, demands or claims in the same jurisdiction, be liable for the fees and expenses of more than one separate legal firm for the Agent and Lenders unless such representation by the same legal counsel would be inappropriate due to actual or potential differing interests or the employment thereof has been specifically authorized by the Borrower in writing and such firm or firms shall be designated in writing by the Agent on behalf of each Agent and Lender. Provided no Default or Event of Default has occurred and is continuing, the Borrower, at its option, shall be entitled to conduct the defence of such suit, action or proceeding with the participation of and taking into account the best interests of the Agent and such Lender. Provided no Default or Event of Default has occurred and is continuing, the Borrower, at its option, shall be entitled to conduct the defence of such suit, action or proceeding with the participation of and taking into account the best interests of the Agent and such Lender. If the Agent or such Lender shall determine in good faith that the defence of any such suit, action or proceeding is not being conducted in the best interests of the Agent or such Lender, the Agent or such Lender shall on notice to the Borrower be entitled to take over the sole conduct of the defence of such suit, action or proceeding and the Borrower shall not be obligated to indemnify the Agent or such Lender in respect of any legal fees and disbursements thereafter incurred in respect of such suit, action or proceeding. This indemnity shall extend to the officers, directors, employees, agents, shareholders and assignees of the Agent and each Lender.

11.7 Environmental Indemnity

- (a) The Borrower shall forthwith on demand fully indemnify, defend and save the Agent, each Lender and their respective directors, officers, employees and agents, and any of them (in this Section 11.7 any one or more or all of such Persons is referred to as the **"Indemnified Party"**) harmless from and against any and all liabilities, losses, claims, damages and expenses (including all legal fees on a solicitor and his own client basis, court costs, reasonable and documented accountant fees and expenses and all other reasonable and documented out of pocket expenses) sustained, paid, incurred or suffered by the Indemnified Party arising in any manner whatsoever out of or as a result of any Environmental Liabilities relating to or affecting any Loan Party or its Property or the property of others where any Loan Party incurs any liability in respect thereof under any Applicable Law (all or any item or part of the foregoing liabilities, losses, claims, damages and expenses are referred to in this Section 11.7 as **"Loss"**). Notwithstanding the generality of the foregoing, the Borrower shall not be obliged to indemnify the Indemnified Party to the extent any Loss has been incurred by reason of (a) from the bad faith, gross negligence or wilful misconduct of the Agent, such Lender or other indemnified party (as determined by a final and non-appealable judgment of a court of competent jurisdiction), (b) in connection with disputes among the Agent, the Lenders and their respective Affiliates, to the extent not arising from any action of the Borrower or (c) from the breach by the Agent or any Lender of any provision of this Agreement or any other Loan Document (as determined by a final and non-appealable judgment of a court of competent jurisdiction). The Borrower acknowledges that the Agent and each of the Lenders is entering into the provisions of this Section 11.7 on its own behalf and as agent and trustee for its directors, officers, employees and agents.
- (b) If any claim (in this Section 11.7 referred to as a **"Claim"**) shall be asserted by any Person against the Indemnified Party which may give rise to a Loss, the Indemnified Party shall promptly notify the Borrower in writing of all particulars of such Claim upon

learning of same. The failure to give any such notice, however, shall not affect the Borrower's liability to indemnify the Indemnified Party except to the extent such failure adversely affects the Borrower's ability to defend, object to, oppose or contest that Claim.

- (c) The Borrower shall at all times have the right, if no Event of Default has occurred and is continuing, at its sole expense, to resist, defend and compromise any Claim in the name of the Indemnified Party, by legal counsel acceptable to the Indemnified Party acting reasonably who will co-operate in such defence on a reasonable basis; provided that the Indemnified Party shall have the right to participate in the defence or compromise of any Claim by other legal counsel of its choosing if the Indemnified Party, acting reasonably, determines it should so participate; provided that subject to Section 11.7(d), the reasonable and documented out-of-pocket fees and disbursements of such other counsel shall be paid by the Borrower. The Indemnified Party shall not effect any settlement or compromise of any Claim without the written consent of the Borrower which consent shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, the Borrower on its own behalf must defend diligently and reasonably throughout the period while such Claim exists. If the Borrower exercises its rights under this Section 11.7(c), it shall not compromise or otherwise settle a Claim without the consent of the Indemnified Party suffering such Claim unless such compromise or settlement includes as an unconditional term the delivery by the claimant or plaintiff of a written release of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. The inability of the Borrower to pay such Claim in full shall constitute a sufficient reason to withhold such consent.
- (d) The Borrower shall not, in connection with any Loss in the same jurisdiction, be liable for the fees and expenses of more than one separate legal firm for the Indemnified Parties unless such representation by the same legal counsel would be inappropriate due to actual or potential differing interests or the employment thereof has been specifically authorized by the Borrower in writing and such firm or firms shall be designated in writing by the Agent on behalf of each Indemnified Party.

ARTICLE 12 THE AGENT AND THE LENDERS

12.1 Authorization of Agent

Each Lender and Swap Lender irrevocably appoints and authorizes the Agent (which term includes, for the purposes of this Article 12, the Agent in its capacity as Agent, and any other Person designated by the Agent to hold all or part of the Security from time to time for the benefit of the Agent, the Lenders, the Swap Lenders, the Creditcard Lenders and the Cash Management Lenders) to exercise such powers, perform such duties, take such actions, make such decisions and determinations and give such consents under the Loan Documents as are required to be exercised, performed, taken, made, given or otherwise carried out by the Agent hereunder or under any other agreement between the Lenders (including, if applicable, Swap Lenders), together with all powers reasonably incidental thereto. As to any matters not expressly required by this Agreement, the other Loan Documents or by any other agreement between the Lenders (including, if applicable, Swap Lenders) to be carried out by the Agent, the Agent is not required to exercise any discretion or take or to refrain from taking any action except upon the written instructions of the Majority Lenders. Notwithstanding anything to the contrary in this Agreement, the Agent shall not be required to exercise any discretion or to take or to refrain from taking any action in any manner which is contrary to the Loan Documents, to any other agreement among the Lenders (including, if applicable, Swap Lenders) or to Applicable Law.

12.2 Delegation of Duties

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents or attorneys-in-

fact appointed by the Agent. The Agent and any such sub-agent or attorneys-in-fact may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates (including the right of the Agent to nominate a US resident agent or trustee to hold and enforce the Security). The exculpatory provisions of this Article 12 shall apply to any such sub-Agent and to the Affiliates of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Agent.

12.3 Exculpatory Provisions

The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; and
- (b) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any other Loan Parties that is communicated to or obtained by the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary or desirable in the circumstances hereunder) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent by the Borrower or a Lender, and actually received by the Agent.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the validity, enforceability, sufficiency, priority, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (iv) the satisfaction of any condition set forth in Article 8 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

12.4 Acknowledgment of Lenders

Each Lender and Swap Lender acknowledges to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, environmental soundness, affairs, status and nature of the Loan Parties and accordingly each Lender and Swap Lender confirms to the Agent that it has not relied, and will not hereafter rely on the Agent:

- (a) **Information:** to check or inquire on its behalf into the adequacy, accuracy or completeness of any information provided by any Loan Party or in connection with the Loan Documents (whether or not such information has been or is hereafter circulated to such Lender or Swap Lender by the Agent);
- (b) **Performance:** to inquire as to the performance by any Loan Party of its obligations under the Loan Documents; or
- (c) **Credit Review:** to assess or keep under review on its behalf the financial condition, creditworthiness, environmental soundness, affairs, status or nature of any Loan Party.

12.5 Rights and Obligations of Each Lender and Swap Lender

The rights and obligations of each Lender and Swap Lender under this Agreement are several and no Lender shall be obligated to make Borrowings available to the Borrower in excess of the amount of such Lender's Commitment. The failure of a Lender or Swap Lender to perform its obligations under this Agreement shall neither:

- (a) **No Liability to Other Lenders or Swap Lenders:** result in any other Lender or Swap Lender incurring any liability whatsoever, provided however that a Lender shall remain liable at all times for the performance of the obligations of its Affiliate that is a Swap Lender; nor
- (b) **No Relief from Obligations:** relieve any Loan Party or any other Lender or Swap Lender from its respective obligations under any Loan Document.

Nothing contained herein or in any other Loan Document nor any action taken pursuant hereto or thereto shall be deemed to constitute the Lenders or Swap Lenders a partnership, joint venture or any other similar entity.

Each of the Lenders and Swap Lenders hereby acknowledge that, to the extent permitted by Applicable Law, the remedies provided hereunder to the Lenders and Swap Lenders are for their benefit collectively and acting together and not severally, and further acknowledge that its rights hereunder are to be exercised not severally but collectively by the Agent upon the decision of the Majority Lenders regardless of whether an Acceleration Notice has been delivered or an Event of Default under Sections 10.1(h) or 10.1(i) has occurred. Notwithstanding any of the provisions contained herein each of the Lenders and Swap Lenders hereby covenants and agrees that it shall not be entitled to individually take any action with respect to the Loan Documents including taking (including in respect of its Commitment or any indebtedness or liability owed to it) any action contemplated in Sections 10.2 and 10.5, but that any such action shall be taken only by the Agent with the prior written agreement or instructions of the Majority Lenders; provided that notwithstanding the foregoing, if the Agent, having been adequately indemnified against costs and expenses of doing so by the Lenders, shall fail to carry out any such instructions of the Majority Lenders, any Lender may do so on behalf of all Lenders and Swap Lenders and shall, in so doing, be entitled to the benefit of all protection given the Agent hereunder or elsewhere.

12.6 Notice to Lenders and Swap Lenders

Unless otherwise specifically dealt with in this Agreement, in the event the Agent delivers a written notice to a Lender or a Swap Lender requesting advice from such Lender or Swap Lender as to whether it consents or objects to any matter in connection with the Loan Documents, then, except as otherwise expressly provided herein, if such Lender or Swap Lender does not deliver to the Agent its written consent or objection to such matter:

- (a) where a time period is specified hereunder for the Agent or the Majority Lenders to provide any response, notice or other communication prior to the end of such period; or
- (b) where no such time period is specified hereunder, then within 15 Business Days of the delivery of such written notice by the Agent to such Lender or Swap Lender;

such Lender or Swap Lender shall be deemed not to have consented thereto.

12.7 Notices between the Lenders or Swap Lenders, the Agent and the Borrower

All notices by the Lenders or Swap Lenders to the Agent shall be through the Agent's Branch of Account and all notices by the Agent to a Lender or Swap Lender shall be through such

Lender's or Swap Lender's Branch of Account. All notices or communications between the Borrower and the Lenders or Swap Lenders which are required or contemplated pursuant to the Loan Documents shall be given or made through the Agent at the Agent's Branch of Account.

12.8 Agent's Duty to Deliver Documents Obtained from the Borrower

The Agent shall promptly, and in any event within five Business Days, deliver to each Lender, at its Branch of Account in hard copy or electronic form, such documents, papers, materials and other information as are furnished by the Borrower to the Agent on behalf of such Lender pursuant to this Agreement, and the Borrower shall provide the Agent with sufficient copies of all such information for such purpose.

12.9 Arrangements for Borrowings

The Agent shall promptly give written notice to each Lender at its Branch of Account upon receipt by the Agent of any notice given pursuant to Article 3 or Section 4.6. The Agent shall advise each Lender of the amount, date and details of each Borrowing and of such Lender's share in each Borrowing. At or before 11:00 a.m. on each Drawdown Date, Conversion Date or Rollover Date:

- (a) **Loans:** each Lender will make available to the Borrower its Lender's Proportion of Accommodations by way of Loans by forwarding to the Agent the amount of Loans required to be made available by such Lender; and
- (b) **Bankers' Acceptances:** each Lender will make available to the Borrower its Lender's Proportion of Accommodations by way of Bankers' Acceptances by forwarding to the Agent the amount of the Discount Proceeds in respect of such Bankers' Acceptances (less the amount of applicable BA Acceptance Fees payable by the Borrower to such Lender pursuant to Section 5.4).

12.10 Arrangements for Repayment of Borrowings

- (a) **Prior to Demand or Acceleration:** Prior to the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i), upon receipt by the Agent of payments from the Borrower on account of principal, interest, fees or any other payment made to the Agent on behalf of the Lenders, the Agent shall pay over to each Lender at its Branch of Account the amount to which it is entitled under this Agreement and shall use its best efforts to make such payment to such Lender on the same Business Day on which such payment is received by the Agent.
- (b) **Subsequent to Acceleration:** Following delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i), the Lenders and Swap Lenders shall share any payments subsequently received in accordance with Section 10.7.

12.11 Repayment by Lenders to Agent

- (a) **Where the Borrower Fails to Pay:** Unless the Agent has been notified in writing by the Borrower at least one Business Day prior to the date on which any payment to be made by the Borrower hereunder is due that the Borrower does not intend to remit such payment, the Agent may (but shall not be obligated to), in its discretion, assume that the Borrower has remitted such payment when so due and the Agent may, in its discretion and in reliance upon such assumption, make available to each Lender on such payment date an amount equal to the amount of such payment which is due to such Lender pursuant to this Agreement. If the Borrower does not in fact remit such payment to the Agent, the Agent shall promptly notify each Lender and each such Lender shall forthwith

on demand repay to the Agent the amount of such assumed payment made available to such Lender, together with interest thereon until the date of repayment thereof at a rate determined by the Agent (such rate to be conclusive and binding on such Lender) in accordance with the Agent's usual banking practice for similar advances to financial institutions of like standing to such Lender.

- (b) **Where a Lender Fails to Pay:** Unless the Agent has been notified in writing by a Lender at least one Business Day prior to a Drawdown Date, Conversion Date or Rollover Date that such Lender does not intend to make available the amount required to be made available by such Lender pursuant to this Agreement on such Drawdown Date, Conversion Date or Rollover Date, the Agent may, in its discretion, assume that such Lender has remitted funds to the Agent in an amount equal to the amount required to be made available by such Lender pursuant to this Agreement and the Agent may, in its discretion and in reliance upon such assumption, make available to the Borrower on such Drawdown Date, Conversion Date or Rollover Date an amount equal to the amount required to be made available by such Lender pursuant to this Agreement. If a Lender does not in fact remit such funds to the Agent and, if the Agent has provided funds to the Borrower on behalf of such Lender, the Agent shall promptly notify such Lender and such Lender shall forthwith remit such funds to the Agent, failing which the Borrower shall within three (3) Business Days repay to the Agent (without prejudice to the Borrower's rights against such Lender) the amount made available by the Agent on behalf of such Lender, in each case together with interest thereon until the date of repayment thereof at a rate determined by the Agent (such rate to be conclusive and binding on such Lender or the Borrower, as the case may be) in accordance with the Agent's usual banking practice for similar advances to financial institutions of like standing to such Lender.

12.12 Adjustments Among Lenders

- (a) **Adjustments to Outstanding Borrowings:** Each Lender agrees that, subsequent to the Adjustment Time, it will at any time and from time to time upon the request of the Agent as required by any other Lender purchase portions of the Borrowings and make any other adjustments which may be necessary or appropriate, in order that amounts which remain outstanding under this Agreement to each Lender are thereafter outstanding, as adjusted pursuant to this Section 12.12, will be in the same proportion as each Lender's was to the commitment amount of all Lenders immediately prior to the Adjustment Time. The Borrower agrees to do all things reasonably necessary or appropriate to give effect to any and all purchases and other adjustments by and between the Lenders pursuant to this Section 12.12.
- (b) **Application of Payments:** The Lenders and Swap Lenders agree that, after the Adjustment Time, the amount of any repayment made by the Borrower under, and the amount of any proceeds from the exercise of any rights or remedies of the Agent, the Lenders and Swap Lenders under the Loan Documents or any Permitted Swaps will, subject to Section 10.7, be applied in a manner so that to the extent possible the amount of Lender Outstandings of each Lender and Swap Lender which remain outstanding after giving effect to such application will be in the same proportion as its Lender's Proportion of the aggregate Lender Outstandings of all Lenders and Swap Lenders and, after repayment of all Borrowings and Permitted Swap Indebtedness, will be applied on account of any remaining Swap Indebtedness.
- (c) **Receipt of Payments other than Borrowings:** Notwithstanding anything contained in this Section 12.12, there shall not be taken into account for the purposes of computing any amount payable to a Lender or Swap Lender pursuant to this Section 12.12, any amount which such Lender or Swap Lender receives as a result of any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any monies owing by a Loan Party to such Lender or Swap Lender other than

on account of Borrowings or Swap Indebtedness; provided that, if at any time a Lender or Swap Lender receives any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of monies owing or payable to it by a Loan Party in respect of liabilities of a Loan Party under Term Borrowings, WIP Borrowings or Swap Indebtedness, such payments will be applied in accordance with Section 10.7; provided further that the provisions of this Section 12.12(c) shall not apply to:

- (i) a Swap Lender which sets off amounts owing by a Loan Party to such Swap Lender under a Permitted Swap against amounts owing by such Swap Lender (including, for clarity, its Affiliates) to a Loan Party under any Permitted Swap entered into between such parties; or
- (ii) a Swap Lender which sets off amounts owing by a Loan Party to such Swap Lender under a Lender Swap (other than a Permitted Swap) against amounts owing by such Swap Lender (including, for clarity, its Affiliates) to a Loan Party under any Lender Swap (other than a Permitted Swap) entered into between such parties.

To the extent that a Lender Swap is entered into by an Affiliate of a Lender, that Lender shall cause such Affiliate to comply with the provisions of this Section 12.12, and such obligation shall survive such Lender (at any time after any such Lender Swap was entered into) ceasing to be a Lender hereunder.

- (d) **Further Assurances:** The Borrower agrees to be bound by and, at the request of the Agent, to do all things necessary or appropriate to give effect to any and all purchases and other adjustments made by and between the Lenders and Swap Lenders pursuant to this Section 12.12 but shall incur no increased indebtedness, in aggregate, by reason thereof.

12.13 Lenders' Consents to Waivers, Amendments, etc.

- (a) **Unanimous Consent of Lenders:** Any waiver of or any amendment to a provision of the Loan Documents which relates to:
 - (i) a change in the types of Accommodations or interest periods relating thereto;
 - (ii) a decrease in interest rates, standby fees, the Applicable Margin or the Standby Fee Rate;
 - (iii) a change in notice periods or the amount of any payments payable by the Borrower to any Lender under this Agreement, including any waiver of the time of payment thereof;
 - (iv) an increase or decrease in the Commitment of any Lender other than as provided for herein;
 - (v) a change in the definition of "CDOR Rate", "Discount Rate" or "Majority Lenders";
 - (vi) the postponement of the Maturity Date of a Lender, other than as provided for herein;
 - (vii) the provisions of this Section 12.13;
 - (viii) an Event of Default under Section 10.1(a) or 10.1(b);

- (ix) any release or modification of the Security, except as provided by Section 6.11 or any provision of the Security, and except for modifications which are mechanical and administrative in nature; or
- (x) any matter which, pursuant to the Loan Documents, specifically requires the consent or agreement of "all of the Lenders", rather than the consent or agreement of "the Lenders" or the "Majority Lenders" or "the Agent";

shall bind the Lenders only if (A) such waiver or amendment set forth in Sections 12.13(a)(i), (a)(iii), (a)(v), (a)(vii), (a)(viii), (a)(ix), or (a)(x) is agreed to in writing by all of the Lenders and (B) such waiver or amendment set forth in Sections 12.13(a)(ii), (a)(iv) or (a)(vi) or is agreed to in writing by the Lenders directly affected thereby.

- (b) **Majority Consent:** Subject to Section 12.13(a) and except as otherwise provided in the Loan Documents, any waiver, consent to or any amendment to any provision of the Loan Documents and any action, consent or other determination in connection with the Loan Documents shall bind all of the Lenders and Swap Lenders if such waiver, amendment, action, consent or other determination is agreed to in writing by the Majority Lenders.
- (c) **Agent's Consent:** Any waiver, consent to or any amendment to any provision of the Loan Documents which relates to the rights or obligations of the Agent shall require the agreement of the Agent thereto.
- (d) **Fronting Lender's Consent:** Any waiver, consent to or any amendment to any provision of the Loan Documents which relates to the rights or obligations of a Fronting Lender shall require the agreement of such Fronting Lender thereto.

12.14 Reimbursement of Agent's Expenses or Lender's Costs

Each Lender agrees that it will indemnify the Agent for its Lender's Proportion of the Total Term Facility Commitment of any and all costs, expenses and disbursements (including, those costs and expenses referred to in Section 11.1) which may be incurred or made by the Agent in good faith in connection with the Loan Documents, and agrees that it will, on written demand detailing such costs, expenses and disbursements, reimburse the Agent for any such costs, expenses or disbursements for which the Agent is not promptly reimbursed at any time by the Borrower. The Agent may refrain from exercising any right, power or discretion or taking any action to protect or enforce the rights of any Lender under the Loan Documents until it has been so reimbursed.

Each Swap Lender that is not a Lender agrees that it will indemnify the Agent for any and all costs, expenses and disbursements which may be incurred or made by the Agent in good faith in connection with the enforcement of the Loan Documents or Security on behalf of such Swap Lender and agrees that it will, on written demand detailing such costs, expenses and disbursements, reimburse the Agent for any such costs, expenses or disbursements for which the Agent is not properly reimbursed at any time by the Borrower. The Agent may refrain from exercising any right, power or discretion or taking any action to protect or enforce the rights of any such Swap Lender under the Loan Documents or Security until it has been so reimbursed.

12.15 Reliance by Agent on Notices, etc.

The Agent shall be entitled:

- (a) **Reliance on Written Documents:** to rely upon any writing, letter, written notice, certificate, telex, facsimile copy, cable, statement, order or other document believed by the Agent to be genuine and correct and to have been signed, sent or made by the proper Person or Persons; and

- (b) **Reliance on Legal Advice:** with respect to legal matters, to act upon advice of legal advisors selected by the Agent concerning all matters pertaining to the Loan Documents and the Agent's duties thereunder,

and the Agent shall assume no responsibility and shall incur no liability to the Borrower or any Lender or Swap Lender by reason of relying on any such document or acting on any such advice. In determining compliance with any condition hereunder to the making of any Accommodation that by its terms must be fulfilled to the satisfaction of a Lender or a Fronting Lender, the Agent may presume that such condition is satisfactory to such Lender or Fronting Lender unless the Agent shall have received notice to the contrary from such Lender or Fronting Lender prior to the making of such Accommodation.

12.16 Relations with Borrower

Except for the transactions provided for in this Agreement, each Lender may deal with any Loan Party in all transactions and generally do any banking business with or provide any financial services to any Loan Party without having any liability to account to the other Lenders therefor. Where any Lender is the Agent, with respect to its Commitment and Lender's Proportion, such Lender shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Agent.

12.17 Successor Agent

The Agent shall resign if at any time it is no longer a Lender hereunder by reason of an assignment of its rights and obligations under this Agreement and the Loan Documents pursuant to Section 13.1 and, in such event, it shall provide 30 days prior written notice of any such intended assignment to each of the Lenders and the Borrower. The Agent may resign at any time by giving 30 days prior written notice thereof to each of the Lenders and the Borrower. Upon any such resignation, the remaining Lenders, or Swap Lenders if there are then no Lenders (the "**Remaining Lenders**") shall have the right to appoint a successor agent, subject to the approval of the Borrower. Any successor agent appointed under this Section 12.17 shall be a Lender or a Swap Lender which has offices in Calgary, Alberta or Toronto, Ontario. If no successor agent shall have been appointed by the Remaining Lenders and shall have accepted such appointment within 30 days after the retiring agent's giving of notice of resignation, then the retiring agent may, on behalf of the Lenders, or Swap Lenders if there are then no Lenders, appoint a successor agent, subject to the approval of the Borrower. Upon the acceptance of any appointment as Agent by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring agent as Agent, and the retiring agent shall be discharged from its duties and obligations under this Agreement as Agent. After any retiring agent's resignation or removal hereunder as the Agent, the provisions of this Agreement shall continue in effect for its benefit and for the benefit of the Lenders, or Swap Lenders if there are then no Lenders, in respect of any actions taken or omitted to be taken by the retiring agent while it was acting as the Agent.

12.18 Indemnity of Agent

Each Lender hereby agrees to indemnify the Agent (to the extent not reimbursed by the Borrower) as to its Lender's Proportion of the Total Term Facility Commitment from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, 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 Loan Documents; provided that the Lenders shall not 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 for its Lender's Proportion of the Total Term Facility Commitment of any out-of-pocket expenses (including legal 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,

the Loan Documents, but only to the extent that the Agent is not reimbursed for such expenses by the Borrower.

12.19 Sharing of Information

Information received by the Agent or a Lender may be disclosed to their respective Affiliates, Swap Lenders, the Agent or any other Lender, including any financial institution which desires to become a Lender hereunder, any actual or prospective counterparty (or its advisors) to any securitization, swap or derivative transaction relating to the Loan Parties and the Secured Obligations, and to any of its employees, directors, trustees, officers, investment advisors, agents, legal counsel, geologists, engineers, accountants and other professional advisors or consultants involved in the evaluation or administration of the Facilities retained by such Persons on a need-to-know basis and subject to the obligation to maintain confidentiality as provided in Section 13.4; provided that any Person required to maintain the confidentiality of such information shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information.

12.20 Amendment of this Article 12

Save and except for the provisions of Sections 12.9, 12.13, 12.17 and 12.18, the provisions of this Article 12 may be amended or added to, from time to time, without the agreement of the Borrower, provided such amendment or addition does not adversely affect the rights of any Loan Party hereunder or increase, in the aggregate, the liabilities of any Loan Party hereunder. A copy of the instrument evidencing such amendment or addition shall be forwarded by the Agent to the Borrower as soon as practicable following the execution thereof; provided that failure to do so shall not render it liable in damages to the Borrower.

12.21 The Agent, Fronting Lender and 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 or any Fronting Lender, as the case may be, in its discretion, equal to all obligations of such Defaulting Lender to the Agent or such Fronting Lender, as the case may be, that are owing or may become owing pursuant to this Agreement, including such Defaulting Lender's obligation to pay its Lender's Proportion of any indemnification, reimbursement 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. The Agent shall be entitled to apply the foregoing cash in accordance with Section 12.18, in the case of amounts owing to the Agent, or to pay the amounts owing to such Fronting Lender from the Defaulting Lender, in the case of amounts owing to such Fronting Lender pursuant hereto (including pursuant to Section 3.10).
- (b) In addition to the indemnity and reimbursement obligations noted in Section 12.18, the Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrower and without limiting the obligations of the Borrower hereunder) rateably according to their respective Lender's Proportions (and in calculating the Lender's Proportion of a Lender, ignoring the Commitments of Defaulting Lenders) any amount that a Defaulting Lender fails to pay the Agent and which is due and owing to the Agent pursuant to Section 12.18. 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 set off any Defaulting Lender's Proportion of all payments received from the Borrower against such Defaulting Lender's obligations to make payments and fund Accommodations required to be made by it and to purchase participations required to be purchased by it in each case under this Agreement and the

other Loan Documents. To the extent permitted by Applicable Law, 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 all amounts (whether principal, interest, fees or otherwise) received by the Agent and due to a Defaulting Lender pursuant to this Agreement, for so long as such Lender is a Defaulting Lender, which amounts shall be used by the Agent:

- (i) first, to reimburse the Agent for any amounts owing to it, in its capacity as Agent, by such Defaulting Lender pursuant to any Loan Document;
 - (ii) second, to the payment of any amounts owing by such Defaulting Lender to a Fronting Lender hereunder;
 - (iii) third, to repay on a *pro rata* basis the incremental portion of any Accommodations made by a Lender pursuant to Section 14.3 in order to fund a shortfall created by a Defaulting Lender and, upon receipt of such repayment, each such Lender shall be deemed to have assigned to the Defaulting Lender such incremental portion of such Accommodations;
 - (iv) fourth, to cash collateralize all other obligations of such Defaulting Lender to the Agent or a Fronting Lender 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 its Lender's Proportion of any indemnification, reimbursement or expense reimbursement amounts not paid by the Borrower; and
 - (v) fifth, to fund from time to time the Defaulting Lender's Proportion of Borrowings.
- (d) For greater certainty and in addition to the foregoing, neither the Agent nor any of its Affiliates nor any of their respective shareholders, officers, directors, employees, agents or representatives shall be liable to any Lender (including 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 as determined by a final non-appealable judgement of a court of competent jurisdiction.
- (e) Notwithstanding any other provision hereof to the contrary, so long as any Lender is a Defaulting Lender, no Fronting Lender shall be obligated to issue any Fronted Letter of Credit unless and until the applicable Fronting Lender (or the Agent on its behalf) has been provided with cash collateral to fully collateralize the applicable Fronting Lender's exposure to each such Defaulting Lender on terms and conditions satisfactory to the Fronting Lender in its discretion, acting reasonably.

ARTICLE 13

SUCCESSORS AND ASSIGNS, JUDGMENT CURRENCY AND CONFIDENTIAL INFORMATION

13.1 Successors and Assigns

- (a) **Successors and Assigns Generally:** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (except as permitted by Section 9.3(b)), and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in

accordance with Section 13.1(b), (ii) by way of participation in accordance with Section 13.1(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 13.1(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 13.1(d) and, to the extent expressly contemplated hereby, the Affiliates of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

- (b) **Assignments by Lenders:** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts:**

- (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section 13.1 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
- (B) in any case not described in paragraph (b)(i)(A) of this Section 13.1, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than Cdn.\$5,000,000, in the case of any assignment in respect of the WIP Facility or the Term Facility, or in the case of any assignment in respect of the Operating Facility or the LC Facility, all of such Commitment, unless each of the Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

- (ii) **Proportionate Amounts:** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-*pro rata* basis.

- (iii) **Required Consents:** No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section 13.1 and, in addition:

- (A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an

Approved Fund; provided that, no additional amounts are payable by the Borrower as a result of such assignment; and

- (B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender.
- (iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of Cdn.\$3,500; provided that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.
- (v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).
- (vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person.
- (vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans in accordance with its Lender's Proportion. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to paragraph (c) of this Section 13.1, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 11 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly

agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 13.1(d).

- (c) **Register.** The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Calgary, Alberta a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Borrowings owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Borrowings owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.18 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 12.13 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Article 11 (subject to paragraph (e) of this Section 13.1) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.1(b); provided that such Participant agrees to be subject to the provisions of Section 12.5 as if it were an assignee under Section 13.1(b). To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 10.6 as though it were a Lender; provided that such Participant agrees to be subject to Section 12.12 as though it were a Lender.

- (e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Sections 11.2 and Taxes than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the entitlement to the greater payment results from a change in law that occurs after the Participant acquired its participation.
- (f) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or equivalent institution; provided that no such pledge or assignment shall release such

Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.2 Judgment Currency

If for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement it becomes necessary to convert into the currency of such jurisdiction (herein called the "**Judgment Currency**") any amount due hereunder in any currency other than the Judgment Currency, then such conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For such purpose "**rate of exchange**" means the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the immediately preceding Business Day. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of payment of the amount due, the Borrower shall, on the date of payment, pay such additional amounts (if any) as may be necessary to ensure that the amount paid on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of payment is the amount then due under this Agreement in such other currency. Any additional amount due from the Borrower under this Section 13.2 shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due under or in respect of this Agreement.

13.3 Swap Lender

If any Swap Lender for any reason ceases to be a Lender, such Swap Lender shall continue to be bound by and entitled to the benefit of the terms and conditions hereof in such capacity, and entitled to the benefit of the Security, until such time as it is no longer a party to any Lender Swap, with the exception of any indemnities of, or in favour of, such Swap Lender hereunder existing at that time and which shall survive such termination.

13.4 Exchange and Confidentiality of Information

Each of the Lenders and the Agent acknowledges the confidential nature of the financial, operational and other information, reports and data provided and to be provided to them by the Loan Parties pursuant to this Agreement (the "**Information**") and agrees to hold the Information in confidence and shall not discuss or disclose or allow access to, or transfer or transmit the Information to any Person, provided however that:

- (a) each of the Lenders and the Agent may disclose all or any part of the Information if such disclosure is required by any Applicable Law but only to the extent of such requirement, or if such disclosure is required in connection with any actual or threatened Governmental Action, including proceedings initiated under or in respect of this Agreement, provided that in any such circumstance (other than disclosure to Governmental Authorities conducting examinations of a Lender's loan portfolio) the Lenders and the Agent, as soon as reasonably practicable, shall notify the Borrower of their obligation to disclose such Information in order to enable the Borrower, if it so chooses, to attempt to ensure that any such disclosure is made on a confidential basis;
- (b) each of the Lenders and the Agent may disclose Information to each other and to any Eligible Assignees or participants and to their respective Affiliates, counsel, agents, employees and advisors; provided that in the case of an Eligible Assignee or a participant, an Eligible Assignee or the participant has provided the Agent or the applicable Lender, as the case may be, with the written agreement referred to in Section 13.4(c) and, in the case of any such agents and advisors, the Agent or the applicable Lender shall notify such Person of the confidential nature of the Information;

- (c) each of the Lenders and the Agent may disclose and discuss the Information with credit officers of any potential Eligible Assignees for the purposes of assignment pursuant to Section 13.1(b) or any Participant for the purposes of a participation; provided that such potential Eligible Assignee or Participant shall have, for the benefit of the Borrower, previously provided to the Agent or the applicable Lender, as the case may be, its written agreement to hold the Information under the same obligations of confidentiality as set forth in this Section 13.4 at all times prior to and, if applicable, after becoming an Eligible Assignee or Participant;
- (d) each of the Lenders and the Agent may disclose all or any part of the Information so as to enable such Lender or the Agent to initiate any lawsuit against any Loan Party or to defend any lawsuit commenced by any Loan Party with respect to or arising from the Loan Documents, the issues of which are directly or indirectly related to the Information, but only to the extent such disclosure is necessary or desirable to the initiation or defense of such lawsuit; and
- (e) each of the Lenders and the Agent may disclose Information to any Person with the prior written consent of the Borrower.

Notwithstanding the foregoing, "**Information**" shall not include any such information:

- (f) which is or becomes readily available to the public (other than by a breach hereof or by a breach of an obligation of confidentiality imposed on an Eligible Assignee or participant or other Person referred to in this Section 13.4) or which has been made readily available to the public by a Loan Party;
- (g) which the Agent or any Lender can show was, prior to receipt thereof from a Loan Party, lawfully in the Agent's or the Lender's possession and not then subject to any obligation on its part to or for the benefit of the Borrower to maintain confidentiality; or
- (h) which the Agent or any Lender received from a Person, prior to receipt thereof from a Loan Party, which was not, to the knowledge of the Agent or such Lender after due enquiry, subject to a duty of confidentiality to or for the benefit of the Borrower at the time the Information was so received.

ARTICLE 14 MISCELLANEOUS

14.1 Severability

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereof in such jurisdiction and any such prohibition or unenforceability in any jurisdiction does not invalidate or render unenforceable such provision in any other jurisdiction.

14.2 Dissenting Lenders

If a Lender (in this Section 14.2 called a "**Dissenting Lender**"):

- (a) withholds its consent or its approval to any matter (including an amendment or waiver to a provision of the Loan Documents) following a request of the Borrower and, as a result, the consent or approval of the Majority Lenders or all of the Lenders, as the case may be, cannot be obtained in connection with such request, or
- (b) makes a claim for Additional Compensation under Section 11.2;

- (c) determines that it is unable to make, fund or maintain Accommodations due to a determination of illegality under Section 11.3; or
- (d) is a Defaulting Lender,

the Borrower may, by giving notice to each Dissenting Lender and to the Agent within thirty (30) Business Days of being notified by the Agent of whether the Lenders have consented to or approved such request (in the case of clause (a) above) or have made such claim or determination (in the case of clause (b) or (c) above) or of whether a Lender is a Defaulting Lender, exercise either of the following options (provided that in the case of clause (a) above, the Borrower shall not be entitled to exercise either of the following options unless, after doing so, the requested consent or approval would be consented to or approved by the Majority Lenders or all Lenders, as applicable):

- (e) designate an alternate lender or lenders (which need not be an existing Lender) to purchase an assignment in accordance with Section 13.1 of a Dissenting Lender's Commitment and the related Borrowings (which alternate lender shall purchase such assignment within 30 days of the expiry of such 30 Business Day period); and/or
- (f) so long as there exists no Default or Event of Default which is continuing, repay all Borrowings of a Dissenting Lender and cancel such Dissenting Lenders Commitment within 30 days of the expiry of such 10 Business Day period;

and in each case unless and until such Dissenting Lender shall have received one or more payments from either the Borrower or one or more assignees in an aggregate amount at least equal to the Borrowings owing to such Dissenting Lender, together with accrued interest thereon to the date of payment of such Borrowings and all other amounts payable to such Dissenting Lender under the Loan Documents (including all losses, costs and expenses suffered or incurred by the Dissenting Lender as a result of complying with this Section 14.2 and all amounts owing under Section 12.14). Any such alternate lender (other than an existing Lender) is subject to the Agent's prior consent, such consent not to be unreasonably withheld. For clarity, if the Borrower exercises its rights under this Section 14.2 and there is more than one Dissenting Lender, the Borrower must deal with all Dissenting Lenders in the same manner.

14.3 Defaulting Lenders

- (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 5.12 shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender;
 - (ii) a Defaulting Lender shall not be included in determining whether, and the Commitment and the Lender's Proportion of the Borrowings of such Defaulting Lender shall not be included in determining whether, all Lenders or the Majority Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 12.13), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that (A) materially and adversely affects such Defaulting Lender differently than other affected Lenders, (B) increases the Commitment or extends the Maturity Date of such Defaulting Lender, or (C) relates to the matters set forth in Sections 12.13(a)(i), 12.13(a)(ii), 12.13(a)(iii), 12.13(a)(iv) (in so far as it relates to the Commitment of a Defaulting Lender) 12.13(a)(v), 12.13(a)(vi) and 12.13(a)(ix) shall require the consent of such Defaulting Lender;

- (iii) the Agent may require such Defaulting Lender to pay to the Agent for deposit into an escrow account maintained by and in the name of the Agent an amount equal to such Defaulting Lender's maximum contingent obligations hereunder to the Agent;
 - (iv) the Agent may withhold any payments owing to such Defaulting Lender for set off against such Defaulting Lender's existing or reasonably foreseeable future obligations hereunder; and
 - (v) for the avoidance of doubt, the Borrower shall retain and reserve its other rights and remedies respecting each Defaulting Lender.
- (b) If the Agent has actual knowledge that a Lender is a Defaulting Lender at the time that the Agent receives (i) a Borrowing Notice or (ii) a Conversion Notice that will result in a currency conversion, then each other Lender shall fund its Lender's Proportion of such affected Accommodation (and, in calculating such Lender's Proportion, the Agent shall ignore the Commitments of each such Defaulting Lender); provided that, for certainty, no Lender shall be obligated by this Section 14.3(b) to make or provide Accommodations in excess of its Commitment. If the Agent acquires actual knowledge that a Lender is a Defaulting Lender at any time after the Agent received (i) a Borrowing Notice or (ii) a Conversion Notice that will result in a currency conversion, then the Agent shall promptly notify the Borrower that such Lender is a Defaulting Lender (and such Lender shall be deemed to have consented to such disclosure). Each Defaulting Lender agrees to indemnify each other Lender for any amounts paid by such Lender under this Section 14.3(b) and which would otherwise have been paid by the Defaulting Lender if its Commitment had been included in determining the Lender's Proportion of such affected Accommodations.
- (c) Upon becoming aware that a Lender is a Defaulting Lender, the Agent shall provide notice thereof to the Borrower and each Lender that is not such Defaulting Lender, provided that the Agent shall not be liable to the Borrower for any failure to provide such notice;
- (d) If any Lender shall cease to be a Defaulting Lender, then, upon becoming aware of the same, the Agent shall notify the Borrower and the other Lenders and (in accordance with the written direction of the Agent) such Lender (which has ceased to be a Defaulting Lender) shall purchase, and the other Lenders shall on a rateable basis sell and assign to such Lender, portions of such Borrowings equal in total to such Lender's Proportion thereof without regard to Section 14.3(b);
- (e) Each Defaulting Lender hereby indemnifies the Borrower and the Agent 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 or the Agent as a result of such Defaulting Lender failing to comply with the terms of this Agreement, including any failure to provide its portion of any Accommodation required to be made by it hereunder.

14.4 Survival of Undertakings

All covenants, undertakings, agreements, representations and warranties made pursuant to this Agreement survive the execution and delivery of this Agreement and continue in full force and effect until the full payment and satisfaction of all Obligations and the termination of the Loan Documents and the Credit Documents unless collateralized to the satisfaction of the Agent and the Swap Lenders, in their sole discretion.

14.5 Failure to Act

No failure, omission or delay on the part of the Agent or any Lender or any Swap Lender in exercising any right, power or privilege hereunder shall impair such right, power or privilege or operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

14.6 Waivers

No breach of any of the provisions of any of the Loan Documents may be waived or discharged verbally; any such waiver or discharge may only be made by way of an instrument in writing signed by either the Agent on behalf of the Lenders or the Majority Lenders, as applicable, or by the Lenders and, if required by the Agent, and such waiver or discharge will then be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given. Any such waiver or discharge which affects the rights of the Agent may only be made by way of an instrument in writing signed by the Agent.

14.7 Amendments

No provision of the Loan Documents may be amended verbally and any such amendment may only be made by way of an instrument in writing signed by the Borrower, the Agent and the Lenders required by Section 12.13.

14.8 Notice

Except as otherwise expressly provided herein, all notices, advices, requests and demands hereunder shall be in writing (including facsimile transmissions) or, if by telephone, immediately confirmed in writing, and shall be given to or made upon the respective parties hereto at:

- (a) in the case of the Borrower or another Loan Party:

4000 4th Street SE, Suite 222
Calgary, Alberta, T2G 2W3
Attention: Director, International Operations and Controller
Facsimile: (403) 662-8497

with a copy to the Sponsor at:

4600, 400 3rd Avenue SW
Calgary, Alberta, T2P 4H2
Attention: Managing Director
Facsimile: (403) 225-3547

- (b) in the case of the Agent, the Agent's Branch of Account;
(c) in the case of the Swingline Lender, the Swingline Lender's Branch of Account; and
(d) in the case of each Lender, the address set forth in Schedule A to this Agreement,

or at such other address as any party shall thereafter designate for itself by notice in writing to the Agent.

All notices shall be effective upon actual receipt. In the event of any discrepancy between any telephone notice, advice, request or demand and the written confirmation thereof, the telephone version shall govern with respect to actions taken by the recipient thereof before such recipient has had a reasonable time to act after its receipt of the written confirmation.

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Agent that it is incapable of receiving notices by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes:

- (e) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient; and
- (f) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient as its email address as described in the foregoing clause (e) of notification that such notice or communication is available and identifying the website address therefor.

14.9 Whole Agreement

This Agreement, together with the other Loan Documents and Credit Documents, constitutes the whole and entire agreement between the parties thereto and cancels and supersedes any prior agreements, undertakings, declarations and representations, written or verbal, in respect of the subject matter of this Agreement and the other Loan Documents.

14.10 Governing Law

The parties agree that this Agreement is conclusively deemed to be made under, and for all purposes to be governed by and construed in accordance with, the laws of the Province of Alberta and of Canada applicable therein. There shall be no application of any conflict of laws or rules which would result in any laws other than internal laws in force in the Province of Alberta applying to this Agreement. The parties hereto do hereby irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any other Loan Document (except to the extent expressly provided for in such other Loan Document), or any of the transactions contemplated hereby or by any thereof, without prejudice to the rights of the Agent or any Lender to take proceedings in other jurisdictions in which any Property secured by the Security may be situate.

14.11 Time of Essence

Time shall be of the essence of this Agreement.

14.12 Anti-Money Laundering Legislation

- (a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Applicable Law, whether within Canada, the U.S.A. or elsewhere (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 directors, authorized signing officers, direct or indirect shareholders or other Persons in control of a Loan Party, and the transactions contemplated hereby. The Borrower shall promptly (i) 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 of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence; and (ii) notify the recipient of any such information of any changes thereto.

- (b) If, upon the written request of any Lender, the Agent has ascertained the identity of any Loan Party or any authorized signatories of a Loan Party for the purposes of applicable AML Legislation on such Lender's behalf, then the Agent;
 - (i) shall be deemed to have done so as an agent for such Lender, and this Agreement shall constitute a "written agreement" in such regard between such Lender and the Agent within the meaning of applicable AML Legislation; and
 - (ii) shall provide to such Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.
- (c) Notwithstanding the foregoing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of any Loan Party or any authorized signatories of a Loan Party, on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

14.13 Platform

- (a) The Borrower agrees that the Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the **"Platform"**).
- (b) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Agent or any of its Affiliates (collectively, the **"Agent Parties"**) have any liability to any Loan Party, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Agent's transmission of communications through the Platform. **"Communications"** means, collectively, any notice, demand, communication, information, document or other material that any Loan Party provides to the Agent pursuant to any Document or the transactions contemplated therein which is distributed to the Agent or any Lender by means of electronic communications pursuant to this Section 14.13, including through the Platform.

14.14 Conflict with Loan Documents

In the event there is a conflict or inconsistency as to any matter between the provisions hereof and the provisions of any other Loan Document, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency; provided, however, that for the purposes of this Section 14.14 there shall not be considered to be a conflict or inconsistency between any provision hereof and any

provision of any other Loan Document merely because one of such Loan Documents does, and the other does not, deal with the particular matter.

14.15 Dealings with Agent

Subject to Section 12.13, the Borrower shall be entitled to accept the written notification, advice, instruction or direction of the Agent on behalf of any Lender, the Majority Lenders or the Lenders without further inquiry. Each Lender, Swap Lender, Creditcard Lender and Cash Management Lender shall be bound by any advice, instruction or direction in writing given to the Borrower by the Agent on behalf of the Majority Lenders or the Lenders, where it is authorized to do so in accordance with the terms and conditions hereof or under any other Loan Document, and each Lender hereby waives any right to contest or disaffirm any such notice, advice, instruction, or direction in writing of the Agent, in the absence of manifest error.

14.16 Further Assurances

The Borrower, the Agent and each of the Lenders shall do all such further acts and things and execute and deliver all such further documents as shall be reasonably required in order to ensure the terms and provisions of the Loan Documents are fully performed and carried out.

14.17 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

14.18 Amendment and Restatement

Effective as of the Effective Date, the Original Credit Agreement is hereby amended and restated as set forth herein without novation and without in any way affecting the rights or obligations of any party which may have accrued pursuant to the provisions of the Original Credit Agreement prior to their amendment hereby, and is, as so amended and restated, hereby ratified and confirmed.

14.19 Counterpart Execution

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts (including by facsimile or other electronic means, including in pdf format), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

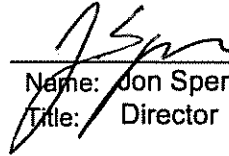
[Remainder of Page intentionally left blank]

S - 1

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

INNOVA GLOBAL LTD.

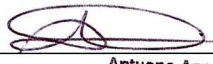
By:


Name: Jon Spencer
Title: Director

Agent:

ATB FINANCIAL, as Agent

By:


Name: Antuane Azpur
Title: Director, Loan Syndications
ATB Financial, CFS

By:


Name: Carolyn Mawhinney
Title: Manager, Syndications
ATB Corporate Financial Services

Lender:

ATB FINANCIAL, as Lender

By:


Name: RYAN WALES
Title: SENIOR DIRECTOR
ATB CORPORATE FINANCIAL SERVICES

By:


Name: Eric Korhonen
Title: Director
ATB Corporate Financial Services

Lender:

**CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender**

By:

Name:

Jurgen van Vuuren

Title:

Authorized Signatory

By:

Name:

Andrew Code

Title:

Authorized Signatory

Lender:

EXPORT DEVELOPMENT CANADA, as Lender

By:



Name: Brent Kolodychuk
Title: Financing Manager

By:



Name: Quynh Nguyen
Title: Regional Underwriting Manager

**SCHEDULE A
COMMITMENTS**

| Lenders | Operating Facility C\$37,500,000 Commitment | % of Operating Facility | Term Facility US\$13,069,841.69 Commitments | % of Term Facility | WIP Facility C\$5,000,000 Commitment | % of WIP Facility | LC Facility US\$15,000,000 Commitment | % of LC Facility |
|---|--|--|--|-----------------------------------|---|----------------------------------|--|-----------------------------|
| ATB Financial Suite 500 – 585 8 th Ave. S.W. Calgary, Alberta T2P 1G1 | C\$15,000,000 (including C\$5,000,000 Swingline Facility Commitment) | 40% | US\$6,534,920.85 | 50% | C\$0 | 0% | US\$7,500,000 | 50% |
| Canadian Imperial Bank of Commerce 7 th Floor, 400 Burrard Street Vancouver, British Columbia V6C 3A6 | C\$7,500,000 | 20% | US\$6,534,920.84 | 50% | C\$0 | 0% | US\$7,500,000 | 50% |
| Export Development Canada 150 Slater Street Ottawa, ON K1A 1K3 Canada | C\$15,000,000 | 40% | US\$0 | 0% | C\$5,000,000 | 100% | US\$0 | 0% |

On February 28, 2019, the Total Operating Facility Commitment and each Operating Lender's Operating Facility Commitment will reduce to the following:

| Lenders | Operating Facility C\$35,000,000 Commitment | % of Operating Facility |
|---|---|------------------------------------|
| ATB Financial Suite 500 – 585 8 th Ave. S.W. Calgary, Alberta T2P 1G1 | C\$14,000,000 (including C\$5,000,000 Swingline Facility Commitment) | 40% |
| Canadian Imperial Bank of Commerce 7 th Floor, 400 Burrard Street Vancouver, British Columbia V6C 3A6 | C\$7,000,000 | 20% |
| Export Development Canada 150 Slater Street Ottawa, ON K1A 1K3 Canada | C\$14,000,000 | 40% |

The Total LC Facility Commitment will be capped at the following amount from the Effective Date until renewal of the EDC Guarantee and delivery to the Agent in accordance with Section 9.2(w):

| Lenders | LC Facility US\$12,000,000 Commitment | % of LC Facility |
|---|--|-------------------------|
| ATB Financial Suite 500 – 585 8 th Ave. S.W. Calgary, Alberta T2P 1G1 | US\$6,000,000 | 50% |
| Canadian Imperial Bank of Commerce 7 th Floor, 400 Burrard Street Vancouver, British Columbia V6C 3A6 | US\$6,000,000 | 50% |
| Export Development Canada 150 Slater Street Ottawa, ON K1A 1K3 Canada | US\$0 | 0% |

Upon renewal of the EDC Guarantee and delivery to the Agent in accordance with Section 9.2(w), the Total LC Facility Commitment will increase as follows:

| Lenders | LC Facility US\$15,000,000 Commitment | % of LC Facility |
|---|--|-------------------------|
| ATB Financial Suite 500 – 585 8 th Ave. S.W. Calgary, Alberta T2P 1G1 | US\$7,500,000 | 50% |
| Canadian Imperial Bank of Commerce 7 th Floor, 400 Burrard Street Vancouver, British Columbia V6C 3A6 | US\$7,500,000 | 50% |
| Export Development Canada 150 Slater Street Ottawa, ON K1A 1K3 Canada | US\$0 | 0% |

**SCHEDULE B
FORM OF BORROWING NOTICE**

TO: ATB Financial ("**ATB**"), as Agent

RE: Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 among Innova Global Ltd. (the "**Borrower**"), ATB and those other financial institutions which are or hereafter become lenders thereunder (the "**Lenders**"), and ATB, as administrative agent for the Lenders (the "**Agent**")

DATE: _____, 20__

1. The Drawdown Date is _____, 20__.
2. Pursuant to Section 3.5 of the Credit Agreement, the undersigned hereby irrevocably requests that the following Accommodations be made available under the applicable Facility:

WIP Facility

| TYPE OF ADVANCE | PRINCIPAL AMOUNT AND CURRENCY | TERM |
|------------------------|--------------------------------------|-------------|
| Prime Loan | _____ | N/A |
| U.S. Base Rate Loan | _____ | N/A |
| Bankers' Acceptances | _____ | _____ |
| Libor Loan | _____ | _____ |

[TO BE COMPLETED IF ACCOMMODATIONS UNDER WIP FACILITY ARE REQUESTED] As of the requested Drawdown Date, the WIP Facility Borrowing Base will be Cdn. \$_____, the detailed calculations of which are attached hereto as an exhibit

Operating Facility

| <u>TYPE OF ADVANCE</u> | <u>PRINCIPAL AMOUNT</u> | <u>TERM</u> |
|------------------------|-------------------------|-------------|
| Prime Loan | | N/A |
| U.S. Base Rate Loan | | N/A |
| Bankers' Acceptances | | |
| Libor Loan | | |

[TO BE COMPLETED IF ACCOMMODATIONS UNDER OPERATING FACILITY ARE REQUESTED] As of the requested Drawdown Date, the Operating Facility Borrowing Base will be Cdn.\$_____, the detailed calculations of which are attached hereto as an exhibit.

LC Facility

| <u>TYPE OF ADVANCE</u> | <u>PRINCIPAL AMOUNT AND CURRENCY</u> | <u>BENEFICIARY</u> |
|------------------------|--------------------------------------|--------------------|
| Letter of Credit | | |

Such Letter of Credit is a **[Financial LC/Non-Financial LC]**.

3. As of the date of this Borrowing Notice, no Default or Event of Default has occurred and is continuing and each of the representations and warranties deemed to be made by the Borrower pursuant to Section 2.2 of the Credit Agreement (other than those made as of a specific date) are, as of the date of such request, and will be, as of the applicable Drawdown Date, true and correct in all material respects.
4. This Notice is irrevocable.
5. Capitalized terms used herein and not otherwise defined herein have the meanings given to them by the Credit Agreement.

DATED effective the date and year first above written.

INNOVA GLOBAL LTD.

By:

Name:

Title:

SCHEDULE C
FORM OF NOTICE OF ROLLOVER OR NOTICE OF CONVERSION OR NOTICE OF REPAYMENT

TO: ATB Financial ("**ATB**"), as Agent

RE: Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 among Innova Global Ltd. (the "**Borrower**"), ATB and those other financial institutions which are or hereafter become lenders thereunder (the "**Lenders**"), and ATB, as administrative agent for the Lenders (the "**Agent**")

DATE: _____, 20__

Capitalized terms used herein and not otherwise defined herein have the meanings given to them by the Credit Agreement.

1. Pursuant to Section 3.15 (Notice of Repayment), 3.17 (Conversion Option) and 3.18 (Rollovers) of the Credit Agreement, the undersigned hereby irrevocably notifies the Agent that it will be:

- (a) rolling over part or all of the Accommodation described as:

Facility: [Term/WIP/Operating/LC] _____

Type of Accommodation: _____

*Principal Amount: _____

Date of Maturity: _____

into the same Accommodation described as:

Date of Maturity: _____

* if only part of an Accommodation is rolled over, please indicate.

or:

- (b) converting part or all of the Accommodation described as:

Facility: [Term/WIP/Operating] _____

Type of Accommodation: _____

Principal Amount, if applicable: _____

Date of Maturity: _____

into an Accommodation described as:

Type of Accommodation: _____

*Principal Amount: _____

Date of Maturity: _____

* if only part of an Accommodation is converted, please indicate.

- (c) Repaying part or all of an Accommodation described as:

Facility: [Term/WIP/Operating/LC] _____

Type of Accommodation: _____

Principal Amount: _____

Date of Maturity or Repayment: _____

* if only part of an Accommodation is being repaid, please indicate the applicable amount being repaid including the details provided above in respect thereof and whether the balance will be rolled over or converted.

2. This Notice is irrevocable.
3. **[No Default or Event of Default has occurred and is continuing.] [NTD: To be included for Rollovers and Conversions only]**

DATED effective the date and year first above written.

INNOVA GLOBAL LTD.

By: _____

Name:

Title:

**SCHEDULE D
FORM OF COMPLIANCE CERTIFICATE**

DATE: _____.

I, _____, of the City of Calgary, in the Province of Alberta, hereby certify as follows:

1. I am the **[insert title of senior officer]** of Innova Global Ltd. ("**Borrower**").
2. This Certificate applies to the **[Fiscal Year/Fiscal Quarter]** ending _____.
3. I am familiar with and have examined the provisions of the Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 among the Borrower, the lenders party thereto and ATB Financial, as agent (as the same may be amended, renewed, extended, modified and/or restated from time to time, the "**Credit Agreement**"), and have made such reasonable investigations of records and inquiries of officers, if any, and senior personnel of the Loan Parties and their agents as I have deemed necessary for purposes of this Certificate.
4. Except where the context otherwise requires, all capitalized terms used herein have the same meaning as in the Credit Agreement.
5. No Default or Event of Default has occurred and is continuing.
6. As of the last day of the above referenced **[Fiscal Quarter/Fiscal Year]** the Term Debt to EBITDA Ratio was _____, and included in Exhibit "A" attached hereto are the detailed particulars of the manner in which the Term Debt to EBITDA Ratio was calculated.
7. As of the last day of the above referenced **[Fiscal Quarter/Fiscal Year]** the Working Capital Ratio was _____, and included in Exhibit "A" attached hereto are the detailed particulars of the manner in which the Working Capital Ratio was calculated.
8. As of the last day of the above referenced **[Fiscal Quarter/Fiscal Year]** the Fixed Charge Coverage Ratio was _____, and included in Exhibit "A" attached hereto are the detailed particulars of the manner in which the Fixed Charge Coverage Ratio was calculated.
9. For the period _____ **[Insert relevant period]**, EBITDA was Cdn.\$_____, and included in Exhibit A" attached hereto are the detailed particulars of the manner in which EBITDA was calculated.
10. **[NTD: Provide in annual compliance certificate for 2019 Fiscal Year only.]** [Excess Cash Flow for Fiscal Year 20__ was Cdn.\$_____, and included in Exhibit "A" attached hereto are the detailed particulars of the manner in which Excess Cash Flow was calculated.]
11. **[NTD: Provide in annual compliance certificate only.]** [Unfunded Capital Expenditures for Fiscal Year 20__ were Cdn.\$_____, and included in Exhibit A" attached hereto are the detailed particulars of the manner in which Unfunded Capital Expenditures were calculated.]
12. **[NTD: Provide in annual compliance certificate only.]** [Capital Expenditures for Fiscal Year 20__ were Cdn.\$_____, and included in Exhibit A" attached hereto are the detailed particulars of the manner in which Capital Expenditures were calculated.]

13. The Loan Parties are the Borrower and other Loan Party which has provided Security to the Agent as required by Article 6 of the Credit Agreement. The Borrower's only other Subsidiaries are [■] and [■], none of which are Material Subsidiaries. [The Borrower has no other Subsidiaries.]
14. The Loan Parties do not carry on business, or have any Real Estate, in any jurisdiction other than those referenced in Schedules M and N to the Credit Agreement. **[Or if new jurisdiction, specify:_____.]**
15. **[Attached hereto as Exhibit "B " is a list of all Real Estate of the Loan Parties as at the last day of the above referenced [Fiscal Quarter/Fiscal Year]. [Certification to be included if any changes to Schedule M are required]**
16. This Certificate is given by the undersigned officer in his or her capacity as an officer of the Borrower, without any personal liability.

[signature page follows]

DATED effective the date and year first above written.

INNOVA GLOBAL LTD.

By: _____
Name:
Title:

Exhibit “A” to Compliance Certificate

[Calculation Details in respect of the Certifications in paragraphs 6 to 10, as applicable]

[Provide required calculations]

Exhibit "B" to Compliance Certificate

Real Estate

SCHEDULE E
FORM OF BORROWING BASE CERTIFICATE

TO: ATB Financial, as Agent (in such capacity, the **"Agent"**)

DATE: _____

This Borrowing Base Certificate is delivered pursuant to Section 9.4(g) of the Second Amended and Restated Credit Agreement (the **"Credit Agreement"**) dated as of October 19, 2018 among Innova Global Ltd. (the **"Borrower"**), the lenders party thereto and the Agent (the **"Credit Agreement"**).

I, **[insert name of senior officer]**, **[insert title]** of the Borrower, for an on behalf of the Borrower and not in any personal capacity and without personal liability that:

- (a) This Borrowing Base Certificate is current to _____, 20____ (the **"Effective Date"**).
- (b) I am familiar with the provisions of the Credit Agreement and I have made or caused to be made under my supervision such reasonable investigations of corporate records and inquiries of officers and personnel of the Loan Parties as I have deemed necessary for purposes of this Borrowing Base Certificate.
- (c) As of the Effective Date, the Operating Facility Borrowing Base was Cdn.\$_____, the detailed calculations of which are attached hereto as Exhibit 1.
- (d) As of the Effective Date, the WIP Facility Borrowing Base was Cdn.\$_____, the detailed calculations of which are attached hereto as Exhibit 2.
- (e) Attached hereto as Exhibit 3 is a summary of (a) an aged listing of Accounts Receivable and Eligible Accounts Receivable, (b) a listing of inventory and Eligible Inventory, (c) a listing of Priority Payables, and (d) a listing of accounts payable, in each case of the Loan Parties on a combined consolidated basis, as of the close of business on the last day of the preceding calendar month.
- (f) Attached hereto as Exhibit 4 is a summary of **[Good Unbilled Revenue]** on a combined consolidated basis, as of the close of business on the last day of the preceding calendar month.
- (g) **[The following is a list of Account Debtors that have been deemed by the Agent to qualify as Investment Grade Debtors under paragraph (b) of the definition of Investment Grade Account Debtors: [____]]. [Section to be completed if relevant]**
- (h) As of the Effective Date:
 - (i) the aggregate amount in the bank accounts list in Section 9.3(r) was U.S.\$_____
 - (ii) the amount in each of the bank accounts listed in Section 9.3(s) was U.S.\$_____ (for account 614-5752371), U.S.\$_____ (for account 022-1717663), U.S.\$_____ (for account 412-1538-078), U.S.\$_____ (for account 412-1538-086), U.S.\$_____ (for account 412-1538-094);

- (iii) the amount in the bank account listed in Section 9.3(t) was U.S.\$_____; and
- (iv) the amount in each of the bank accounts listed in Section 0 was U.S.\$_____ (for account 10317154410), U.S.\$_____ (for account 77-1750-0009-0000-0000-1255-1867), U.S.\$_____ (for account 77175000090000000012551878), U.S.\$_____ (for account 96-1750-0009-0000-0000-3906-9288), U.S.\$_____ (for account 030-8-122373).

Capitalized words and phrases used herein and not otherwise defined herein have the meanings attributed to them in or for the purposes of the Credit Agreement.

Dated effective the date first above written.

INNOVA GLOBAL LTD.

Name:

Title:

Exhibit 1 to Borrowing Base Certificate

Operating Facility Borrowing Base Calculations

Exhibit 2 to Borrowing Base Certificate

WIP Facility Borrowing Base Calculations

Exhibit 3 to Borrowing Base Certificate

Accounts Receivable and Eligible Accounts Receivable, Listing of inventory and Eligible Inventory
Listing of Priority Payables and Listing of Accounts Payable

Exhibit 4 to Borrowing Base Certificate

Listing of Good Unbilled Revenue

**SCHEDULE F
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 **[the] [each]**¹ Assignor identified in item 1 below (**[the] [each, an] “Assignor”**) and **[the] [each]**² Assignee identified in item 2 below (**[the] [each, an] “Assignee”**). **[It is understood and agreed that the rights and obligations of [the Assignors] [the Assignees]³ hereunder are several and not joint.]**⁴ 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] [each]** 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] [each]** Assignor hereby irrevocably sells and assigns to **[the Assignee] [the respective Assignees]**, and **[the] [each]** Assignee hereby irrevocably purchases and assumes from **[the Assignor][the respective Assignors]**, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Agent as contemplated below (i) all of **[the Assignor’s] [the respective Assignors’]** rights and obligations in **[its capacity as a Lender][their respective capacities as Lenders]** 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] [the respective Assignors]** under the respective Facilities identified below (including any letters of credit and Guarantees 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)] [the respective Assignors (in their respective capacities as Lenders)]** 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 by **[the] [any]** Assignor to **[the] [any]** Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as **[the] [an] “Assigned Interest”**). Each such sale and assignment is without recourse to **[the][any]** Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by **[the] [any]** Assignor.

1. Assignor[s]: _____

[Assignor [is] [is not] a Defaulting Lender]

2. Assignee[s]: _____

[for each Assignee, indicate [Affiliate] [Approved Fund] of [identify Lender]]

1 For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

2 For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

3 Select as appropriate.

4 Include bracketed language if there are either multiple Assignors or multiple Assignees.

3. Borrower(s): _____
4. Agent: _____ as the administrative agent under the Credit Agreement
5. Credit Agreement: Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 among Innova Global Ltd., the lenders party thereto and ATB Financial, as administrative agent
6. Assigned Interest[s]:

| Assignor[s] ⁵ | Assignee[s] ⁶ | Facility Assigned ⁷ | Aggregate Amount of Commitment/ Loans for all Lenders ⁸ | Amount of Commitment/ Loans Assigned | Percentage Assigned of Commitment/ Loans ⁹ |
|--------------------------|--------------------------|--------------------------------|--|--------------------------------------|---|
| | | | Cdn./U.S.\$ | Cdn./U.S.\$ | Cdn./U.S.\$ |
| | | | Cdn./U.S.\$ | Cdn./U.S.\$ | Cdn./U.S.\$ |
| | | | Cdn./U.S.\$ | Cdn./U.S.\$ | Cdn./U.S.\$ |

7. [Trade Date: _____]¹⁰

Effective Date: _____, 20____ [TO BE INSERTED BY ADMINISTRATIVE 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[S]¹¹

[NAME OF ASSIGNOR]

By: _____

Title:

[NAME OF ASSIGNOR]

By: _____

5 List each Assignor, as appropriate.

6 List each Assignee, as appropriate.

7 Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., "WIP Facility Commitment", "Operating Facility Commitment", "Term Facility Commitment", "Swingline Facility Commitment", "LC Facility Commitment", etc.)

8 Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

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

10 To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

11 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

Title:

ASSIGNEE[S]¹²

[NAME OF ASSIGNEE]

By: _____

Title:

[NAME OF ASSIGNEE]

By: _____

Title:

12 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[Consented to and]¹³ Accepted:

ATB FINANCIAL, as Agent

By: _____

Title:

[Consented to:]¹⁴

[NAME OF RELEVANT PARTY]

By: _____

Title:

13 To be added only if the consent of the Agent is required by the terms of the Credit Agreement.

14 To be added only if the consent of the Borrower and/or other parties is required by the terms of the Credit Agreement.

ANNEX 1

[]¹⁵STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

8. Representations and Warranties.

- (a) **Assignor[s]. [The][Each]** Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of **[the] [the relevant]** Assigned Interest, (ii) **[the] [such]** Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (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 (iv) it is **[not]** a Defaulting Lender; 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 Loan Document¹⁶, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan 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 Loan 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 Loan Document.
- (b) **Assignee[s]. [The][Each]** 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 the requirements to be an assignee under Section 13.1(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 13.1(b)(iii) of 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] [the relevant]** Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Sections 9.4(b) and 9.4(c) thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the] [such]** Assigned Interest, and (vi) it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the][such]** Assigned Interest; and (b) agrees that (i) it will, independently and without reliance on the Agent, **[the] [any]** 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 Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

15 Describe Credit Agreement at option of the Agent.

16 The term "Loan Document" should be conformed to that used in the Credit Agreement.

9. **Payments.**

From and after the Effective Date, the Agent shall make all payments in respect of **[the] [each]** Assigned Interest (including payments of principal, interest, fees and other amounts) to **[the] [the relevant]** Assignor for amounts which have accrued to but excluding the Effective Date and to **[the] [the relevant]** Assignee for amounts which have accrued from and after the Effective Date¹⁷. Notwithstanding the foregoing, the Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to **[the] [the relevant]** Assignee.

10. **General Provisions.**

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and 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 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 of the Province of Alberta and of Canada applicable therein.

¹⁷ The Agent should consider whether this method conforms to its systems. In some circumstances, the following alternative language may be appropriate:

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

SCHEDULE G
FORM OF LOAN PARTY GUARANTEE

This Guarantee is made as of _____, 20_____.

TO: ATB Financial, in its capacity as Agent (as hereinafter defined)

For valuable consideration, receipt whereof is hereby acknowledged, each of the undersigned (each a **"Guarantor"** and, together with each other entity from time to time which becomes a Guarantor pursuant to Section 24 hereof, collectively, the **"Guarantors"**) hereby irrevocably, absolutely and unconditionally guarantees to the Lenders (as hereinafter defined) the full, prompt and punctual payment by each other Loan Party of the Obligations (as hereinafter defined).

And each Guarantor agrees with the Lenders as follows:

1. Definitions. In this Guarantee unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions (including the singular and plural form and derivatives thereof) shall have the following meanings:
 - (a) **"Agent"** means ATB Financial, in its capacity as agent for the Lenders, and includes any successor agent appointed pursuant to the Credit Agreement, and any successor entity to ATB Financial;
 - (b) **"Borrower"** means Innova Global Ltd., a corporation amalgamated under the laws of Alberta, and its successors and assigns;
 - (c) **"Credit Agreement"** means the Second Amended and Restated Credit Agreement (the **"Credit Agreement"**) dated as of October 19, 2018 among the Borrower, the financial institutions which are or may hereafter become party thereto from time to time, as lenders, and the Agent, providing for certain credit facilities, as such credit agreement may be amended, amended and restated, modified, replaced, restated or supplemented from time to time;
 - (d) **"Guarantee"** means this Guarantee, as the same may be amended, amended and restated, modified, supplemented, replaced or restated from time to time;
 - (e) **"including"** has the meaning given to it in the Credit Agreement;
 - (f) **"Lenders"** has the meaning given to it in the Credit Agreement, and for the purposes of this Guarantee, also includes the Agent, the Swap Lenders, the Creditcard Lenders and the Cash Management Lenders in those respective capacities;
 - (g) **"Obligations"** means all Secured Obligations of any Loan Party (other than the applicable Guarantor); and
 - (h) **"other Person"** without limiting the breadth of such expression, includes other Guarantors under this Guarantee, and any others who from time to time guarantee all or any part of the Obligations under any other Loan Document.

Capitalized terms which are not otherwise defined herein shall have the meanings given to them in the Credit Agreement.

2. Acknowledgment of Agent Capacity. This Guarantee is given to the Agent in its capacity as agent for the Lenders. All of the covenants, representations, warranties, rights, benefits and protections made or given in favour of the Agent hereunder are acknowledged to be for the benefit of the Lenders (including the Agent) from time to time.
3. Evidence of Accounts. Any account settled or stated between any Lender, on the one hand, and the Borrower, on the other hand, shall be accepted by each Guarantor as *prima facie* evidence that the amount thereby appearing due by the Borrower is so due.
4. Waiver of Defences. The liability of each Guarantor under this Guarantee shall be irrevocable, unconditional and absolute and, without limiting the generality of the foregoing, the obligations of each Guarantor shall not be released, discharged, limited or otherwise affected by, and each Guarantor hereby waives as against the Lenders to the fullest extent permitted by Applicable Law, any defence relating to:
 - (a) any extension, other indulgence, renewal, settlement, discharge, compromise, waiver, subordination or release of the Borrower, any Guarantor or any other Person in respect of any Obligation or otherwise unless such extension, other indulgence, renewal, settlement, discharge, compromise, waiver, subordination or release shall expressly and specifically release a specific Guarantor from its indebtedness, obligations or liabilities hereunder or any part thereof, or is a payment of all the Obligations in full;
 - (b) any modification or amendment of or supplement to the Obligations, including any increase or decrease in the principal, the rates of interest or other amounts payable in respect thereof;
 - (c) any incapacity, disability or lack or limitation of status or power of the Borrower, any Guarantor or any other Person or of the directors, officers, employees, partners or agents thereof, or that the Borrower, any Guarantor or any other Person may not be a legal entity, or any irregularity, defect or informality in the borrowing or obtaining of moneys or credits in respect of the Obligations;
 - (d) any change in the existence, structure, constitution, name, control or ownership of the Borrower, any Guarantor or any other Person;
 - (e) any insolvency, bankruptcy, amalgamation, merger, reorganization, arrangement or other similar proceeding affecting the Borrower, any Guarantor or any other Person or the assets of the Borrower, any Guarantor or any other Person;
 - (f) any change in the shareholdings or membership of the Borrower, any Guarantor or any other Person through the retirement of one or more shareholders or partners or the introduction of one or more shareholders or partners or otherwise;
 - (g) the existence of any claim, set-off or other rights which a Guarantor may have at any time against the Borrower, any other Guarantor, any Lender or any other Person, whether in connection with the Obligations or any unrelated transactions;
 - (h) any release or non-perfection or any invalidity, illegality or unenforceability relating to or against the Borrower, any Guarantor or any other Person, whether relating to any instrument evidencing the Obligations or any other Loan Document or any provision of Applicable Law purporting to prohibit the payment by the Borrower, any Guarantor or any other Person of any of the Obligations;
 - (i) any limitation, postponement, prohibition, subordination or other restriction on the rights of any Lender to payment of the Obligations or to take any steps in respect thereof,

including any stay of proceedings against the Borrower, any Guarantor or any other Person;

- (j) any addition, substitution or release of any co-signer, endorser, other guarantor or any other Person in respect of the Obligations;
- (k) any failure of any Lender to make any presentment, demand for performance, notice of non-performance, protest, and any other notice, including notice of:
 - (i) acceptance of this Guarantee;
 - (ii) partial payment or non-payment of all or any part of the Obligations; and
 - (iii) the existence, creation or incurring of new or additional Obligations;
- (l) any failure of any Lender to proceed against the Borrower, any other Guarantor or any other Person, to proceed against, apply or exhaust any security held from the Borrower, any Guarantor or any other Person, or to proceed against or to pursue any other remedy or recourse in the power of any Lender whatsoever;
- (m) the benefit of any law which provides that the obligation of a guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal obligation or which reduces a guarantor's obligation in proportion to the principal obligations;
- (n) any incapacity, lack of authority, or other defence of the Borrower, any Guarantor or any other Person, or by reason of the cessation from any cause whatsoever of the liability of the Borrower, any Guarantor or any other Person with respect to all or any part of the Obligations, or by reason of any act or omission of any Lender or others which directly or indirectly results in the discharge or release of the Borrower, any Guarantor or all or any part of the Obligations or any security, or guarantee therefor, whether by operation of law or otherwise;
- (o) any failure by any Lender to obtain, perfect or maintain a perfected (or any) Security Interest upon any property of the Borrower, any Guarantor or any other Person or by reason of any interest of any Lender in any property, whether as owner thereof or the holder of a Security Interest therein or lien or encumbrance thereon, being invalidated, voided, declared fraudulent or preferential or otherwise set aside, or by reason of any impairment by any Lender of any right to recourse or collateral;
- (p) the failure of any Lender to marshal any assets;
- (q) any failure of any Lender to give to the Borrower, any Guarantor or any other Person notice of any sale or other disposition of any property securing any or all of the Obligations or any guarantee thereof, or any defect in any notice that may be given in connection with any sale or other disposition of any such property, or any failure of any Lender to comply with any provision of Applicable Law in enforcing any Security Interest upon any such property, including any failure by any Lender to dispose of any such property in a commercially reasonable manner;
- (r) any dealing whatsoever with the Borrower, any Guarantor or any other Person or any security, whether negligently or not, or any failure to do so;
- (s) any extinguishment of all or any of the Obligations for any reason whatsoever (other than the actual satisfaction thereof);

- (t) whether any Lender Swaps shall be in respect of commodity risk, interest rate risk, currency risk or otherwise and whether on a financial or physical basis, and whether speculative or not; or
- (u) any other law, event or circumstance which might otherwise constitute a defence available to, or a discharge of, any Guarantor, any other act or omission to act or delay of any kind by the Borrower, any Guarantor, any Lender or any other Person, or any other circumstance whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 4, constitute a legal or equitable discharge, limitation or reduction of the obligations of any Guarantor hereunder (other than the payment or satisfaction in full of all of the Obligations).

The foregoing provisions apply (and the foregoing waivers shall be effective) even if the effect is to destroy or diminish any Guarantor's subrogation rights, its right to proceed against the Borrower for reimbursement, its right to recover contribution from any other Person or any other right or remedy.

5. Indemnity. Each Guarantor shall be liable for and shall indemnify and save the Lenders harmless from and against any and all losses, damages, costs, expenses or liabilities suffered or incurred by any Lender resulting or arising from or relating to any failure of any other Loan Party to pay in full or fully perform the Obligations as and when due, provided that the amount of such indemnification shall not exceed the amount of the Obligations together with any and all other amounts due and owing hereunder from time to time.
6. No Waiver. No delay on the part of any Lender in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No amendment to this Guarantee or waiver of any of the rights of any Lender hereunder shall be deemed to be made by any Lender unless the same shall be in writing, duly signed by the Agent and the Guarantors and each such waiver, if any, shall apply only with respect to the specific instance involved and for the specific purpose for which given, and shall in no way impair the rights or liabilities of any Lender or any Guarantor in any other respect at any other time.
7. Deemed Existence. If at any time, all or any part of any payment previously applied by any Lender to any Obligation is or must be rescinded or returned to a Lender for any reason whatsoever (including the insolvency, bankruptcy or reorganization of the Borrower, any Guarantor or any other Person) such Obligation shall, for the purpose of this Guarantee, to the extent that such payment is rescinded or returned, be deemed to have continued in existence, notwithstanding such application by such Lender, and this Guarantee shall continue to be effective or be reinstated, as the case may be, as to such Obligation, all as though such application had not been made.
8. Assignment and Postponement. All present and future indebtedness and liabilities of the Borrower to each Guarantor is hereby assigned by such Guarantor to the Agent and, following the occurrence and during the continuance of an Event of Default, postponed to the Obligations and all moneys received by such Guarantor in respect thereof will be received in trust for and will be paid over to the Agent upon demand by the Agent. If any Lender receives from any Guarantor a payment or payments in full or on account of the liability of such Guarantor hereunder, such Guarantor will not be entitled to claim repayment against the Borrower until the Lender's claims against the Borrower have been irrevocably and unconditionally paid in full. In case of liquidation, winding-up or bankruptcy of the Borrower (whether voluntary or involuntary) or any composition with creditors or scheme of arrangement, the Lenders will have the right to rank for their full claims and receive all dividends or other payments in respect thereof in priority to such Guarantor until the claims of the Lenders have been irrevocably and unconditionally paid in full and such Guarantor will continue to be liable hereunder for any balance which may be owing to the Lenders by the Borrower. The foregoing provisions of this Section 8 will not in any way limit or lessen the liability of any Guarantor under any other section of this Guarantee.

9. Other Securities. This Guarantee is in addition to and not in substitution for any other guarantee or any other securities by whomsoever given at any time held by any Lender for any present or future Obligations and such Lender shall at all times have the right to proceed against or realize upon all or any portion of any other guarantees or securities or any other money or assets to which it may become entitled or have a claim in such order and in such manner as it in its sole and unfettered discretion may deem fit.
10. Continuing Guarantee. Subject to Section 27, this Guarantee is a continuing guarantee and (a) shall remain in full force and effect in accordance with its terms until payment in full of all amounts payable under this Guarantee and termination of the Lenders' Commitments and obligations under and pursuant to the Loan Documents; and (b) shall enure to the benefit of each Lender and its respective successors and assigns, and shall be binding upon each Guarantor, its successors and permitted assigns.
11. Enforcement of Guarantee. The obligations of each Guarantor under this Guarantee shall be enforceable by the Agent upon demand by the Agent for payment of the Obligations made after the occurrence and during the continuance of an Event of Default in accordance with the terms hereof without the necessity of any action or recourse whatsoever against the Borrower, any Guarantor or any other Person. The remedies provided in this Guarantee are cumulative and not exclusive of any remedies provided by Applicable Law, the Loan Documents or otherwise.
12. Subrogation. This Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to any Lender, and all dividends, compensations, proceeds of security valued and payments received by any Lender from the Borrower, any Guarantor or any other Person or from any estate shall be regarded for all purposes as payments in gross without any right on the part of any Guarantor to claim in reduction of the liability under this Guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by any Lender or proceeds thereof, and no Guarantor shall have any right to be subrogated in any rights of any Lender until the Lenders shall have received full, final and indefeasible payment and performance of the Obligations and the Lenders have no further obligation to extend credit or advance monies to or for the benefit of the Borrower.
13. Foreign Currency Obligations. Each Guarantor will make payment relative to each Obligation in the currency (the "**Original Currency**") in which the Borrower is required to pay such Obligation. If any Guarantor makes payment relative to any Obligation to a Lender in a currency (the "**Other Currency**") other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment will constitute a discharge of the liability of such Guarantor hereunder in respect of such Obligation only to the extent of the amount of the Original Currency which such Lender is able to purchase at Calgary, Alberta with the amount it receives on the date of receipt. If the amount of the Original Currency which such Lender is able to purchase is less than the amount of such currency originally due to it in respect of the relevant Obligation, each Guarantor will indemnify and save the Lenders harmless from and against any loss or damage arising as a result of such deficiency. This indemnity will constitute an obligation separate and independent from the other obligations contained in this Guarantee, will give rise to a separate and independent cause of action, will apply irrespective of any indulgence granted by any Lender and will continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.
14. Guarantee of Payment and Performance. This Guarantee is a guarantee of payment and performance and not of collection and is in addition and without prejudice to any securities of any kind now or hereafter held by any Lender.
15. Costs. The Guarantors shall pay to the Agent all legal fees on a solicitor and his own client basis and all other reasonable and documented out-of-pocket costs and expenses incurred by the Lenders from time to time in the enforcement, realization and collection of or in respect of this

Guarantee, which for the avoidance of doubt, in the case of legal fees and expenses, should be limited to the fees and expenses of one separate law firm for the Lenders unless such representation by the same legal counsel would be inappropriate due to actual or potential differing interests or the employment thereof has been specifically authorized by the applicable Guarantor in writing and such firm or firms shall be designated in writing by the Agent on behalf of each Lender. The term “**Obligations**” herein shall include all such costs and expenses.

16. Payment. All payments hereunder with respect to any Obligations shall be made to the Agent on behalf of the Lenders at the Agent's Branch of Account or at such other branch or agency of the Agent as the Agent shall designate from time to time by notice in writing to the Borrower. All Obligations shall be payable by the Guarantors on demand, shall from the date of such demand bear interest at the rate or rates of interest then applicable to the Obligations under and calculated in the manner provided in the Credit Agreement (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).
17. Payment on Stay. If (a) the Borrower is prevented from making payment of any of the Obligations when it would otherwise be required to do so; or (b) any Lender is prevented from demanding payment of the Obligations because of a stay or other judicial proceeding or any other legal impediment, all Obligations or other amounts otherwise subject to demand, acceleration or payment shall be payable by the Guarantors as provided for hereunder.
18. Waiver of Notice. Each Guarantor waives all notices which may be required by any statute, rule of law, contract or otherwise to preserve the rights of any Lender against such Guarantor.
19. Taxes. (a) Any and all payments by any Guarantor hereunder shall be made without set-off or counterclaim, free and clear of, and without deduction for or on account of, any Tax. If any Guarantor shall be required by Applicable Law to deduct any Taxes from such payments, then: (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 19) the applicable Lender receives an amount equal to the sum it would have received had no such deductions been made; (ii) the applicable Guarantor shall make such deductions; and (iii) the applicable Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

 (b) If any Lender is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Guarantor is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Guarantee, it shall use commercially reasonable efforts to deliver to the applicable Guarantor, at the time or times prescribed by Applicable Law, such properly completed and executed documentation prescribed by Applicable Law or reasonably requested by such Guarantor as will permit such payments to be made without withholding or at such reduced rate.

 (c) If the applicable Lender receives a refund, credit or deduction from a taxing authority in respect of a payment by any Guarantor of Taxes, such Lender thereupon shall make commercially reasonable efforts to repay the applicable Guarantor the amount with respect to such refund, credit or deduction equal to any net reduction in Taxes actually obtained by such Lender to be attributable to such refund, credit or deduction (net all reasonable out-of-pocket expenses related thereto); provided that, such Guarantor shall, upon a request by the applicable Lender, return such refund, credit or deduction to such party if such party is required to repay such amount to the applicable taxing authority.
20. Governing Law and Submission to Jurisdiction. The parties agree that this Guarantee is conclusively deemed to be made under, and for all purposes to be governed by and construed in accordance with, the laws of the Province of Alberta and of Canada applicable therein. There shall be no application of any conflict of laws or rules which would result in any laws other than internal laws in force in the Province of Alberta applying to this Guarantee. The parties hereto do

hereby irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Guarantee, or any of the transactions contemplated hereby or by any thereof, without prejudice to the rights of any Lender to take proceedings in other jurisdictions in which any assets of a Guarantor may be situate.

21. Severability. Any provision of this Guarantee which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereof in such jurisdiction and any such prohibition or unenforceability in any jurisdiction does not invalidate or render unenforceable such provision in any other jurisdiction.
22. Notices. Any notice or other communication hereunder shall be made in accordance with the terms of the Credit Agreement.
23. Acknowledgment. Each Guarantor confirms that its obligations under this Guarantee are not subject to any promise or condition affecting or limiting its liability, and no statement, representation, collateral agreement or promise by any Lender or by any officer, employee or agent of it, forms any part of this Guarantee or has induced the making thereof, or shall be deemed in any way to affect any Guarantor's liability hereunder.
24. Additional Guarantors. Any Person may become a Guarantor hereunder by executing a Guarantor Supplement substantially in the form of Exhibit A attached hereto and delivering the same to the Agent. Any such Person shall thereafter be a "Guarantor" for all purposes under this Guarantee, to the same extent as if it were an original signatory hereto.
25. Joint and Several Obligations. Each Guarantor's liability under this Guarantee is joint and several with all other Guarantors under this Guarantee, and with any other Person who from time to time guarantees all or any part of the Obligations under any other Loan Document.
26. Waiver of Trial by Jury. The parties hereby waive, to the fullest extent permitted by Applicable Law, any right they may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this guarantee or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). The parties (a) certify that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledge that they have been induced to enter into this guarantee by, among other things, the waivers and certifications in this section.
27. Termination and Release. At such time as the Obligations have been unconditionally and irrevocably paid in full, the obligations of each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. The Agent shall, at the request and expense of the Borrower or the Guarantors, execute and deliver to the Borrower or the Guarantors such documents as the Borrower or the Guarantors shall reasonably request to evidence any termination or release contemplated by this Section 27. Without limiting the generality of the foregoing provision, each Guarantor shall automatically be released from its obligations hereunder in the event that the Guarantor is no longer required to be a Loan Party in accordance with Section 9.5(b) of the Credit Agreement.
28. Conflict. In the event of any conflict between the provisions of this Guarantee and the provisions of the Credit Agreement which cannot be resolved by both provisions being complied with, the provisions contained in the Credit Agreement will prevail to the extent of such conflict.
29. Counterpart Execution. This Guarantee may be executed by facsimile or other electronic means and in any number of counterparts and by different parties in separate counterparts (including by facsimile or other electronic means, including in pdf format), each of which when so executed

shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF the Guarantor has caused this Guarantee to be signed by the proper officers duly authorized in that behalf as of the date and year first above written.

GUARANTOR:

[NAME OF GUARANTOR]

By: _____
Name:
Title:

EXHIBIT A

Guarantor Supplement

This Guarantor Supplement (this "**Guarantor Supplement**"), dated as of [_____, 20__] is made by [_____, a [_____] (the "**Additional Guarantor**"), in favour of ATB Financial, in its capacity as Agent (the "**Agent**").

RECITALS

- A. Pursuant to the Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 (as amended, amended and restated, modified, replaced, restated or supplemented from time to time, the "**Credit Agreement**"), by and among Innova Global Ltd. (the "**Borrower**"), the Lenders party thereto from time to time (the "**Lenders**"), and the Agent, the Lenders have made certain Facilities available to the Borrower.
- B. The Borrower is required pursuant to the Credit Agreement to cause the Additional Guarantor to deliver this Guarantor Supplement in order to cause the Additional Guarantor to become a Guarantor under the Loan Party Guarantee (the "**Guarantee**") dated as of January 1, 2016 executed by the Loan Parties (other than the Borrower).
- C. The Additional Guarantor has received and will receive substantial direct and indirect benefits from the Borrower's compliance with the terms and conditions of the Credit Agreement.
- D. Capitalized terms which are not otherwise defined herein shall have the meanings given to them in the Credit Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the funds advanced to the Borrower by the Lenders under the Credit Agreement from time to time, and to enable the Borrower to comply with the terms of the Credit Agreement, the Additional Guarantor hereby covenants, represents and warrants to the Lenders as follows:

The Additional Guarantor hereby becomes a Guarantor (as defined in the Guarantee) for all purposes of the Guarantee. Without limiting the foregoing, the Additional Guarantor hereby (a) jointly and severally with the other Guarantors under the Guarantee (as provided in Section 25 thereof), guarantees to the Lenders (as defined in the Guarantee) from time to time the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of all Obligations (as defined in Section 1 of the Guarantee) in the same manner and to the same extent as is provided in the Guarantee, (b) accepts and agrees to perform and observe all of the covenants and agreement set forth therein, and (c) waives the rights set forth in Section 4 of the Guarantee.

Notice of acceptance of this Guarantor Supplement and of the Guarantee, as supplemented hereby, is hereby waived by the Additional Guarantor.

Notices and other communications shall be delivered to the Additional Guarantor pursuant to Section 22 of the Guarantee.

IN WITNESS WHEREOF, the Additional Guarantor has caused this Guarantor Supplement to be duly executed and delivered as of the date and year first above written.

[NAME OF GUARANTOR]

By: _____
Name:
Title:

SCHEDULE H-1
FORM OF POWER OF ATTORNEY TERMS – BANKERS' ACCEPTANCES

In order to facilitate the acceptance of Bankers' Acceptances pursuant to the terms of the Second Amended and Restated Credit Agreement (the "**Credit Agreement**") dated as of October 19, 2018 between Innova Global Ltd., as borrower (the "**Borrower**"), ATB Financial, as Agent, and the Lenders named therein (as amended, supplemented and restated from time to time, the "**Credit Agreement**"), the Borrower hereby appoints each Lender (hereinafter individually called the "**Bank**"), acting by an authorized signing officer (the "**Attorney**") for the time being of the Bank's Branch of Account, the attorney of the Borrower:

- (a) to sign for and on behalf and in the name of the Borrower as drawer, drafts in the Bank's standard form which are "depository bills" under and as defined in the *Depository Bills and Notes Act* (Canada) (the "**DBNA**") ("**Drafts**") drawn on the Bank payable to a "clearing house" under the DBNA or its nominee for deposit by the Bank with the "clearing house" after acceptance thereof by the Bank; and
- (b) to fill in the amount, date and maturity date of such Drafts;

provided that such acts in each case are to be undertaken by the Bank in accordance with instructions given to the Bank by the Borrower as provided in this power of attorney.

Instructions to the Bank relating to the execution, completion, endorsement, discount, purchase and/or delivery by the Bank on behalf of the Borrower of Drafts which the Borrower wishes to submit to the Bank for acceptance by the Bank shall be communicated by the Agent in writing to the Attorney at the Bank's Branch of Account concurrently with delivery by the Borrower, pursuant to the provisions of: (i) Section 3.5 or 3.7 of the Credit Agreement, a Borrowing Notice by way of Bankers' Acceptances in the form of Schedule B to the Credit Agreement; or (ii) Section 3.17 of the Credit Agreement, a Conversion Notice in the form of Schedule C to the Credit Agreement. The instructions to the Bank shall specify the following information:

- (c) a Canadian Dollar amount, which shall be the aggregate face amount of the Drafts to be accepted by the Bank in respect of a particular Borrowing, Conversion or Rollover; and
- (d) a specified period of time, as provided in the Credit Agreement, which shall be the number of months after the date of such Drafts that such Drafts are to be payable, and the dates of issue and maturity of such Drafts.

The communication in writing to the Bank of the instructions referred to above shall constitute (a) the authorization and instruction of the Borrower to the Bank to complete and endorse Drafts in accordance with such information as set out above and (b) the request of the Borrower to the Bank to accept such Drafts and deposit the same with the "clearing house" against payment as set out in the instructions. The Borrower acknowledges that the Bank shall not be obligated to accept any such Drafts except in accordance with the provisions of the Credit Agreement.

The Bank shall be and it is hereby authorized to act on behalf of the Borrower upon and in compliance with instructions communicated to the Bank as provided herein if the Bank reasonably believes them to be genuine.

The Borrower hereby agrees to indemnify the Bank and its directors, officers, employees, affiliates and agents and to hold it and them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any way relating to or arising out of this power of attorney or the acts contemplated hereby including the deposit of any

Draft with the "clearing house"; provided that this indemnity shall not apply to any such loss, liability, expense or claim which results from the negligence or wilful misconduct of the Bank or any of its directors, officers, employees, affiliates or agents.

This power of attorney may be revoked at any time upon not less than 15 Business Days' written notice served in accordance with Section 14.8 of the Credit Agreement upon the Bank at its Branch of Account, provided that: (i) it may be replaced with another power of attorney forthwith on terms satisfactory to the Bank; and (ii) no such revocation shall reduce, limit or otherwise affect the obligations of the Borrower in respect of any Draft executed, completed, endorsed, discounted and/or delivered in accordance herewith prior to the time at which such revocation becomes effective. This power of attorney may be terminated by the Bank at any time upon not less than 15 Business Days written notice to the Borrower in accordance with Section 14.8 of the Credit Agreement. Any revocation or termination of this power of attorney shall not affect the rights of the Bank and the obligations of the Borrower with respect to the indemnities of the Borrower above stated with respect to all matters arising prior in time to any such revocation or termination.

This power of attorney is in addition to and not in substitution for any agreement to which the Bank and the Borrower are parties.

This power of attorney shall be governed in all respects by the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Borrower and the Bank hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of such jurisdiction in respect of all matters arising out of this power of attorney.

In the event of a conflict between the provisions of this Power of Attorney and the Credit Agreement, the Credit Agreement shall prevail. Capitalized terms used and not defined herein shall have the meanings given to them in the Credit Agreement.

SCHEDULE H-2
FORM OF POWER OF ATTORNEY TERMS – BA EQUIVALENT ADVANCES

In order to facilitate the making of BA Equivalent Advances pursuant to the terms of the Second Amended and Restated Credit Agreement (the “**Credit Agreement**”) dated as of October 19, 2018 between Innova Global Ltd., as borrower (the “**Borrower**”), ATB Financial, as Agent, and the Lenders named therein (as amended, supplemented and restated from time to time, the “**Credit Agreement**”), the Borrower hereby appoints each Lender (hereinafter individually called the “**Bank**”), acting by an authorized signing officer (the “**Attorney**”) for the time being of the Bank’s Branch of Account, the attorney of the Borrower:

- (a) to sign for and on behalf and in the name of the Borrower as drawer, promissory notes in the Bank’s standard form for advances in the nature of BA Equivalent Advances (“**Notes**”) payable to the Bank or its order evidencing BA Equivalent Advances made by the Bank to the Borrower pursuant to the Credit Agreement; and
- (b) to fill in the amount, date and maturity date of such Notes;

provided that such acts in each case are to be undertaken by the Bank in accordance with instructions given by the Borrower to the Agent and by the Agent to the Bank as provided in this power of attorney.

Instructions to the Bank relating to the execution, completion, endorsement, discount, purchase and/or delivery by the Bank on behalf of the Borrower of Notes which the Borrower wishes to issue to the Bank shall be communicated by the Borrower in writing to the Agent by delivery to the Agent of the Borrowing Notice or relevant Conversion Notices and Rollover Notices, as the case may be, in accordance with the Credit Agreement which, in turn, shall be communicated by the Agent, on behalf of the Borrower, in writing to the Attorney of the Bank at the Bank’s Branch of Account concurrently with delivery by the Borrower, pursuant to the provisions of: (i) Section 3.5 or 3.7 of the Credit Agreement, a Borrowing Notice by way of Bankers’ Acceptances in the form of Schedule B to the Credit Agreement; or (ii) Sections 3.17 and 3.18 of the Credit Agreement, a Conversion Notice or Rollover Notice in the form of Schedule C to the Credit Agreement. The instructions to the Bank shall specify the following information:

- (c) a Canadian Dollar amount, which shall be the aggregate face amount of the Notes in respect of a particular Borrowing, Conversion or Rollover; and
- (d) a specified period of time, as provided in the Credit Agreement, which shall be the number of months after the date of such Notes that such Notes are to be payable, and the dates of issue and maturity of such Notes.

The communication in writing to the Bank of the instructions referred to above shall constitute the authorization and instruction of the Borrower to the Bank to complete and, if applicable, endorse Notes in accordance with such information as set out above. The Borrower acknowledges that the Bank shall not be obligated to make any BA Equivalent Advance and thereafter complete and execute, and if applicable, endorse any such Notes except in accordance with the provisions of the Credit Agreement.

The Bank shall be and it is hereby authorized to act on behalf of the Borrower upon and in compliance with instructions communicated to the Bank as provided herein if the Bank reasonably believes them to be genuine.

The Borrower agrees to indemnify the Bank and its directors, officers, employees, affiliates and agents and to hold it and them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any

way relating to or arising out of this power of attorney or the acts contemplated hereby; provided that this indemnity shall not apply to any such loss, liability, expense or claim which results from the breach of the Credit Agreement or this power of attorney by the Bank or the negligence or wilful misconduct of the Bank or any of its directors, officers, employees, affiliates or agents.

This power of attorney may be revoked at any time upon not less than fifteen (15) Business Days' written notice served in accordance with Section 14.8 of the Credit Agreement upon the Bank at its Branch of Account, provided that: (i) it may be replaced with another power of attorney forthwith on terms satisfactory to the Bank; and (ii) no such revocation shall reduce, limit or otherwise affect the obligations of the Borrower in respect of any Notes executed, completed, endorsed, discounted and/or delivered in accordance herewith prior to the time at which such revocation becomes effective. This power of attorney may be terminated by the Bank at any time upon not less than fifteen (15) Business Days written notice to the Borrower in accordance with Section 14.8 of the Credit Agreement. Any revocation or termination of this power of attorney shall not affect the rights of the Bank and the obligations of the Borrower with respect to the indemnities of the Borrower above stated with respect to all matters arising prior in time to any such revocation or termination.

This power of attorney is in addition to and not in substitution for any agreement to which the Bank and the Borrower are parties.

This power of attorney shall be governed in all respects by the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Borrower and the Bank hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of such jurisdiction in respect of all matters arising out of this power of attorney.

In the event of a conflict between the provisions of this power of attorney and the Credit Agreement, the Credit Agreement shall prevail. Capitalized terms used and not defined herein shall have the meanings given to them in the Credit Agreement.

SCHEDULE I
FRONTING LENDER ACKNOWLEDGEMENT

This Fronting Lender Acknowledgement dated as of _____, 20____ is made:

AMONG:

ATB FINANCIAL, in its capacity as administrative agent (the “**Agent**”)

- and –

[■] (the “Fronting Lender”)

- and –

INNOVA GLOBAL LTD. (the “**Borrower**”)

WHEREAS:

- A. The Agent, the Fronting Lender and the Borrower among others, are parties to a certain Second Amended and Restated Credit Agreement (the “**Credit Agreement**”) dated as of October 19, 2018 (the “**Credit Agreement**”).
- B. The Borrower has, pursuant to the terms of the Credit Agreement, requested the issuance of a Letter of Credit to [■] in the amount of [■] (the “**Fronted Letter of Credit**”), the details of which are described in Exhibit 1 attached hereto.
- C. The parties wish to acknowledge and confirm the appointment of the Fronting Lender in respect of the Fronted Letter of Credit.

NOW THEREFORE, the parties agree and acknowledge as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, unless otherwise defined herein, capitalized words and phrases shall have the meanings given to them in the Credit Agreement.

ARTICLE 2
CONFIRMATION OF FRONTING LENDER

2.1 Fronting Lender

Pursuant to the request of the Borrower and the terms of the Credit Agreement, the Borrower has requested the Fronting Lender to act, and the Fronting Lender hereby agrees to act, as Fronting Lender (as defined in the Credit Agreement) in respect of the Fronted Letter of Credit and shall issue the Fronted Letter of Credit on behalf of the LC Lenders.

2.2 Acknowledgement

The Agent acknowledges that it has been advised that the Fronting Lender shall act as Fronting Lender (as defined in the Credit Agreement) in respect of the Fronted Letter of Credit and shall issue the Fronted Letter of Credit on behalf of the LC Lenders.

ARTICLE 3 PROCEDURES AND LIMITATIONS

3.1 Procedures and Limitations

The parties agree and acknowledge that:

- (a) the term of the Fronted Letter of Credit shall have a maximum term of not more than one (1) year from the Issue Date;
- (b) the Fronted Letter of Credit shall not expire in any event later than the Maturity Date;
- (c) the Fronting Lender shall have no obligation to issue the Fronted Letter of Credit until the Fronting Lender, through the Agent, shall have received such customary administrative documents as the Fronting Lender, through the Agent, shall have reasonably requested as a condition to the issuance of such Fronted Letter of Credit; provided that in the event of any conflict between the terms of such other documents and the Credit Agreement, the terms of the Credit Agreement shall prevail and further provided that the Borrower's obligations in respect of Fronted Letters of Credit shall be determined solely by reference to the provisions of the Credit Agreement; and
- (d) each LC Disbursement shall constitute the making of a Prime Loan in the case of a Fronted Letter of Credit in Canadian Dollars or U.S. Base Rate Loan in the case of a Fronting Letter of Credit in U.S. Dollars, as applicable, to the Borrower by the Fronting Lender on the Participation Date (without limiting each LC Lender's obligations under the Credit Agreement to the Fronting Lender in respect of any such Loan and notwithstanding the otherwise pro-rata nature of Accommodations under the Credit Agreement), even if any condition precedent to the making of such a Loan shall not have been satisfied.

ARTICLE 4 MISCELLANEOUS

4.1 Paramountcy

The parties agree and acknowledge that this Agreement merely confirms and acknowledges certain terms of the Credit Agreement and shall not have the effect of limiting, expanding or amending the terms thereof. To the extent that this Agreement is contrary to or inconsistent with the provisions of the Credit Agreement, the terms of the Credit Agreement shall be paramount and prevail.

4.2 Counterpart Execution

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Agreed and acknowledged as of the date first above written.

ATB FINANCIAL, as Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

●, as Fronting Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

INNOVA GLOBAL LTD.

By: _____

Name:

Title:

By: _____

Name:

Title:

Exhibit 1

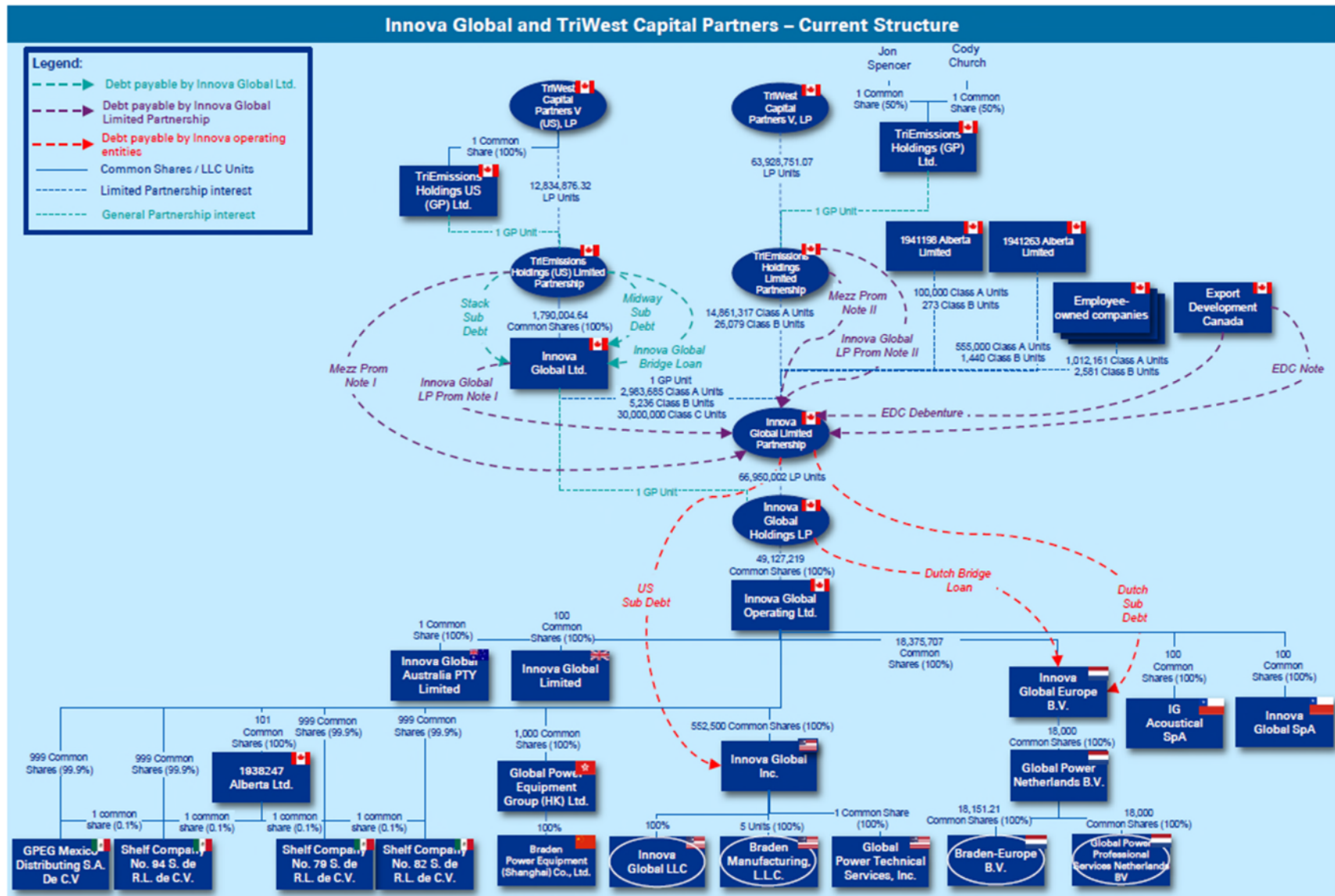
Particulars of Letter of Credit

**SCHEDULE J
BANK ACCOUNTS**

| Bank | Account numbers | Currency | Description | Status | Purpose |
|---|------------------|----------|----------------------------|--------|---|
| Innova Global Ltd. | | | | | |
| Alberta Treasury Branches | 760-0055 2162900 | CAD | Operating Account | Active | General Operating Account |
| Alberta Treasury Branches | 760-0055 2438500 | CAD | Savings Account | Active | CAD Cash Interest Account |
| Alberta Treasury Branches | 760-0055 2278100 | USD | Operating Account | Active | General Operating Account |
| Alberta Treasury Branches | 760-0055 2441500 | USD | Savings Account | Active | USD Cash Interest Account |
| The Bank of Nova Scotia | 12989-0570613 | CDN | Operating Account | Active | General Operating Account |
| The Bank of Nova Scotia | 12989-0543314 | USD | Operating Account | Active | General Operating Account |
| Canadian Imperial Bank of Commerce | 00009 88-09313 | CAD | Operating Account | Active | General Operating Account |
| Innova Global Inc. | | | | | |
| Bank of Nova Scotia | 12989-0426512 | CDN | Operating Account | Active | General Operating Account |
| Bank of Nova Scotia | 12989-8771715 | USD | Operating Account | Active | General Operating Account |
| Wells Fargo | 614-5752371 | USD | Salary Account/Tax Account | Active | ADP Payroll for US Employees and Tax Remittances |
| Innova Global LLC | | | | | |
| Bank of Nova Scotia | 12989-0283614 | CDN | Operating Account | Active | General Operating Account |
| Bank of Nova Scotia | 12989-0305111 | USD | Operating Account | Active | General Operating Account |
| Bank of Nova Scotia | 12989-8677417 | USD | Operating Account | Active | General Operating Account |
| Bank of Nova Scotia | 12989-0009948 | EUR | Operating Account | Active | General Operating Account Euro denominated deposits and payables |
| Wells Fargo | 022-1717663 | USD | Salary Account/Tax Account | Active | ADP Payroll for US Employees and Tax Remittances |
| Shelf Company No. 79, S. de R.L. de C.V. | | | | | |
| Scotiabank Inverlat S.A. | 14509673199 | MXP | Operating Account | Active | General Operation Account |
| Scotiabank Inverlat S.A. | 14500022470 | USD | Operating Account | Active | General Operation Account |
| Shelf Company No. 82, S. De R.L. de C.V. | | | | | |
| Bank of Nova Scotia Mexico | 14509898263 | MXP | Operating Account | Active | General Operation Account |
| Bank of Nova Scotia Mexico | 14500022497 | USD | Operating Account | Active | General Operation Account |
| Braden Manufacturing, L.L.C. | | | | | |
| Wells Fargo | 412-1538-078 | USD | Operating Account | Active | General Operating Account |
| Wells Fargo | 412-1538-086 | USD | Operating Account | Active | A/P Operating Account |
| Wells Fargo | 412-1538-094 | USD | Operating Account | Active | Payroll |
| Innova Global Limited (UK) | | | | | |
| Bank of Nova Scotia | 23077 000000968 | GBP | Operating Account | Active | General Operating Account |

| | | | | | |
|--|----------------------------------|----------|-------------------|--------|---------------------------|
| Innova Global Australia Pty Limited | | | | | |
| Westpac | 032143 383674 | AUD | Operating Account | Active | General Operating Account |
| Global Power Netherlands B.V. | | | | | |
| ABN AMRO Bank N.V. | 503275646 NL38ABNA0503275646 | EURO | Operating Account | Active | General Operating Account |
| ABN AMRO Bank N.V. | 401193551 NL15ABNA0401193551 | EURO/USD | Operating Account | Active | General Operating Account |
| ABN AMRO Bank N.V. | 605233705 NL11ABNA0605233705 | EURO | Operating Account | Active | General Operating Account |
| Global Power Professional Services Netherlands B.V. | | | | | |
| ABN AMRO Bank N.V. | 401437523 NL41ABNA0401437523 | EURO | Operating Account | Active | General Operating Account |
| ABN AMRO Bank N.V. | 468687440 NL35ABNA0468687440 | EURO | Operating Account | Active | General Operating Account |
| Braden-Europe B.V. | | | | | |
| ABN AMRO Bank N.V. | 448599449 NL98ABNA0448599449 | EURO | Operating Account | Active | General Operating Account |
| ABN AMRO Bank N.V. | 448620197 NL77ABNA0448620197 | EURO/USD | Operating Account | Active | General Operating Account |
| BRD Bank | 10317154410 | RON | | Active | |
| Raiffeisen | 77-1750-0009-0000-0000-1255-1867 | PLN | | Active | |
| Raiffeisen | 77175000090000000012551878 | EURO | | Active | |
| Raiffeisen | 96-1750-0009-0000-0000-3906-9288 | PLN | | Active | VAT Account |
| Bangkok Bank | 030-8-122373 | THB | | Active | |
| Innova Global Europe B.V. | | | | | |
| ABN AMRO Bank N.V. | 823860078 NL48ABNA0823860078 | EURO | Operating Account | Active | General Operating Account |

SCHEDULE K OWNERSHIP STRUCTURE/ORGANIZATIONAL CHART



A. Shareholdings:

(a) Innova Global Ltd.

- (i) 1,790,004.64 common shares issued to TriEmissions Holdings (US) Limited Partnership

(b) Innova Global Limited Partnership

- (i) 2,983,685 Class A Units, 2,604 Class B Units and 30,000,000 Class C Units issued to Innova Global Ltd.
- (ii) 14,861,317 Class A Units and 12,972 Class B Units issued to TriEmissions Holdings Limited Partnership
- (iii) 555,000 Class A Units and 1,440 Class B Units issued to 1941263 Alberta Ltd.
- (iv) 100,000 Class A Units and 273 Class B Units issued to 1941198 Alberta Ltd.
- (v) 37,000 Class A Units and 75 Class B Units issued to 1948398 Alberta Ltd.
- (vi) 37,000 Class A Units and 75 Class B Units issued to 1948376 Alberta Ltd.
- (vii) 40,000 Class A Units and 127 Class B Units issued to 1948354 Alberta Ltd.
- (viii) 92,500 Class A Units and 266 Class B Units issued to 1949040 Alberta Ltd.
- (ix) 100,000 Class A Units and 187 Class B Units issued to 1949035 Alberta Ltd.
- (x) 100,000 Class A Units and 187 Class B Units issued to 1948384 Alberta Ltd.
- (xi) 67,500 Class A Units and 155 Class B Units issued to 1065630 B.C. Unlimited Liability Company
- (xii) 33,750 Class A Units and 72 Class B Units issued to 1065651 B.C. Unlimited Liability Company
- (xiii) 37,000 Class A Units and 75 Class B Units issued to 1065642 B.C. Unlimited Liability Company
- (xiv) 206,494 Class A Units and 755 Class B Units issued to 2058548 Alberta Ltd.
- (xv) 75,917 Class A Units and 249 Class B Units issued to 2058814 Alberta Ltd.

(c) Innova Global Holdings Limited Partnership

- (i) 1 unit issued to Innova Global Ltd.
- (ii) 66,950,002 units issued to Innova Global Limited Partnership

(d) Innova Global Operating Ltd.

- (i) 49,127,219 common shares issued to Innova Global Holdings Limited Partnership

(e) 1938247 Alberta Ltd.

- (i) 101 common shares issued to Innova Global Operating Ltd.

(f) Innova Global Inc.

- (i) 552,500 common shares issued to Innova Global Operating Ltd.

(g) Innova Global LLC

- (i) Innova Global Inc. holds 100% of the membership interests

(h) Shelf Company No. 79, S. de R.L. de C.V.

- (i) Innova Global Operating Ltd. holds 99.9% of the total capital
- (ii) 1938247 Alberta Ltd. holds 0.1% of the total capital

- (i) Shelf Company No. 82, S. de R.L. de C.V.
 - (i) Innova Global Operating Ltd. holds 99.9% of the total capital
 - (ii) 1938247 Alberta Ltd. holds 0.1% of the total capital
- (j) Shelf Company No. 94 S. de R.L. de C.V.
 - (i) Innova Global Operating Ltd. holds 99.9% of the total capital
 - (ii) 1938247 Alberta Ltd. holds 0.1% of the total capital
- (k) GPEG Mexico Distributing S.A. de C.V.
 - (i) Innova Global Operating Ltd. holds 99.9% of the total capital
 - (ii) 1938247 Alberta Ltd. holds 0.1% of the total capital
- (l) Innova Global Limited
 - (i) 100 ordinary shares issued to Innova Global Operating Ltd.
- (m) Innova Global Australia PTY Limited
 - (i) 1 ordinary share issued to Innova Global Operating Ltd.
- (n) Braden Manufacturing L.L.C.
 - (i) 100 membership units issued to Innova Global Inc.
- (o) Innova Global Europe B.V.
 - (i) 18,375,707 shares issued to Innova Global Operating Ltd.
- (p) Global Power Netherlands B.V.
 - (i) Innova Global Europe B.V. holds 100% of the equity interests
- (q) Global Power Professional Services Netherlands B.V.
 - (i) Global Power Netherlands B.V. holds 100% of the equity interests
- (r) Braden-Europe B.V.
 - (i) Global Power Netherlands B.V. holds 100% of the equity interests
- (s) Global Power Technical Services, Inc.
 - (i) Innova Global Inc. holds 100% of the equity interests
- (t) Global Power Equipment Group (HK) Ltd.
 - (i) Innova Global Operating Ltd. Holds 100% of the equity interests
- (u) Braden Power Equipment (Shanghai) Co., Ltd.
 - (i) Global Power Equipment Group (HK) Ltd. holds 100% of the equity interests
- (v) IG Acoustical SpA

- (i) Innova Global Operating Ltd. holds 100% of the equity interests
- (w) Innova Global SpA
 - (i) Innova Global Operating Ltd. holds 100% of the equity interests

**SCHEDULE L
MATERIAL AGREEMENTS**

| Agreement Title | Parties | Effective Date |
|--|---|-----------------------|
| Outotec Purchase Order 4500233730 (Waste Heat Recovery Unit) | ATCO Emissions Management Inc & Outotec USA Inc. | 1/4/2016 |
| Black & Veatch Subcontract 184704.72.0912 Rev 0 (Boiler Feed Water Buildings) | ATCO Emissions Management Inc & Black & Veatch Corp. | 8/26/2015 |
| ProEnergy Purchase Order PES131003 (Catalyst Systems) | Innova Global Ltd. & ProEnergy Services | 7/26/2016 |
| ProEnergy Purchase Order PES131003 (Catalyst Systems) | Innova Global Ltd. & ProEnergy Services | 8/26/2016 |
| Industrial Turbine Company - Siemens Centrica Purchase Order 5010031164 (SCR) | Innova Global Limited (UK) & Industrial Turbine Company | 10/14/2016 |
| Black & Veatch Subcontract 190634.72.0912 (Metal Roof and Wall Panel) | Innova Global Inc. and Black & Veatch Corp. | 11/3/2016 |
| PSEG Sewaren Subcontract MA00004086 (Power House & Aux Buildings) | Innova Global Inc & PSEG Fossil LLC | 4/7/2016 |
| PSEG Bridgeport Subcontract MA00004892 (Administration Building) | Innova Global Inc & PSEG Power Connecticut LLC | 5/12/2017 |
| PSEG Bridgeport Subcontract MA00004966 (Turbine Hall & Control Buildings) | Innova Global Inc & PSEG Power Connecticut LLC | 5/22/2017 |
| Gemma Purchase Order 6311528.38 (Acoustic Walls & Compressor Buildings) | ATCO Emissions Management Inc & Gemma Power Systems LLC | 4/7/2016 |
| GE Ocotillo Purchase Order 411512775 (SCR & Exhaust Systems) | Innova Global Inc. & GE Distributed Power | 2/3/2017 |
| AECOM Riverside (Building Systems) | Innova Global Inc. & AECOM | 5/26/2017 |
| Duke Energy Progress, LLC Purchase Order 5191466 (Exhaust Stack Retrofit) | Innova Global Inc. & Duke Energy Progress, LLC | 7/14/2017 |
| Kiewit Power Constructors Purchase Order 102851 (Compressor Station) | Innova Global Inc. & Kiewit Power Constructors | 09/19/2016 |
| Duke Energy Progress, LLC Purchase Order 5223850 (Exhaust Stack Silencer) | Innova Global Inc. & Duke Energy Progress, LLC | 8/09/2017 |
| GE Carlsbad Purchase Order 411511719 (SCR & Exhaust Systems) | Innova Global Inc. & GE Distributed Power | 7/15/2015 |

| Agreement Title | Parties | Effective Date |
|--|--|-----------------------|
| IHI Kiewit Contract B14015 (Liquifaction Plant Facilities) | ATCO Emissions Management LLC and IHI Kiewit | 11/01/2015 |
| Mitsubishi Hitachi Power Systems ELC-CC-59-0003 Rev2 (Filter House and Inlet Duct) | GPEG Mexico Distributing S.A.de C.V and Mitsubishi Hitachi Power Systems | 08/03/2017 |
| Black & Veatch Subcontract 192158.72.0912 Rev. 0 (Chemical Building) | Innova Global Inc. and Black & Veatch Corp. | 9/27/2017 |
| Mitsubishi Hitachi Power Systems Topo Air Inlet Filter House & Inlet Duct | GPEG Mexico Distributing S.A.de C.V and Mitsubishi Hitachi Power Systems | 10/01/2017 |
| Mitsubishi Hitachi Power Systems Noreste Filter House and Inlet | GPEG Mexico Distributing S.A.de C.V and Mitsubishi Hitachi Power Systems | 9/30/2016 |
| Siemens Germany Air Intake System Punjab | Braden Europe BV and Siemens | 11/15/2017 |
| Sundt (New Indy) Container Board 411513162 (Mirrored Heat Recovery Steam Generators) | Innova Global Inc and Sundt (New Indy) Container Board | 03/05/2018 |
| GE Power (FCA Fabrication Facility) | Innova Global Inc and GE Power | 04/06/2018 |
| CB&I Duke Ashville - Cladding and Roofing | Innova Global Inc and CB&I North Carolina Inc | 05/03/2018 |

**SCHEDULE M
REAL ESTATE**

Freehold

NIL

Leasehold

| Lease Name | Parties | Commencement Date | Description of Leased Premises |
|--|--|--|--|
| Calgary Office Lease | Stantec Consulting Ltd. | July 01, 2016 | Suite 222, 4000 – 4 th St SE., Calgary, Alberta |
| Cambridge, Ontario Office Lease | Hughson Business Space | June 16, 2016 | 73 Water Street, Suite 300, Cambridge, Ontario |
| Clifton Park, New York Office Lease. | Plank Road Centre, LLC and ATCO Emissions Management Agreement assigned to Atrium Properties as landlord upon renewal | September 01, 2013 Amended on June 23, 2015 | Suite 200, 636 Plank Road, Clifton Park, New York 12065. |
| Plymouth, Minnesota Office Lease. | St. Paul Fire and Marine Insurance Company and ATCO Emissions Management, Inc. | June 01, 2012 Amended on August 4, 2015 | Suite 250 on the second floor of Plymouth Woods Office Center at 3300 Fernbrook Lane North, Plymouth, Minnesota 55441. |
| Houston, Texas Office Lease. | DF Group, LLC and ATCO Emissions Management, Inc. | July 01, 2013 | Suite A, SP Professional Park, 464 Park Grove, Katy, Harris, Texas 77450. |
| Tulsa, Oklahoma Office Lease. | Beta Enterprises, Inc. . Fountain Plaza | March 01, 2017 | Suite 700, 4867 S. Sheridan, Tulsa, Oklahoma 74145. |
| Shelf 79 Mexico Plant 2 Lease | Steel TKK International S de R.L. de C.V. and Shelf Company No. 79, S de R.L. de C.V. | July 29, 2014 | Plot number 220 of Carretera Huinala KM1 Col. el Migro in the municipality of Apodaca, N.L. |
| Office Lease – 1101 West Mineral Avenue, Littleton, CO | WDS Land, LLC. | June 01, 2017 | 1101 West Mineral Avenue Suite 107, Littleton, CO 80120. |

| Lease Name | Parties | Commencement Date | Description of Leased Premises |
|--|--|--------------------------|---|
| Commercial Real Estate Lease | Summer Resources, LLC, 38th Street Investment Corporation, Admiral Investments, L.L.C. and Braden Investors, LLC, as lessor, and Braden Manufacturing, L.L.C., as lessee | September 01, 2016 | 5199 N. Mingo Road Tulsa, OK 74117 |
| Lease for Office Space and other Business Premises subject to Article 7:230a of the Dutch Civil Code | Twinport Technohouse BV, as lessor, and Braden-Europe BV, as lessee | October 01, 2016 | Nieuw Eyckholt 290H, 6419 DJ Heerlen |
| Lease Agreement | GP East LLC, as lessor, and Braden Manufacturing, L.L.C., as lessee | December 22, 2016 | 17 St. Mark Street Auburn, MA |
| St. George Steel Land Lease for storage | F.W. Jones and Associates, Inc. | March 01, 2017 | 1400 East Highlands Drive St. George, UT |
| St. George Steel Office and Manufacturing Plant | Scholzen Investment Company | April 01, 2017 | 1301 East 700 North, St. George, UT 84770 |
| Pennsylvania Office | Forty-Two Company, LLC | October 01, 2015 | Suite 221, Building 200 2581 Washington Road Pittsburg, PA 15241 |
| Project 10831 Accommodations | Barrington IV Apartments, LLC dba 22 Slate Apts | February 15, 2018 | Units 204, 214, 301, 304 5614 Black Onyx Drive, Madison, WI 53718 |
| Project 10839 & 10840 Accommodations | ASN Long Beach, LLC Manger: AvalonBay Communities for eaves Seal Beach | October 31, 2017 | C223 333 First Street Seal Beach, CA 90740 |
| Project 10886 Accommodations | Flournoy Properties Aventine Ashville | July 10, 2018 | Unit 301, 5000 Aventine Drive Arden, NC 28704 |

| Lease Name | Parties | Commencement Date | Description of Leased Premises |
|--|---|-------------------|---|
| Project 10888 Accommodations - UK | Susan Shanks Managed by: CMW Property Services Ltd, trading as Martin & Co Plymouth | August 04, 2018 | 5 Discovery Wharf, Sutton Harbour The Barbican Plymouth, PL4 0RB |
| Project 10860 Accommodations | Randy Cox Agent: Preferred Rentals of Richmond County | January 01, 2018 | 104 Sadie Lane, Rockingham, NC 28379 |
| Calgary Condo Lease for CEO | Wayne Whitlock | February 01, 2018 | Suite 3202 433 – 11 th Avenue SE Calgary, AB |
| Mexico Manufacturing Plant and Office | Aceros Unidos III SA DE CV | April 01, 2018 | Blvd. Julián Treviño Elizondo #220 Elilagro, 66634, Apodaca, Nuevo León, México |

**SCHEDULE N
LOCATIONS OF OFFICES AND ASSETS**

| Loan Party | Jurisdiction of Incorporation | Registered Office | Chief Executive Office | Location of Assets |
|--|--------------------------------------|---|--|--|
| Innova Global Ltd. | Alberta | Stikeman Elliott LLP 4300 Bankers Hall West, 888 - 3rd Street S.W. Calgary, AB T2P 5C5 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Alberta, British Columbia, Saskatchewan and Ontario |
| Innova Global Limited Partnership | Alberta | Stikeman Elliott LLP 4300 Bankers Hall West, 888 - 3rd Street S.W. Calgary, AB T2P 5C5 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Alberta, British Columbia, Saskatchewan and Ontario |
| Innova Global Holdings Limited Partnership | Alberta | Stikeman Elliott LLP 4300 Bankers Hall West, 888 - 3rd Street S.W. Calgary, AB T2P 5C5 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Alberta |
| Innova Global Operating Ltd. | Alberta | Stikeman Elliott LLP 4300 Bankers Hall West, 888 - 3rd Street S.W. Calgary, AB T2P 5C5 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Alberta, British Columbia, Saskatchewan and Ontario |
| 1938247 Alberta Ltd. | Alberta | Stikeman Elliott LLP 4300 Bankers Hall West, 888 - 3rd Street S.W. Calgary, AB T2P 5C5 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Alberta, British Columbia, Saskatchewan and Ontario |
| Innova Global Inc. | California | Gary L. Bradus 400 Capitol Mall, Suite 1100 Sacramento, CA 95814 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | United States |
| Innova Global LLC | Delaware | The Corporation Trust Company Corporation Trust Centre, 1209 Orange St Wilmington, DE 19801 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | United States |
| Shelf Company No. 79, S. de R.L. de C.V. | Mexico | Frida Kahlo 195 710 Valle Ote. San Pedro Garza García, Nuevo León, C.P. 66269 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Monterrey, Mexico |

| Loan Party | Jurisdiction of Incorporation | Registered Office | Chief Executive Office | Location of Assets |
|--|--------------------------------------|---|--|--|
| Shelf Company No. 82, S. de R.L. de C.V. | Mexico | Frida Kahlo 195 710 Valle Ote. San Pedro Garza García, Nuevo León, C.P. 66269 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Monterrey, Mexico |
| Innova Global Limited | United Kingdom | 5th Floor, 6 St Andrew Street, London, EC4A 3AE | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | United Kingdom |
| Innova Global Australia PTY Limited | Australia | Level 16, 201 Elizabeth Street, Sydney NSW 2000 | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Australia |
| Innova Global Europe BV | Netherlands | Nieuw-Eyckholt 290 H, 6419 DJ Heerlen, the Netherlands | Nieuw Eyckholt 290H, 6419 DJ Heerlen | Heerlen, Netherlands |
| Global Power Netherlands BV | Netherlands | Nieuw-Eyckholt 290 H, 6419 DJ Heerlen, the Netherlands | Nieuw Eyckholt 290H, 6419 DJ Heerlen | Heerlen, Netherlands |
| Braden-Europe BV | Netherlands | Nieuw-Eyckholt 290 H, 6419 DJ Heerlen, the Netherlands | Nieuw Eyckholt 290H, 6419 DJ Heerlen | Heerlen, Netherlands and bank accounts in Poland and Romania |
| Global Power Professional Services Netherlands BV | Netherlands | Nieuw-Eyckholt 290 H, 6419 DJ Heerlen, the Netherlands | Nieuw Eyckholt 290H, 6419 DJ Heerlen | Heerlen, Netherlands |
| Braden Manufacturing, L.L.C. | Delaware | 3411 Silverside Road Tatnall Building, Suite 104, Wilmington, DE 19810 | 5199 North Mingo Road, Tulsa, Oklahoma 74117 | United States |
| IC Industrials Inc. | Delaware | 3411 Silverside Road Tatnall Building, Suite 104, Wilmington, DE 19810 | 5199 North Mingo Road, Tulsa, Oklahoma 74117 | United States |
| Innova Global SpA | Chile | Tenderini 85 – Oficina 31 Santiago, Chile South America | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Chile |
| IG Acoustical SpA | Chile | Tenderini 85 – Oficina 31 Santiago, Chile South America | 4000 – 4th Street SE, Suite 222 Calgary, AB T2G 2W3 | Chile |