

SPYGLASS RESOURCES CORP.  
as Borrower

-and-

NATIONAL BANK OF CANADA,  
THE TORONTO-DOMINION BANK,

-and-

THOSE OTHER FINANCIAL INSTITUTIONS WHICH  
HEREAFTER BECOME LENDERS  
UNDER THIS AGREEMENT  
as Lenders

-and-

NATIONAL BANK OF CANADA  
as Administrative Agent

-with-

NATIONAL BANK FINANCIAL INC., and  
TD SECURITIES INC.  
as Co-Lead Arrangers

-with-

NATIONAL BANK FINANCIAL INC.  
as Sole Bookrunner

-with-

TD SECURITIES INC.  
as Syndication Agent

CREDIT AGREEMENT

Dated March 28, 2013

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**CREDIT AGREEMENT**

**THIS AGREEMENT** is made effective March 28,  
2013, BETWEEN:

**SPYGLASS RESOURCES CORP.**  
**as Borrower**

**-and-**

**NATIONAL BANK OF CANADA,  
THE TORONTO-DOMINION  
BANK,**

**-and-**

**THOSE OTHER FINANCIAL INSTITUTIONS  
WHICH HEREAFTER BECOME LENDERS  
UNDER THIS  
AGREEMENT  
as Lenders**

**-and-**

**NATIONAL BANK OF CANADA  
as Administrative Agent**

**-with-**

**NATIONAL BANK FINANCIAL INC.,  
and TD SECURITIES INC.  
as Co-Lead Arrangers**

**-with-**

**NATIONAL BANK FINANCIAL INC.  
as Sole Bookrunner**

**-with-**

**TD SECURITIES INC.  
as Syndication Agent**



**PREAMBLE:**

- A. Charger Energy Corp., Pace Oil & Gas Ltd. and AvenEx Energy Corp. have entered into the Arrangement Agreement pursuant to which they have agreed to amalgamate to form the Borrower (the "**Amalgamation**");
- B. The Lenders have agreed to provide the Credit Facilities to the Borrower on the terms and conditions herein set forth;
- C. The Lenders wish the Agent to act on their behalf with regard to certain matters associated with the Credit Facilities as herein provided.

**AGREEMENT:**

In consideration of the covenants and agreements between the Parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

- 1.1 **Definitions.** Capitalized words and phrases used in the Documents, the Schedules hereto and in all notices and communications expressed to be made pursuant to this Agreement will have the meanings set out in Schedule A, unless otherwise defined in any of the Documents.
- 1.2 **Headings.** Headings, subheadings and the table of contents contained in the Documents are inserted for convenience of reference only, and will not affect the construction or interpretation of the Documents.
- 1.3 **Subdivisions.** Unless otherwise stated, reference herein to a Schedule or to an Article, Section, paragraph or other subdivision is a reference to such Schedule to this Agreement or such Article, Section, paragraph or other subdivision of this Agreement. Unless specified otherwise, reference in Schedule A to a Schedule or to an Article, Section, paragraph or other subdivision is a reference to such Schedule or Article, Section, paragraph or other subdivision of this Agreement.
- 1.4 **Number.** Wherever the context in the Documents so requires, a term used herein importing the singular will also include the plural and vice versa.
- 1.5 **Statutes, Regulations and Rules.** Any reference in the Documents to all or any section or paragraph or any other subdivision of any Law will, unless otherwise expressly stated, be a reference to that Law or the relevant section or paragraph or other subdivision thereof, as such Law may be amended, substituted, replaced or re-enacted from time to time.
- 1.6 **Permitted Encumbrances.** Any reference in any of the Documents to a Permitted Encumbrance is not intended to and will not be interpreted as subordinating or

postponing, or as any agreement to subordinate or postpone, any obligation of any Loan Party to the Lenders under any of the Documents to any Permitted Encumbrance.

- 1.7 Monetary References.** Whenever an amount of money is referred to in the Documents, such amount will, unless otherwise expressly stated, be in Canadian Dollars.
- 1.8 Time.** Time will be of the essence of the Documents.
- 1.9 Governing Law.** The Documents will be governed by and construed in accordance with the Law in force in the Province of Alberta from time to time.
- 1.10 Enurement.** The Documents will be binding upon and will enure to the benefit of the Parties and their respective successors and permitted assigns.
- 1.11 Amendments.** No Document may be amended orally and, subject to Sections 1.12(a), 18.16 and 19.1(e), any amendment may only be made by way of an instrument in writing signed by the Parties.
- 1.12 No Waiver.**
- (a) No waiver by a Party of any provision or of the breach of any provision of the Documents will be effective unless it is contained in a written instrument duly executed by an authorized officer or representative of such Party. Such written waiver will affect only the matter specifically identified in the instrument granting the waiver and will not extend to any other matter, provision or breach.
  - (b) The failure of a Party to take any steps in exercising any right in respect of the breach or non-fulfilment of any provision of the Documents will not operate as a waiver of that right, breach or provision, nor will any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in Law or otherwise.
  - (c) Acceptance of payment by a Party after a breach or non-fulfilment of any provision of the Documents requiring a payment to such Party will constitute a waiver of such provision if cured by such payment, but will not constitute a waiver or cure of any other provision of the Documents.
- 1.13 Severability.** If the whole or any portion of the Documents or the application thereof to any circumstance will be held invalid or unenforceable to an extent that does not affect the operation of the Document in question in a fundamental way, the remainder of the Document in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, will not be affected thereby and will be valid and enforceable to the fullest extent permitted by applicable Law.
- 1.14 Inconsistency.** To the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and any other Document, the provisions of this Agreement will govern to the extent necessary to eliminate such inconsistency or ambiguity.

**1.15 Accounting Terms and Principles.** Except as otherwise expressly provided, all accounting terms, principles and calculations applicable to the Credit Facilities will be interpreted, applied and calculated, as the case may be, in accordance with GAAP. The basis of accounting and all calculations set out in this Agreement will be applied and made on a consistent basis and will not be changed for the purposes of this Agreement unless required by GAAP or as agreed to by the Lenders in writing, such agreement not to be unreasonably withheld. It will be reasonable for the Lenders to withhold their consent if a proposed change could adversely affect the obligations of the Borrower or rights of the Lenders under the Documents.

**1.16 Changes in GAAP or Accounting Policies.**

- (a) 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 GAAP, or would reasonably be expected to materially and adversely affect (a) the rights of, or the protections afforded to, the Agent or the Lenders hereunder or (b) the position either of the Borrower 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 GAAP and in detail sufficient for the Agent and the Lenders to make the determination required of them in the following sentence. If any of the Borrower, the Agent or the Lenders determine at any time that such change in accounting policy results in a material adverse change either (i) in the rights of, or protections afforded to, the Agent or the Lenders intended to be derived, or provided for, hereunder or (ii) in the position either of the Borrower 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 Lenders.
- (b) Upon the delivery of a written notice pursuant to Section 1.16(a) the Borrower and the Agent on behalf of the Lenders shall meet to consider the impact of such change in GAAP or such change in accounting policy (in each case, an "**Accounting Change**"), as the case may be, on the rights of, or protections afforded to, the Agent and the Lenders or on the position of the Borrower 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 Borrower or the Agent and the Lenders (as the case may be) on the date hereof or the position of the Borrower 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 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 GAAP prior to such change and the Borrower's prior accounting policy. For the purposes of this Section 1.16, 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 Borrower, the Agent and the Lenders as is intended by this Agreement as at the Closing Date. If the Borrower and the Agent on behalf of the 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 this Agreement within 60 days following the date of delivery of such written notice, the Borrower shall either continue to provide financial statements in accordance with GAAP prior to such change or provide all such financial information as is reasonably required (or requested by the Agent acting reasonably) in order for any amount required to be determined hereunder to be determined in accordance with GAAP prior to such change and/or the Borrower's prior accounting policy, including to the extent applicable the calculation of and the reason for the changed amounts as between GAAP prior to such change and GAAP, and, for all purposes hereof, the applicable changes from GAAP prior to such change 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 GAAP prior to such change and/or the Borrower's prior accounting policy.

- (c) If a Compliance Certificate is delivered in respect of a Fiscal Quarter or Fiscal Year in which an Accounting Change is implemented without giving effect to any revised method of calculating a financial calculation hereunder (each a "**Financial Calculation**"), and subsequently, as provided above, the method of calculating the Financial Calculation is revised in response to such Accounting Change, or the amount to be determined pursuant to the Financial Calculation is to be determined without giving effect to such Accounting Change, the Borrower shall deliver a revised Compliance Certificate. Any Event of Default which arises as a result of the Accounting Change and which is cured by this Section 1.16 shall be deemed never to have occurred.

**1.17 Schedules.** The following are the Schedules which form part of this Agreement:

Schedule A:	Definitions
Schedule B:	Commitments
Schedule C:	Form of Compliance Certificate
Schedule D:	Form of Extension Request
Schedule E:	Form of Notice of Borrowing
Schedule F:	Form of Notice of Rollover or Notice of Conversion or Notice of Repayment
Schedule G:	List of Subsidiaries
Schedule H:	Form of Assignment

## ARTICLE 2 CONDITIONS PRECEDENT

**2.1 Conditions Precedent.** This Agreement will become effective upon:

- (a) the receipt by the Agent, for and on behalf of the Lenders, of the following documents each in full force and effect, and in form and substance satisfactory to the Lenders, acting reasonably:
  - (i) an executed copy of this Agreement;
  - (ii) executed copies of Closing Certificates from or on behalf of the Borrower and each other Loan Party, together with all attachments thereto;
  - (iii) an executed pro-forma Compliance Certificate;
  - (iv) a certificate of status, certificate of good standing, partnership declaration or similar evidence as to the creation or existence of each Loan Party under the Laws of its jurisdiction of formation, each such certificate to be dated on or about the Closing Date;
  - (v) executed copies of the Security;
  - (vi) an environmental questionnaire from the Borrower on behalf of itself and the Loan Parties;
  - (vii) a certificate of insurance;
  - (viii) an executed copy of the Closing Opinion; and
  - (ix) an executed copy of an opinion from Lenders' counsel;
- (b) the merger of Charger Energy Corp., Avenex Energy Corp. and Pace Oil & Gas Ltd. shall have been completed in all material respects on the terms set out in the Arrangement Agreement, with such amendments as are acceptable to the Lenders, acting reasonably;
- (c) the Borrower shall have, concurrently with the first Advance hereunder, (i) fully repaid all obligations, liabilities and indebtedness under the Existing Credit Facilities and cancelled the same, (ii) obtained the release and discharge of all security held by third parties in respect of the Existing Credit Facilities on terms and conditions acceptable to the Agent, acting reasonably, and (iii) provided evidence of the foregoing to the Agent;
- (d) the Elbow River Sale shall have been completed on the terms set out in the Elbow River Asset Purchase Agreement;
- (e) receipt by the Agent of the Borrower's (i) capital expenditure and operating budget for 2013 and (ii) pro-forma combined financial statements, each in a form satisfactory to the Agent and the Lenders;
- (f) receipt by the Agent and the Lenders of any information, including supporting documentation and other evidence, requested by any Lender or the Agent, each

acting reasonably, pursuant to Section 19.12 or other "know your client" information;

- (g) the payment of all fees and expenses which are payable by the Borrower to the Co-Lead Arrangers, the Agent and the Lenders, as the case may be, in connection with the execution and delivery of this Agreement;
- (h) no event, circumstance or development shall have occurred or become known which has had or would reasonably be expected to have a Material Adverse Effect;
- (i) no Default or Event of Default shall occur as a result of the execution and delivery of the Documents;
- (j) each of the representations and warranties as provided in Section 13.1 shall be true and correct; and
- (k) such other documents, certificates, opinions and agreements as are reasonably required to confirm the completion and satisfaction of the foregoing which the Agent and the Lenders may reasonably request.

### **ARTICLE 3 CREDIT FACILITIES**

**3.1 Credit Facilities.** Subject to the terms and conditions hereof and effective on the date hereof:

- (a) Production Facility. The Production Facility Lenders hereby establish the Production Facility in favour of the Borrower as an extendible revolving credit facility. Accommodations under the Production Facility may be drawn down by the Borrower in accordance with Section 3.4(a) in Canadian Dollars, or the Canadian Dollar Exchange Equivalent thereof in U.S. Dollars, or any combination thereof, to a maximum of the Production Facility Commitment Amount. The Individual Production Facility Commitment Amount of each of the Production Facility Lenders is set out in Schedule B.
- (b) Operating Facility. The Operating Facility Lender hereby establishes the Operating Facility in favour of the Borrower as an extendible revolving credit facility. The Operating Facility may be drawn down by the Borrower in accordance with Section 3.4(b) in Canadian Dollars, or the Canadian Dollar Exchange Equivalent thereof in U.S. Dollars, or any combination thereof, to a maximum of the Operating Facility Commitment Amount. The Operating Facility Commitment Amount of the Operating Facility Lender is set out in Schedule B.

**3.2 Extension of Term Out Date and Revolving Period.**

- (a) Request for an Extension. The Borrower may, from time to time and provided there is no Default or Event of Default which is continuing, request an extension of the Term Out Date (an "**Extension**") of each Lender that is not then a Non-Agreeing Lender (a "**Revolving Lender**") by sending to the Agent and, if applicable, the Operating Facility Lender, an extension request in the form of Schedule D (an "**Extension Request**") in duplicate not less than sixty (60) days and not more than ninety (90) days prior to the then current Term Out Date (the "**Request Period**") and the Agent shall forthwith notify such Revolving Lenders of such request and each such Revolving Lender shall acknowledge receipt of such notification. Each such Revolving Lender shall advise the Agent as to whether it agrees with such request within thirty (30) days of receipt by the Agent of the Engineering Report required to be delivered pursuant to Section 14.2(1); and

provided that in the event such Lender does not so advise the Agent within such thirty (30) day period, such Revolving Lender shall be deemed to have advised the Agent that it is not prepared to make an offer to the Borrower to extend its Term Out Date. Within two (2) Banking Days of the Agent receiving from each such Revolving Lender its decision with respect to making an offer to the Borrower to extend its Term Out Date, the Agent shall, subject to Section 3.2(b), provide the Borrower with an offer to extend the applicable Term Out Date in accordance with Section 3.2(c) or 3.2(d), as the case may be, and the Borrower, subject to Section 3.2(f), shall be entitled to accept any such offer at any time up to and including the last Banking Day preceding the then current Term Out Date by written notice to the Agent of such acceptance. Notwithstanding the foregoing, for the Revolving Period beginning on the Closing Date and ending on April 30, 2013, the Borrower shall be deemed to have delivered an Extension Request to the Agent within the Request Period, and each Revolving Lender shall advise the Agent as to whether it agrees with such request by April 30, 2013.

- (b) Non-Extension: If Revolving Lenders holding more than 33 1/3% of the aggregate commitments of all such Revolving Lenders under a Credit Facility do not agree or are deemed not to agree to make an offer to the Borrower to extend the Term Out Date pursuant to the Extension Request, the Agent shall not provide the Borrower with an offer to extend the Term Out Date of any of the Revolving Lenders in accordance with Section 3.2(a).

In any such case:

- (i) the Term Out Date of all Revolving Lenders shall not be extended; and
  - (ii) the Term Period shall commence for all Revolving Lenders on such Term Out Date and all such Lenders shall be deemed to be Non-Agreeing Lenders for the purposes hereof.
- (c) Extension for All Lenders: If all Revolving Lenders agree to make an offer to the Borrower to extend the Term Out Date pursuant to an Extension Request and the Borrower accepts such offer in accordance with Section 3.2(a), then the Term Out

Date for each such Revolving Lender shall be extended for a period of three hundred sixty-four (364) days from the date of the acceptance by the Borrower of the offer made to it to extend the Term Out Date by the Agent on behalf of such Revolving Lenders.

- (d) Partial Extension. If, with respect to an Extension Request, the provisions of Section 3.2(b) or 3.2(c) are not applicable and there are Non-Agreeing Lenders under Section 3.2(g) in respect of the Production Facility (a "**Partial Extension**"), the remaining Individual Production Facility Commitment Amounts of the Non-Agreeing Lenders shall continue for the Term Period applicable to such Lenders but any undrawn portion of such Commitment Amounts shall be cancelled on the Term Out Date applicable to such Lenders. Thereafter, any Drawdowns under the Production Facility may only be obtained from the Agreeing Lenders in proportion to their respective Individual Production Facility Commitment Amounts and all applicable provisions of this Agreement shall be construed accordingly. Without limiting the foregoing, in the event of any Partial Extension:
- (i) the Revolving Period (and the corresponding Term Out Date and Term Maturity Date) under the Production Facility will only be extended in respect of the Agreeing Lenders and the Term Out Date and Term Maturity Date for the Non-Agreeing Lenders will remain unchanged; and
  - (ii) for so long as the Revolving Period under the Production Facility exists concurrently with one or more Term Periods under the Production Facility:
    - (A) any subsequent Accommodations under the Production Facility (other than Conversions and Rollovers) shall be allocated pro rata among the Agreeing Lenders in accordance with their respective Individual Production Facility Commitment Amounts;
    - (B) any reduction in the Production Facility Commitment Amount pursuant to Section 3.5 or 3.10 shall be allocated pro rata among the Agreeing Lenders and the Non-Agreeing Lenders in accordance with their respective Individual Production Facility Commitment Amounts; and
    - (C) if the Borrower makes an optional prepayment under the Production Facility during the Revolving Period other than pursuant to Section 3.5, such prepayment shall be deemed to have been made to the Agreeing Lenders only and shall not be applied in repayment of Borrowings owed to Non-Agreeing Lenders unless the Agent is expressly directed in writing by the Borrower at the time of payment to allocate such payment pro rata among the Agreeing Lenders and the Non-Agreeing Lenders in accordance



with their respective Individual Production Facility Commitment Amounts.

- (e) Independent Decision: The Borrower understands that consideration of any Extension Request constitutes an independent credit decision which each Lender retains the absolute and unfettered discretion to make, and that no commitment in this regard is given by any such Lender and that any extension of the Term Out Date may be on such terms and conditions in addition to those set out herein as the Lenders may stipulate and the Borrower may agree to.
- (f) Default or Event of Default: Notwithstanding the foregoing, the Borrower shall not be entitled to accept any offer made by the Agent on behalf of the Agreeing Lenders to extend the Term Out Date if a Default or Event of Default has occurred and is continuing unless such Default or Event of Default is waived by all of the Agreeing Lenders; provided any such waiver shall be effective only for the purposes of this Section 3.2 and shall not be applicable to any such Lenders which are not Agreeing Lenders.
- (g) Request Refused. Subject to Section 3.2(b), if a Revolving Lender does not agree to make an offer to extend its Term Out Date (each such Lender being a "**Non-Agreeing Lender**" and any Revolving Lender agreeing to make an offer to extend its Term Out Date being an "**Agreeing Lender**"), the Borrower may:
  - (i) arrange for a replacement lender (a "**Replacement Lender**") (which may be one of the Agreeing Lenders) to purchase the Non-Agreeing Lender's Individual Commitment Amount. Any such Replacement Lender which is not an Agreeing Lender shall require the approval of the Agent, such approval not to be unreasonably withheld, and no later than three (3) Banking Days prior to the Term Out Date such Replacement Lender shall have purchased the Non-Agreeing Lender's Commitment by execution of all necessary documentation; or
  - (ii) as long as there exists no Default or Event of Default, repay the Aggregate Principal Amount and other amounts under the Credit Facilities owing to the Non-Agreeing Lender on or prior to such Non-Agreeing Lender's Term Out Date and, upon such payment, each such Non-Agreeing Lender shall cease to be a Production Facility Lender hereunder and, if applicable, the Operating Facility Lender, and such Non-Agreeing Lender's Individual Production Facility Commitment Amount and, if applicable, its Operating Facility Commitment Amount, shall be terminated and the Commitment Amount reduced accordingly.

3.3 **Maturity Date.** Each Advance made by a Lender under a Credit Facility will have a Maturity Date which expires on or prior to the Term Maturity Date applicable to such Lender under such Credit Facility. If, at any time, there are Lenders with different Term Maturity Dates, all applicable Lenders will share in Accommodations on the basis of their Rateable Portions under the Production Facility except to the extent the particular

Accommodation requested has a Maturity Date after the Term Maturity Date of a Lender, in which case the Borrower shall request a similar Accommodation to the extent permitted hereunder from such other Lenders with a Maturity Date occurring on or before the Term Maturity Date of such other Lenders. Each such determination by the Agent shall be prima facie evidence of such Rateable Portion or share.

### 3.4 **Repayment.**

- (a) Production Facility. The Borrower may borrow, repay and re-borrow any amount of the Individual Commitment Amount of each Production Facility Lender based on the Rateable Portion of such Lender's Individual Commitment Amount during the Revolving Period of each Production Facility Lender. Subject to Section 3.2, on the Term Out Date of each Production Facility Lender, the Individual Production Facility Commitment Amount of each such Production Facility Lender shall be reduced to the equivalent amount in Canadian Dollars of all amounts then outstanding and owing to such Production Facility Lender. Thereafter, the Borrower may only effect Conversions and Rollovers in respect of its borrowings under the Production Facility. During the Term Period of a Production Facility Lender, any repayments or prepayments under the Production Facility (except upon a Conversion or Rollover) shall effect a permanent reduction of its Individual Production Facility Commitment Amount.
- (b) Operating Facility. The Borrower may borrow, repay and re-borrow any amount of the Individual Commitment Amount of the Operating Facility Lender during the Revolving Period of the Operating Facility Lender. Subject to Section 3.2, on the Term Out Date of the Operating Facility Lender, the Operating Facility Commitment Amount shall be reduced to the equivalent amount in Canadian Dollars of all amounts then outstanding and owing to the Operating Facility Lender. Thereafter, the Borrower may only effect Conversions and Rollovers in respect of its borrowings under the Operating Facility. During the Term Period of the Operating Facility Lender, any repayments or prepayments under the Operating Facility (except upon a Conversion or Rollover) shall effect a permanent reduction of the Operating Facility Commitment Amount.
- (c) Term Maturity Date. With respect to each Lender under a Credit Facility, the Aggregate Principal Amount owing to such Lender under such Credit Facility on the Term Maturity Date applicable to such Lender and such Credit Facility will be repayable by the Borrower in one balloon principal repayment on the Term Maturity Date applicable to it, together with all accrued and unpaid interest and fees thereon and all other Obligations owing to such Lender under such Credit Facility.
- (d) Payments to Agent. All payments of the Obligations of the Borrower to the Lenders under the Production Facility will be made by the Borrower to the Agent for the account of the applicable Lenders, and, except to the extent otherwise provided herein, in accordance with each such Lender's Rateable Portions thereof, if any.

- (e) Payments to Operating Facility Lender. All payments of the Obligations of the Borrower under the Operating Facility will be made by the Borrower to the Operating Facility Lender for its own account.

### **3.5 Prepayment and Cancellation.**

- (a) Prepayment. Subject to Sections 3.2(d), 3.2(g) and 9.5, and with the same notice required when the Advance to be prepaid was made, the Borrower may at any time prepay without premium, bonus or penalty, any or all of the Aggregate Principal Amount under a Credit Facility, provided that: (a) the Borrower shall post the required Escrow Funds in accordance with Section 9.5 to fully defease a Bankers' Acceptance prior to its Maturity Date, (b) a LIBOR Based Loan may only be paid prior to its Maturity Date in accordance with Sections 8.2 and 11.2 and (c) an unexpired Letter of Credit will not be prepaid prior to its Maturity Date (except by the return of the original thereof to the Operating Facility Lender for cancellation or by the collateralization thereof in the manner set forth in Section 10.10).
- (b) Prepayment and Cancellation. At any time prior to the Term Maturity Date, the Borrower may also, upon the Borrower giving the Agent not less than 2 Banking Days prior notice, cancel any undrawn portion, of the Production Facility Commitment Amount or Operating Facility Commitment Amount, including any undrawn portion resulting from a prepayment. Any prepayment and cancellation made under this Section 3.5(b) in respect of either Credit Facility shall be permanent.
- (c) Amounts. Each prepayment or cancellation made in accordance with Section 3.5 shall be in a minimum amount of the lesser of: (i) \$5,000,000 (and in multiples of \$1,000,000), and (ii) the Aggregate Principal Amount outstanding under the relevant Credit Facility immediately prior to such prepayment or cancellation.

- 3.6 **Use of Proceeds.** The Borrower will be entitled, subject to Section 6.2, to use the proceeds of the Credit Facilities for general corporate purposes and the repayment and cancellation of the Existing Credit Facilities.

### **3.7 Types of Accommodation.**

- (a) Production Facility. The Borrower may from time to time obtain Advances under the Production Facility (unless otherwise indicated) by way of:
  - (i) Canadian Prime Rate Loans, in principal amounts of not less than Cdn. \$1,000,000 and in multiples of Cdn. \$100,000 for any amounts in excess thereof;
  - (ii) U.S. Base Rate Loans, in principal amounts of not less than U.S. \$1,000,000 and in multiples of U.S. \$100,000 for any amounts in excess thereof;

- (iii) Bankers' Acceptances; and
- (iv) LIBOR Based Loans; and
- (b) Operating Facility. The Borrower may from time to time obtain Advances under the Operating Facility (unless otherwise indicated) by way of:
  - (i) Canadian Prime Rate Loans, in principal amounts of not less than Cdn. \$1,000,000 and in multiples of Cdn. \$100,000 for any amounts in excess thereof;
  - (ii) Bankers' Acceptances;
  - (iii) Letters of Credit up to a maximum amount of Cdn. [REDACTED] (or the Canadian Dollar Exchange Equivalent in any other currency acceptable to the Operating Facility Lender), with an expiry date that is not beyond the Term Maturity Date applicable to the Operating Facility Lender, and which, for certainty, may be used to secure permitted Financial Instruments; and
  - (iv) Overdraft from the Borrower's Account in Canadian Dollars on such terms as agreed between the Borrower and the Operating Facility Lender;

(collectively among (a) and (b), the "Accommodations").

### **3.8 Interest and Fees.**

- (a) Interest and Fees. Interest and fees payable by the Borrower under the Credit Facilities will be payable in the following manner:
  - (i) each Canadian Prime Rate Loan will bear interest at a variable rate of interest per annum equal to the Canadian Prime Rate plus the applicable margin indicated in the Pricing Table below payable monthly in arrears, subject to Section 3.8(e);
  - (ii) each LIBOR Based Loan will bear interest at a rate per annum equal to LIBOR plus the applicable margin indicated in the Pricing Table below payable in accordance with Section 7.2(d), subject to Section 3.8(e);
  - (iii) for each Bankers' Acceptance, the stamping fee (the "BA Stamping Fee") payable by the Borrower on the acceptance thereof by the applicable Lenders will be calculated based upon the applicable BA Stamping Fee indicated in the Pricing Table below, subject to Section 3.8(e);
  - (iv) each U.S. Base Rate Loan will bear interest at a variable rate of interest per annum equal to the U.S. Base Rate plus the applicable margin indicated in the Pricing Table below, payable monthly in arrears, subject to Section 3.8(e);

- (v) the Borrower will pay to the Operating Facility Lender a fee (the "**Letter of Credit Fee**") in respect of each Letter of Credit issued in accordance with Section 10.6(a) at the applicable rate indicated in the Pricing Table, together with all other customary administrative charges in respect thereof; provided that such fee will be in a minimum amount of \$[REDACTED] in the applicable currency at the time of each payment made with respect thereto;
- (vi) the standby fees payable quarterly in arrears by the Borrower as set forth in Section 12.4 will be calculated based upon the applicable standby fee indicated in the Pricing Table.

**Pricing Table**

Level	Consolidated Debt to EBITDA Ratio	Canadian Prime Rate/U.S. Base Rate Margin	BA Stamping Fee/LIBOR Margin/Letter of Credit Fee for Financial Letters of Credit*	Standby Fees
I	< 1.00:1	[REDACTED]	[REDACTED]	[REDACTED]
II	2': 1.00:1 < 1.50:1	[REDACTED]	[REDACTED]	[REDACTED]
III	2': 1.50:1 < 2.00:1	[REDACTED]	[REDACTED]	[REDACTED]
IV	2': 2.00:1 < 2.50:1	[REDACTED]	[REDACTED]	[REDACTED]
V	2': 2.50:1 < 3.00:1	[REDACTED]	[REDACTED]	[REDACTED]
VI	2': 3.00:1	[REDACTED]	[REDACTED]	[REDACTED]

\* Non-Financial Letters of Credit will be issued at [REDACTED]% of the applicable fees stated in the Pricing Table above applicable to Financial Letters of Credit.

\* From the Closing Date until the date on which the next Compliance Certificate is delivered hereunder, the Level applicable to the Borrower in the Pricing Table will be determined in accordance with the Compliance Certificate delivered on the Closing Date.

- (b) Changes in Rates due to Change in Ratio. The effective date on which any change in interest rates, BA Stamping Fees, Letter of Credit Fees or standby fees occurs will be the first day of the calendar month immediately following the earlier of: (i) the date the Borrower delivers to the Agent the Compliance Certificate as required hereunder which evidences a change in the Consolidated Debt to EBITDA Ratio; and (ii) the date such Compliance Certificate is due in accordance with Section 14.2(b), provided that if such Compliance Certificate is not so delivered when required, then the applicable interest rates and fees shall be those set forth in Level VI of the Pricing Table effective the date such Compliance Certificate was otherwise due until such time as the Compliance Certificate is delivered. Any increase or decrease in: (x) the interest rates on LIBOR Based Loans outstanding on the effective date of a change in the aforesaid rates and fees will apply proportionately to each such LIBOR Based Loan outstanding on the basis of the number of days remaining in the term to maturity

thereof; (y) the BA Stamping Fees on Bankers' Acceptances outstanding on the effective date of a change in the aforesaid rates and fees will apply for new Bankers' Acceptances issued after such effective date or on any Rollover of an existing Bankers' Acceptance but otherwise the BA Stamping Fees on any Bankers' Acceptance existing at such effective date will not change until the Maturity Date thereof; and (z) the Letters of Credit Fees on Letters of Credit outstanding on the effective date of a change in the aforesaid rates and fees will apply proportionately to each such Letter of Credit outstanding on the basis of the number of days remaining in the term to maturity or renewal thereof.

- (c) Changes in Rates upon Term Out. Effective upon the Term Out Date, the interest rates then applicable to Canadian Prime Rate Loans, LIBOR Based Loans, U.S. Base Rate Loans, BA Stamping Fees and fees in respect of Letters of Credit will each increase by [REDACTED] Basis Points. Such increase in: (x) the interest rates on LIBOR Based Loans outstanding on the Term Out Date will apply proportionately to each such LIBOR Based Loan outstanding on the basis of the number of days remaining in the term to maturity thereof; (y) the BA Stamping Fees on Bankers' Acceptances outstanding on the Term Out Date will apply proportionately to each such Banker's Acceptance outstanding on the basis of the number of days remaining in the term to maturity thereof; and (z) the Letters of Credit Fees on Letters of Credit outstanding on the Term Out Date will apply proportionately to each such Letter of Credit outstanding on the basis of the number of days remaining in the term to maturity or renewal thereof.
- (d) Restatement of Ratio. If the Borrower has delivered a Compliance Certificate that is subsequently found to be inaccurate in any way as a result of the Borrower's financial results having to be restated or if the Borrower's financial results were inaccurately reflected in the original financial results on which such Compliance Certificate was based or for any other reason and the result thereof is that the Consolidated Debt to EBITDA Ratio was originally reported as lower (and the corresponding Level in the Pricing Table was lower) than it otherwise would have been in the absence of such inaccuracy or prior to such restatement, then the Borrower will, immediately upon the correction of such inaccuracy or upon such restatement, pay to the Agent for the benefit of the applicable Lenders an amount equal to the interest, stamping fees in respect of Bankers' Acceptances and standby fees that the Lenders should have received, but did not receive, over the applicable period had the Consolidated Debt to EBITDA Ratio, and the underlying components thereof, been reported correctly in the first instance.
- (e) Event of Default. Effective upon the occurrence of an Event of Default (the "**Effective Date**"), the interest rates then applicable to Canadian Prime Rate Loans, LIBOR Based Loans, U.S. Base Rate Loans, BA Stamping Fees and fees in respect of Letters of Credit will each increase by [REDACTED] Basis Points and such increase will remain in effect for as long as such Event of Default subsists. An increase in interest rates and fees as aforesaid arising from an Event of Default shall apply to all outstanding Advances under the Credit Facilities and will on the Effective Date apply proportionately to each outstanding Advance on the basis of

the number of days remaining in the term to maturity of such Advance. The Borrower will pay to the Agent on behalf of the Lenders any resulting increase in BA Stamping Fees and Letter of Credit Fees on or prior to the third Banking Day following the Effective Date. In addition to the conditions set forth above, the Lenders' obligation to provide any Advances under either Credit Facility, other than rollovers or conversions of then-maturing Advances (in each case not to exceed a 30 day term), will be suspended for as long as there exists an Event of Default.

**3.9 Swap Facilities.** Subject to Section 14.3(c), each Lender, or one of its Affiliates, may enter into Swap Documents with any Loan Party; provided that, subject to Section 15.5, all Hedging Obligations of the Loan Parties shall rank at all times *pari passu* with the Borrower's and the other Loan Parties' Obligations under the Credit Facilities.

**3.10 Determinations of the Borrowing Base; Removal of Certain Lenders.**

- (a) The Borrowing Base shall be determined in the sole discretion of the Lenders in accordance with their usual and customary lending parameters and practices for Canadian borrowing base credit facilities and the Agent shall deliver to the Borrower a written notice specifying each such determination (each such notice, a "**Borrowing Base Notice**") in accordance with this Section 3.10. Each determination of the Borrowing Base by the Lenders shall be binding and conclusive for all purposes hereof and shall be effective (a) in the case of an increase in the Borrowing Base, immediately upon receipt by the Borrower of the Borrowing Base Notice specifying the same, (b) in the case of a decrease in the Borrowing Base resulting from the sale, transfer, assignment or other disposition of P&NG Rights previously included by the Lenders in the determination of the Borrowing Base, immediately upon receipt by the Borrower of the Borrowing Base Notice specifying the same, and (c) in the case of all other decreases in the Borrowing Base, 60 days after receipt by the Borrower of the Borrowing Base Notice specifying the same, in each case until the coming into effect of a subsequent determination of the Borrowing Base. As at the date hereof, the Borrowing Base has been determined by the Lenders to be Cdn. \$400,000,000.
- (b) Hereafter, the Borrowing Base shall be determined as follows:
  - (i) Annual Determination of Borrowing Base. Upon receipt of an Engineering Report pursuant to Section 14.2(1) and provided the financial statements required to be delivered pursuant to Section 14.2(a) are delivered on a timely basis, the Lenders collectively shall, by April 30 of each year and in their sole discretion, make a determination of the Borrowing Base;
  - (ii) Semi-Annual Determination of Borrowing Base. Upon receipt of an Engineering Report pursuant to Section 14.2(m) and provided the financial statements required to be delivered pursuant to Section 14.2(a) are delivered on a timely basis, the Lenders collectively shall, by October 31

of each year and in their sole discretion, make a determination of the Borrowing Base; and

- (iii) Other Determinations. Notwithstanding paragraphs (a) and (b) above, the Borrowing Base may be determined at the request of the Majority Lenders at a time other than or in addition to the determinations pursuant to Sections 3.1O(b)(i) and 3.1O(b)(ii) not more than once in any 12 month period and the Borrower shall provide an updated Engineering Report for the purposes of any such determination of the Borrowing Base if, in their sole discretion, such Majority Lenders, acting reasonably, deem such receipt of an updated Engineering Report warranted.
- (c) If all of the Lenders agree to the amount of the Borrowing Base within the applicable periods referred to above (each, a "**Determination Period**"), then the Agent shall deliver a Borrowing Base Notice to the Borrower (with a copy thereof to each Lender) specifying the Borrowing Base.
- (d) If all of the Lenders cannot agree on the amount of the Borrowing Base within the applicable Determination Period, then the Borrowing Base shall be deemed to have been determined by the Lenders as the lowest Borrowing Base amount proposed by a Lender or Lenders (each such Lender, a "**Lowest Borrowing Base Lender**") to the Agent and other Lenders by written notice within such period, and promptly after the expiry of the applicable Determination Period the Agent shall deliver a Borrowing Base Notice to the Borrower (with a copy thereof to each Lender) specifying the Borrowing Base.
- (e) If the Borrowing Base has been determined pursuant to Section 3.10(d), the Borrower shall have the right:
  - (i) to require any Lowest Borrowing Base Lender to assign its Individual Commitment Amount, its Rateable Portion of all Credit Facilities and other Obligations and all of its rights, benefits and interests under the Documents to other Lenders which have agreed to increase their Commitment Amounts or to other financial institutions acceptable to the Agent, acting reasonably, and the provisions of Section 3.2(g) shall apply thereto, *mutatis mutandis*; or
  - (ii) to repay a Lowest Borrowing Base Lender's Rateable Portion of all Loans outstanding under the Credit Facility, together with all accrued but unpaid interest and fees thereon with respect to its Commitment (without making corresponding repayment to the other Lenders) and cancel such Lowest Borrowing Base Lender's Commitment, and the provisions of Section 3.2(g) shall apply thereto, *mutatis mutandis*.



### 3.11 **Borrowing Base Shortfall**

- (a) If at any time, other than as provided by Section 5.8, any determination of the Borrowing Base results in the Aggregate Principle Amount exceeding the Borrowing Base (such difference) being the “**Borrowing Base Shortfall**”) then, the Borrower will within sixty (60) days of the occurrence of such Borrowing Base Shortfall, repay such Aggregate Principle Amount as is required to eliminate such Borrowing Base Shortfall.
- (b) Until a Borrowing Base Shortfall is eliminated as required by Section 3.11(a):
  - (i) no Drawdowns (other than Conversions and Rollovers) or Advances under the Credit Facilities will be available without the prior consent of the Majority Lenders; and
  - (ii) notwithstanding Section 14.2(i) and Section 14.3(g), no assets of the Borrower and any other Loan Party used in the determination of the Borrowing Base may be disposed of without the prior consent of the Majority Lenders.

## **ARTICLE 4 SECURITY**

**4.1 Security.** The present and future Obligations of the Borrower and each other Loan Party to the Agent and the Lenders under the Documents, and to the Swap Lenders under all Financial Instruments between a Swap Lender and a Loan Party (collectively, the “**Swap Documents**”) and all other Obligations of the Borrower and each other Loan Party to the Agent, the Lenders and the Swap Lenders, howsoever arising or incurred hereunder and under the Documents and the Swap Documents, as applicable, will be secured by the following (collectively, the “**Security**”), each in a form acceptable to the Lenders, acting reasonably:

- (a) a demand debenture in the principal amount of Cdn. \$1,000,000,000 from each Loan Party granting a floating charge over all present and after-acquired real and personal property and a negative pledge and undertaking to provide fixed charges on such Loan Party's major producing petroleum and natural gas reserves at the request of the Agent;
- (b) an unconditional full liability guarantee from each Loan Party other than the Borrower;
- (c) an unlimited guarantee by the Borrower of all Hedging Obligations of the Loan Parties;
- (d) if requested by the Agent, such documents and instruments providing a fixed Lien in accordance with Section 4.6; and
- (e) thereafter, all such other guarantees and all such other mortgages, debentures, pledge agreements, assignments and other security agreements as may be required by the Agent, acting reasonably (each in form and substance satisfactory to the Agent, acting reasonably) in order to, or to more effectively, charge in favour of

the Agent on behalf of itself, the Lenders and Swap Lenders or grant Liens in favour of the Agent on behalf of itself, the Lenders and Swap Lenders on and against all of the undertaking, assets and property (real or personal, tangible or intangible, present or future and of whatsoever nature and kind) of the Borrower and any other Loan Party.

**4.2 Sharing of Security.** The Borrower and the Lenders agree and acknowledge that, subject to Section 15.5, the Security is being shared equally among the Lenders and the Swap Lenders to secure the Obligations of the Loan Parties under the Documents and Hedging Obligations on a rateable basis; and that the Agent will hold the Security for the benefit of the Lenders hereunder and the Swap Lenders with respect to all the Hedging Obligations. For purposes of the above sentence, "rateable basis" means:

- (a) with respect to the Lenders, the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount and other Obligations under the Credit Facilities relative to the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount and other Obligations under the Credit Facilities and the Hedging Obligations; and
- (b) with respect to the Swap Lenders, the Canadian Dollar Exchange Equivalent of the Hedging Obligations relative to the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount and other Obligations under the Credit Facilities and the Hedging Obligations.

If requested by the Lenders or any Swap Lender, the Lenders and the Swap Lenders will enter into such further agreements and assurances as may be reasonably requested to further evidence the provisions of this Section 4.2.

**4.3 Exclusivity of Remedies.** Nothing herein contained or in the Security now held or hereafter acquired by the Agent and the Lenders, nor any act or omission of the Agent and the Lenders with respect to any such Security, will in any way prejudice or affect the rights, remedies or powers of the Agent and the Lenders with respect to any other security at any time held by the Agent and the Lenders.

**4.4 Form of Security.** 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 Canada or any province thereof as the Agent, acting reasonably, may from time to time require to protect the Liens created thereby; provided that unless a Default or Event of Default has occurred and is continuing, the Security which encumbers Canadian assets will not be registered at any land titles office or similar registry in Canada. Should the Agent determine at any time and from time to time, acting reasonably, that the form and nature of the then existing Security is deficient in any way or does not fully provide the Agent, the Lenders or the Swap Lenders with the Liens and priority to which each is entitled hereunder, 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.

**4.5 After-Acquired Property.** All property acquired by or on behalf of the Borrower or any Loan Party which forms part of the property of the Borrower or any Loan Party (hereafter collectively referred to as "**After-Acquired Property**"), will be subject to the Security

without any further conveyance, mortgage, pledge, charge, assignment or other act on the part of the Parties. Without limiting the effect of the preceding sentence, the Borrower

will, or will cause the applicable Loan Party to, from time to time execute and deliver and the Agent will register, all at the Borrower's expense, such instruments supplemental to the Security, in form and substance satisfactory to the Agent, acting reasonably, as may be necessary or desirable to ensure that the Security as amended and supplemented constitutes in favour of the Agent, the Lenders and the Swap Lenders an effective Lien to the extent created by the Security over such After-Acquired Property as required hereunder, subject only to Permitted Encumbrances which under applicable Law rank in priority thereto.

**4.6 Undertaking to Grant Fixed Charge Security.** If a Default or an Event of Default has occurred and is continuing, the Borrower, at the request of the Agent, will forthwith grant or cause to be granted to the Agent, for its benefit and for the benefit of the Lenders and the Swap Lenders, a fixed charge in all or any of the Borrower's and the Loan Parties' property (including any After-Acquired Property) which is intended by the terms of the Documents to be subject to a fixed charge pursuant to Section 4.1.

**4.7 Further Assurances.** The Borrower will and will cause each Loan Party, in connection with the provision of any amended, new or replacement Security referred to in Section 4.4 or 4.5:

- (a) do, make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, assignments, acts, matters and things which may be reasonably required by the Agent to give effect to any provision of the amended, new or replacement Security;
- (b) provide the Agent with such information as is reasonably required by the Agent to identify the property to be charged;
- (c) do all such things as are reasonably required to grant the Liens to be granted pursuant to the amended, new or replacement Security;
- (d) provide the Agent with all corporate, partnership or other organizational resolutions and other action required for the Borrower to grant the amended, new or replacement Security;
- (e) provide the Agent with an opinion of the Borrower's Counsel confirming the due authorization, execution and delivery by the applicable Loan Party of all such agreements and instruments comprising the amended, new or replacement Security in form and content satisfactory to the Agent, acting reasonably; and
- (f) assist the Agent in the registration or recording of such agreements and instruments in such public registry offices in all such jurisdictions as the Agent, acting reasonably, deems necessary to give full force and effect to the amended, new or replacement Security.

**4.8 Security for Swap Documents with Former Lenders.** If a Lender ceases to be a Lender under this Agreement (a "**Former Lender**"), all Hedging Obligations owing to such Former Lender and its Affiliates under Swap Documents entered into while such

Former Lender was a Lender shall remain secured by the Security (equally and rateably) to the extent that such Hedging Obligations were secured by the Security prior to such Lender becoming a Former Lender, subject to the following provisions of this Section 4.8. For certainty, any Hedging Obligations under Financial Instruments entered into with a Former Lender or an Affiliate thereof after the Former Lender has ceased to be a Lender shall not be secured by the Security. Notwithstanding the foregoing, while any Obligations remain outstanding under either Credit Facility, no Former Lender or any Affiliate thereof shall have any right to cause or require the enforcement of the Security or any right to participate in any decisions relating to the Security, including any decisions relating to the enforcement or manner of enforcement of the Security or decisions relating to any amendment to, waiver under, release of or other dealing with all or any part of the Security; for certainty, the sole right of a Former Lender and its Affiliates with respect to the Security while any Obligations remain outstanding under either Credit Facility is to share, on *apari passu* basis, in any proceeds of realization and enforcement of the Security.

- 4.9 Discharge of Security.** The Agent will discharge all of the Security at the Borrower's expense forthwith after all of the Loan Parties' Obligations under each Credit Facility and the Swap Documents have been unconditionally and irrevocably paid or satisfied in full.
- 4.10 Priority.** The Agent and the Lenders acknowledge and agree that holders of Non-Recourse Debt, Purchase Money Liens, capital leases and hedging transactions which are permitted to be incurred under this Agreement and are permitted to be secured under paragraph (p) of the definition of Permitted Encumbrances shall rank in priority to the Security with respect to the applicable assets of any Loan Party which are subject to such Liens and the Agent is hereby authorized to execute and deliver all such documents as may be reasonably requested by the Borrower in order to confirm such priority.

## ARTICLE 5 FUNDING AND OTHER MECHANICS

- 5.1 Funding of Accommodations.** Subject to Section 5.2 and Article 9, all Advances (other than Letters of Credit) requested by the Borrower will be made available by deposit of the applicable funds (which in the case of Bankers' Acceptances will be the Net Proceeds) into the Borrower's Account for value on the Banking Day, or the LIBOR Banking Day in the case of a LIBOR Based Loan, as the case may be, on which the Advance is to take place.
- 5.2 Notice Provisions.** Drawdowns under each Credit Facility will be made available to the Borrower and the Borrower will be entitled to effect a Rollover or Conversion where permitted hereunder, in each case on the requested Banking Day or LIBOR Banking Day, as the case may be, provided a Notice of Borrowing or Notice of Rollover or Notice of Conversion, as applicable, is received by the Agent (or the Operating Facility Lender in the case of the Operating Facility) from the Borrower as follows:
- (a) with respect to Advances under the Production Facility by way of U.S. Base Rate Loans and under each Credit Facility by way of Canadian Prime Rate Loans, at least 1 Banking Day prior to such Advance, provided notice is received by the Agent no later than 12:00 noon (Toronto time) on the first Banking Day immediately preceding the requested issuance date;

- (b) with respect to Advances under each Credit Facility, other than by way of LIBOR Based Loans, Letters of Credit, U.S. Base Rate Loans and Canadian Prime Rate Loans, at least 2 Banking Days prior to such Advance, provided notice is received by the Agent or the Operating Facility Lender (as applicable) no later than 12:00 noon (Toronto time) on the second Banking Day immediately preceding the requested Drawdown Date or the date of Rollover or Conversion, as applicable; and
- (c) with respect to a Drawdown, Rollover or Conversion of or into a LIBOR Based Loan, at least 3 LIBOR Banking Days prior to such Advance, provided notice is received by the Agent no later than 12:00 noon (Toronto time) on the third LIBOR Banking Day immediately preceding the Drawdown Date or the date of Rollover or Conversion, as applicable and with respect to the issuance of Letters of Credit, at least 3 Banking Days prior to the requested issuance date, provided notice is received by the Agent no later than 12:00 noon (Toronto time) on the third Banking Day immediately preceding the requested issuance date.

Any of the notices referred to in the foregoing paragraphs of this Section 5.2 may, subject to Section 19.2, be given by the Borrower, solely at the risk of the Borrower, to the Agent or the Operating Facility Lender, as applicable, by telephone and in such case will be followed by the Borrower delivering to the Agent or the Operating Facility Lender, as applicable, on the same day the written notice required hereunder confirming such instructions.

**5.3 Irrevocability.** Subject to Section 8.3, a Notice of Borrowing, Notice of Rollover or Notice of Conversion when given by the Borrower will be irrevocable and will oblige the Borrower, the Agent and the Lenders to take the action contemplated herein and therein on the date specified therein, provided that, any such notice will not be binding on a Lender who makes a determination under Section 11.2.

**5.4 Rollover or Conversion of Accommodations.**

- (a) Subject to Section 3.3, Section 5.2, Article 8 and Article 9, the Borrower will be entitled to effect a Rollover of one type of Accommodation into the same type of Accommodation or to effect a Conversion of one type of Accommodation into another type of Accommodation on the terms herein provided, in each case under the same Credit Facility.
- (b) Subject to Section 8.1(b), if the Borrower fails to give the Agent a duly completed Notice of Rollover or Notice of Conversion under a Credit Facility if and as required by Section 5.2, or if in giving such notice the Borrower fails to provide for the Rollover or Conversion of all of the Advances then maturing under a Credit Facility, the Borrower will be deemed to have irrevocably elected to convert such maturing Advances under a Credit Facility, or that part of such maturing Advances which the Borrower has failed to provide for in such notice, as the case may be, into a Canadian Prime Rate Loan with respect to a Cdn. \$ Advance or a U.S. Base Rate Loan with respect to a U.S. Dollar Advance.
- (c) No Conversion of a Bankers' Acceptance will be made prior to its Maturity Date.

**5.5 Agent's Obligations.** Upon receipt of a Notice of Borrowing, Notice of Rollover or

Notice of Conversion with respect to a proposed Advance under a Credit Facility, the Agent will forthwith notify the applicable Lenders of the proposed date on which such Advance is to take place, of each applicable Lender's Rateable Portion of such Advance and of the account of the Agent to which each applicable Lender's Rateable Portion thereof is to be credited, if applicable.

- 5.6 **Lenders' Obligations.** Each Lender will, prior to 12:00 noon (Toronto time) on the proposed date on which an Advance under the applicable Credit Facility is to take place (other than an Advance by way of Bankers' Acceptances, in which case prior to 2:00 p.m. (Toronto time)), credit the account of the Agent specified in the Agent's notice given pursuant to Section 5.5 with such Lender's Rateable Portion of such Advance, and upon receipt of the funds from the Lenders, the Agent will make available to the Borrower the amount so credited.

5.7 **Failure of a Lender to Fund.**

- (a) Subject to repayment in accordance with Section 18.2(c), if any Lender fails to make available to the Agent its Rateable Portion of any Advance, which for greater certainty includes a deemed Advance hereunder (such Lender being herein called the "**Non-Paying Lender**"), the Agent shall forthwith give notice of such failure by the Non-Paying Lender to the Borrower (except where such failure relates to a deemed Advance). Upon the Non-Paying Lender becoming a Defaulting Lender, the Agent shall then forthwith give notice to the other Lenders that any Lender may make available to the Agent all or any portion of the Non-Paying Lender's Rateable Portion of such Advance (but in no way shall any other Lender or the Agent be obliged to do so) in the place of the Non-Paying Lender. If more than one Lender gives notice that it is prepared to make funds available in the place of a Non-Paying Lender in such circumstances and the aggregate of the funds which such Lenders (herein collectively called the "**Contributing Lenders**" and individually called the "**Contributing Lender**") are prepared to make available exceeds the amount of the Advance which the Non-Paying Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its Rateable Portion of such Advance based on the Contributing Lenders' relative commitments to advance in such circumstances. If any Contributing Lender makes funds available in the place of a Non-Paying Lender in such circumstances, then the Non-Paying Lender shall pay to any Contributing Lender making the funds available in its place, forthwith on demand, any amount advanced on its behalf together with interest thereon at the rate applicable to such Advance from the date of advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Advance from the Borrower. The failure of any Lender to make available to the Agent its Rateable Portion of any Advance as required herein shall not relieve any other Lender of its obligations to make available to the Agent its Rateable Portion of any Advance as required herein.
- (b) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, either as a result of being a Non-Paying Lender or otherwise, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

- (i) the standby fees payable pursuant to Section 12.2 shall cease to accrue on the unused portion of the Individual Production Facility Commitment Amount and the Operating Facility Commitment Amount, as applicable, of such Defaulting Lender;
- (ii) a Defaulting Lender shall not be included in determining whether, and the Individual Commitment Amount, Individual Production Facility Commitment Amount, Operating Facility Commitment Amount and the Rateable Portion of the Aggregate Principal Amount of such Defaulting Lender under the Credit Facilities or either of them 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 18.16), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;
- (iii) after giving effect to Section 5.7(a), for the purposes of any Advance requested hereunder while there is a Defaulting Lender, each Production Facility Lender's Rateable Portion thereof shall be calculated based on such Lender's Individual Production Facility Commitment Amount relative to the Production Facility Commitment Amount reduced by the Individual Production Facility Commitment Amount of the Defaulting Lender, in the case of the Production Facility; provided that, for certainty, no Lender will be required to exceed its Individual Commitment Amount;
- (iv) the Agent or the Operating Facility Lender 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 Lenders' maximum contingent obligations hereunder to the Agent or the Operating Facility Lender;
- (v) 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
- (vi) for the avoidance of doubt, the Borrower shall retain and reserve its other rights and remedies under applicable Law respecting each Defaulting Lender.

## 5.8 **Exchange Rate Fluctuations.**

- (a) Subject to Sections 5.8(b) and 5.9, if as a result of currency fluctuation, the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount (a) under the Production Facility exceeds the Production Facility Commitment Amount or (b) under the Operating Facility exceeds the Operating Facility Commitment Amount in the case of the Operating Facility (in each case, an

"Excess"), the Borrower will, within 3 Banking Days after a written request from the Agent, pay the applicable Excess to the Agent as a Principal Repayment for

the benefit of the applicable Lenders to be shared on the basis of each applicable Lender's Rateable Portion under the applicable Credit Facility.

- (b) If the applicable Excess represents an amount which is less than 3% of the then current Production Facility Commitment Amount or Operating Facility Commitment Amount, as applicable, then the Borrower will only be required to repay the applicable Excess on the earlier of the next Rollover date or Conversion date and 30 days after written request from the Agent.

**5.9 Excess Relating to LIBOR and Bankers' Acceptances.** If to pay an Excess it is necessary to repay an Advance made by way of Bankers' Acceptance or a LIBOR Based Loan prior to the Maturity Date thereof, the Borrower will not be required to repay such Advances until the Maturity Date applicable thereto, provided, however, that at the request of the Agent, the Borrower will forthwith pay the Excess to the Agent for deposit into a cash collateral, non-interest bearing account maintained by and in the name of the Agent for the benefit of the Lenders. The Excess will be held by the Agent for set-off against future Obligations owing by the Borrower to the Lenders in respect of such Excess, if any. The Agent shall have exclusive control over all amounts at any time on deposit in such cash collateral account. The deposit of the Excess by the Borrower with the Agent as herein provided, will not operate as a repayment of the Aggregate Principal Amount under the Credit Facilities until such time as the Excess is actually paid to the Lenders as a Principal Repayment.

## ARTICLE 6 DRAWDOWNS UNDER THE CREDIT FACILITIES

**6.1 Conditions Precedent to Drawdown.** The Lenders' obligation to provide Advances will be subject to the following conditions precedent being met:

- (a) the Borrower will have complied, or caused to be complied, with the deliveries required under Section 2.1;
- (b) except in the case of the Operating Facility, the appropriate Notice of Borrowing, Notice of Rollover or Notice of Conversion will have been delivered in accordance with the notice provisions provided in Section 5.2;
- (c) no Event of Default will have occurred and be continuing;
- (d) in the case of any Advances by way of a Drawdown only, no Default will have occurred and be continuing;
- (e) subject to Section 13.2, each of the representations and warranties set out in Article 13 (except those representations and warranties made as of a specific date) will be true and correct with the same effect as if such representations and warranties had been made on the date of such Advance;
- (f) the notice with respect to a Hostile Acquisition if required to be given pursuant to Section 6.2 will have been provided by the Borrower and the other provisions of Section 6.2, if applicable, will have been complied with; and
- (g) a Borrowing Base Shortfall shall not exist and, after giving effect to the proposed Advance, the Aggregate Principle Amount shall not exceed the Borrowing Base then in



effect.

- 6.2 Hostile Acquisitions.** If the Borrower wishes to utilize, whether directly or indirectly, Drawdowns under either of the Credit Facilities to facilitate, assist or participate in a Hostile Acquisition by any Loan Party or any Affiliate thereof:
- (a) at least 10 Banking Days prior to the delivery to the Agent of a Notice of Borrowing made in connection with a Hostile Acquisition, the president or chief financial officer of the Borrower will notify the Agent in writing (who will then notify the Lenders) of the particulars of the Hostile Acquisition in sufficient detail to enable each Lender to determine, in each Lender's sole discretion, whether it will permit a Drawdown to be utilized for such Hostile Acquisition;
  - (b) if a Lender decides not to fund an Advance to be utilized for such Hostile Acquisition, then upon such Lender so notifying the Agent (who will then notify the Borrower), such Lender will have no obligation to fund such Advance notwithstanding any other provision of this Agreement to the contrary; and
  - (c) each Lender will use reasonable commercial efforts to notify the Agent as soon as practicable (and in any event within 5 Banking Days of receipt of the particulars thereof from the Agent) of its decision whether or not to fund such proposed Hostile Acquisition.
- 6.3 Adjustment of Rateable Portion.** If a Lender elects not to participate in a Drawdown for a Hostile Acquisition (a "**Non-Participating Lender**"), the Lenders who are not Non-Participating Lenders (each, a "Participating Lender") shall have an obligation, up to the amount of its Individual Commitment Amount, to provide Advances to finance such Hostile Acquisition, and the Advances to finance such Hostile Acquisition shall be provided by each Participating Lender in accordance with the ratio that the Individual Commitment Amount of such Participating Lender bears to the aggregate of the Commitment Amount of all the Participating Lenders.
- 6.4 Subsequent Drawdowns.** If a Lender is a Non-Participating Lender, subsequent Drawdowns will be funded first by the Non-Participating Lenders rateably based on each Non-Participating Lender's Individual Commitment Amount until the Aggregate Principal Amounts of all Lenders are again in proportion to their respective Rateable Portions.
- 6.5 Prepayment.** As an alternative to the provisions of Section 6.4, the Borrower will also be entitled, subject to the prepayment provisions herein contained but without obligation to make prepayments to all Lenders to reduce the Aggregate Principal Amount under the Credit Facilities owing to the Participating Lenders until the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount owing to all the Lenders are again in proportion to their respective Rateable Portions.

## ARTICLE 7 CALCULATION OF INTEREST AND FEES

- 7.1 Records.** The Operating Facility Lender will maintain records, in written or electronic

form, evidencing all Operating Facility Advances it has made in respect of the Operating Facility. The Agent will maintain records, in written or electronic form, evidencing all Advances (other than Operating Facility Advances) and all other Obligations owing by the Borrower to the Agent and each Lender under this Agreement. The Operating Facility Lender or Agent, as applicable, will enter in such records details of all amounts from time to time owing, paid or prepaid by the Borrower to it hereunder. In addition, each Lender will maintain records, in written or electronic form, evidencing all Advances and other Obligations owing by the Borrower to such Lender. The information entered in such records will constitute *prima facie* evidence of the Obligations of the Borrower to the Agent, the Operating Facility Lender and each Lender. In the event of a conflict between the records of the Agent and a Lender maintained pursuant to this Section 7.1, the records of the Agent shall prevail, absent manifest error.

## 7.2 **Payment of Interest and Fees.**

- (a) **Interest.** Except as expressly stated otherwise herein, all Canadian Prime Rate Loans, U.S. Base Rate Loans and LIBOR Based Loans from time to time outstanding will bear interest, as well after as before maturity, default and judgment, with interest on overdue interest, at the applicable rates as prescribed under Section 3.8 or Section 19.10. Interest payable at a variable rate will be adjusted automatically without notice to the Borrower whenever there is a variation in such rate.
- (b) **Calculation of Interest and Fees.** Interest on Canadian Prime Rate Loans and U.S. Base Rate Loans will accrue and be calculated but not compounded daily and be payable monthly in arrears on the third Banking Day of each Month for the immediately preceding Month. Interest on Canadian Prime Rate Loans and U.S. Base Rate Loans, BA Stamping Fees on Bankers' Acceptances and Letter of Credit Fees will be calculated on the basis of a 365 day year, except if the U.S. Base Rate is based on the Federal Funds Rate in which case it will be calculated on the basis of a 360 day year.
- (c) **Interest Act (Canada).** For the purposes of the *Interest Act* (Canada) and any other applicable Laws which may hereafter regulate the calculation or computation of interest on borrowed funds, the annual rates of interest and fees applicable to Canadian Prime Rate Loans, U.S. Base Rate Loans, Bankers' Acceptances and Letters of Credit, respectively, are the rates as determined hereunder multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest or stamping fee is payable and divided by 365.
- (d) **LIBOR Based Loans.** Interest on LIBOR Based Loans will accrue and be calculated but not compounded daily and be payable at the end of each applicable LIBOR Period, provided that, where the LIBOR Period exceeds 3 months, interest will be calculated and payable every 3 months during the term of the LIBOR Period and on the last day of the applicable LIBOR Period. Interest on LIBOR Based Loans will be calculated on the basis of the actual number of days in each LIBOR Period divided by 360. For the purposes of the *Interest Act* (Canada) and any other applicable Laws, the annual rates of interest applicable to LIBOR Based Loans are the rates as determined hereunder multiplied by the actual number of

days in a period of one year commencing on the first day of the period for which such interest is payable and divided by 360.

- 7.3 Payment of BA Stamping Fee.** The Borrower will pay to the Agent for the account of the Lenders the applicable BA Stamping Fee under Section 3.8(a) with respect to Bankers' Acceptances on the date of acceptance thereof by the Lenders. Payment of the BA Stamping Fee may be made by way of set-off as provided in Section 9.4.
- 7.4 Debit Authorization.** The Borrower authorizes and directs each of the Agent and the Operating Facility Lender, in its discretion, to automatically debit, by mechanical, electronic or manual means, the bank accounts of the Borrower maintained by it for amounts that are due and payable under this Agreement.
- 7.5 Conversion to Another Currency.** A Conversion of an Advance from one currency to another currency may be made only by the repayment of such existing Advance in the same currency as such existing Advance and the request of a new Advance in another currency.
- 7.6 Maximum Rate of Return.** Notwithstanding any provision herein to the contrary, in no event will the aggregate "interest" (as defined in section 347 of the *Criminal Code* (Canada)) payable under this Agreement exceed the maximum effective annual rate of interest on the "credit advanced" (as defined in that section 347) permitted under that section and, if any payment, collection or demand pursuant to this Agreement in respect of "interest" (as defined in that section 347) is determined to be contrary to the provisions of that section 347, such payment, collection or demand will be deemed to have been made by mutual mistake of the Borrower and the applicable Lenders and the amount of such payment or collection will be refunded to the Borrower. For purposes of this Agreement, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Credit Facilities on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent will be *prima facie* evidence, for the purposes of such determination.
- 7.7 Waiver of Judgment Interest Act (Alberta).** To the extent permitted by applicable Law, the provisions of the *Judgment Interest Act* (Alberta) will not apply to the Documents and are hereby expressly waived by the Borrower.
- 7.8 Deemed Reinvestment Not Applicable.** For the purposes of the *Interest Act* (Canada), the principle of deemed reinvestment of interest will not apply to any interest calculation under the Documents, and the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

## ARTICLE 8 GENERAL PROVISIONS RELATING TO LIBOR BASED LOANS

### 8.1 General.

- (a) The aggregate amount of each Advance by way of a LIBOR Based Loan will be at least U.S. \$5,000,000 and in multiples of U.S. \$100,000 for any amount in excess thereof, and each LIBOR Based Loan will have a term to maturity of 1, 2, 3 or 6 months, or, subject to availability, as otherwise agreed by the Production

Facility Lenders.

- (b) If the Borrower elects to Drawdown by way of a LIBOR Based Loan or effect a Rollover of a LIBOR Based Loan or a Conversion of an Accommodation into a LIBOR Based Loan, the Borrower will specify in its Notice of Borrowing, Notice of Rollover or Notice of Conversion, as applicable, the LIBOR Period (which will begin and end on a LIBOR Banking Day) applicable to such LIBOR Based Loan. If the Borrower fails, as required hereunder, to select a LIBOR Period for any proposed LIBOR Based Loan, such election shall be deemed to be for a U.S. Base Rate Loan.
- (c) Any amount owing by the Borrower in respect of any LIBOR Based Loan which is not paid at maturity in accordance with this Agreement will, as and from its Maturity Date, be deemed to be outstanding as a U.S. Base Rate Loan.

**8.2 Early Termination of LIBOR Periods.** If the early termination of any LIBOR Based Loan is required hereunder, the Borrower will pay to the Production Facility Lenders all expenses and out-of-pocket costs incurred by the Lenders as a result of the early termination of the LIBOR Based Loan, including expenses and out-of-pocket costs incurred due to early redemption of offsetting deposits. If, in the sole discretion of a Production Facility Lender, acting reasonably, any such early termination cannot be effected, the LIBOR Based Loan will not be terminated and the Borrower will continue to pay interest to the applicable Production Facility Lenders, at the rate per annum applicable to such LIBOR Based Loan for the remainder of the applicable LIBOR Period. A written statement of the Agent as to the aggregate amount of such expenses and out of pocket costs will be *prima facie* evidence of the amount thereof.

**8.3 Inability to Make LIBOR Based Loans.** If at any time subsequent to the giving of a Notice of Borrowing or any Notice of Rollover or Notice of Conversion to the Agent by the Borrower with regard to any requested LIBOR Based Loan:

- (a) the Agent (acting reasonably) 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 Based Loan during the ensuing LIBOR Period selected;
- (b) the Agent (acting reasonably) determines that the making or continuing of the requested LIBOR Based Loan by the Production Facility Lenders has been made impracticable by the occurrence of an event which materially adversely affects the London Interbank Eurodollar Market generally; or
- (c) the Agent is advised by Production Facility Lenders holding at least 25% of the Commitment Amount of all Production Facility Lenders hereunder by written notice (each, a "**Lender LIBOR Suspension Notice**"), such notice received by the Agent no later than 2:00 p.m. (Toronto time) on the third LIBOR Banking Day prior to the date of the requested Drawdown, Rollover or Conversion, as the case may be, that such Production Facility Lenders have determined (acting reasonably and in good faith) that LIBOR will not or does not represent the

effective cost to such Production Facility Lenders of United States Dollar deposits in such market for the relevant LIBOR Period,

then the Agent shall give notice thereof to the Production Facility 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 Banking Day after receipt of such notice and in replacement of the Notice of Borrowing, Notice of Rollover or Notice of Conversion, as the case may be, previously given by the Borrower, give the Agent a Notice of Borrowing or a Notice of Conversion, as the case may be, which specifies the Advance of a U.S. Base Rate Loan or the Conversion of the relevant LIBOR Based Loan on the last day of the applicable LIBOR Period into a U.S. Base Rate Loan. In the event the Borrower fails to give, if applicable, a valid replacement Notice of Conversion with respect to the maturing LIBOR Based Loans which were the subject of a Notice of Rollover, such maturing LIBOR Based Loans shall be converted on the last day of the applicable LIBOR Period into U.S. Base Rate Loans under the Production Facility as if a Notice of Conversion 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 Notice of Borrowing with respect to an Advance originally requested by way of a LIBOR Based Loan, then the Borrower shall be deemed to have requested an Advance by way of a U.S. Base Rate Loan in the amount specified in the original Notice of Borrowing and, on the originally requested date of Advance, the Lenders (subject to the other provisions hereof) shall make available the requested amount by way of a U.S. Base Rate Loan under the Production Facility.

## ARTICLE 9 BANKERS' ACCEPTANCES

**9.1 General.** Each bankers' acceptance draft tendered by the Borrower for acceptance by a Lender will be in a form acceptable to the accepting Lenders, acting reasonably, and the Advance in respect thereof will be in a principal amount of not less than Cdn. \$5,000,000 and in multiples of Cdn. \$100,000 for any amounts in excess thereof (or, in respect of the Operating Facility, such other amounts as agreed with the Operating Facility Lender) and will have terms of not less than 1, 2, 3 or 6 months, unless, subject to availability, otherwise agreed to by the accepting Lenders.

### **9.2 Terms of Acceptance by the Lenders.**

- (a) **Payment.** The Borrower will provide for payment to the Agent for the benefit of the Lenders of each Bankers' Acceptance at its maturity, either by payment of the face amount thereof or, subject to Section 7.3, through the utilization of an Accommodation (including by way of Rollover) in accordance with this Agreement, or through a combination thereof. The Borrower waives presentment for payment of Bankers' Acceptances by the Lenders and will not claim from the applicable Lenders any days of grace for the payment at maturity of Bankers' Acceptances. Any amount owing by the Borrower in respect of any Bankers' Acceptance which is not paid at maturity in accordance with this Agreement, will, as and from its maturity date, be deemed to be outstanding as a Canadian Prime Rate Loan.
- (b) **Power of Attorney.** To facilitate the procedures contemplated in this Agreement, the Borrower appoints each Lender from time to time as the attorney-in-fact of the

Borrower to execute, endorse and deliver on behalf of the Borrower drafts or depository bills in the form or forms prescribed by such Lender for bankers acceptances denominated in Canadian Dollars (each such executed draft or depository bill which has not yet been accepted by a Lender being referred to as a "**Draft**"). Each Bankers' Acceptance executed and delivered by a Lender on behalf of the Borrower as provided for in this Section 9.2(b) will be as binding upon the Borrower as if it had been executed and delivered by a duly authorized officer of the Borrower. The foregoing appointment will cease to be effective three Banking Days following receipt by the Lender in question of a notice from the Borrower revoking such appointment provided that any such revocation will not affect Bankers' Acceptances previously executed and delivered by a Lender pursuant to such appointment.

- (c) Depository Bills. It is the intention of the Parties that pursuant to the *Depository Bills and Notes Act* (Canada) ("**DBNA**"), all Bankers' Acceptances accepted by the Lenders under this Agreement will be issued in the form of a "depository bill" (as defined in the DBNA), deposited with a "clearing house" (as defined in the DBNA), including The Canadian Depository for Securities Limited or its nominee CDS Clearing and Depository Services Inc. ("**CDS**"). In order to give effect to the foregoing, the Agent will, subject to the approval of the Borrower and the Lenders, establish and notify the Borrower and the Lenders of any additional procedures, consistent with the terms of this Agreement, as are reasonably necessary to accomplish such intention, including:
- (i) any instrument held by the Agent for purposes of Bankers' Acceptances will have marked prominently and legibly on its face and within its text, at or before the time of issue, the words "This is a depository bill subject to the *Depository Bills and Notes Act* (Canada)";
  - (ii) any reference to the authentication of the Bankers' Acceptance will be removed; and
  - (iii) any reference to the "bearer" will be removed and such Bankers' Acceptances will not be marked with any words prohibiting negotiation, transfer or assignment of it or of an interest in it.

- 9.3 **BA Equivalent Loans.** In lieu of accepting bankers' acceptance drafts on any Drawdown Date, or any date of Rollover or Conversion, as applicable, each Non-BA Lender will make a BA Equivalent Loan. Any BA Equivalent Loan will be made on the relevant Drawdown Date, or any date of Rollover or Conversion, as applicable, and its Maturity Date will be the Maturity Date of the corresponding Bankers' Acceptances. The amount of each BA Equivalent Loan will be equal to the Discount Proceeds of the corresponding Bankers' Acceptances calculated on the basis the Lenders purchased such Bankers' Acceptances. On the Maturity Date of a BA Equivalent Loan, the Borrower will pay to the Non-BA Lender an amount equal to the face amount of the Bankers' Acceptance which such Non-BA Lender would have accepted in lieu of making a BA Equivalent Loan if it were not a Non-BA Lender. All provisions of this Agreement with respect to Bankers' Acceptances will apply to BA Equivalent Loans provided that stamping fees with respect to a BA Equivalent Loan will be calculated on the basis of the

amount of such BA Equivalent Loan which the Borrower is required to pay on the Maturity Date.

#### **9.4 General Mechanics.**

- (a) Bankers' Acceptances. Unless such Lender makes a BA Equivalent Loan pursuant to the terms of Section 9.3, upon acceptance of a Bankers' Acceptance by a Lender, such Lender will purchase, or arrange for the purchase of, each Bankers' Acceptance from the Borrower at the BA Discount Rate applicable for such Lender for such Bankers' Acceptance accepted by it and provide to the Agent the Discount Proceeds for the account of the Borrower. The stamping fee payable by the Borrower to a Lender in respect of each Bankers' Acceptance by such Lender will be set off against the Discount Proceeds payable by such Lender under this Section 9.4.
- (b) Rollovers. In the case of a Rollover of maturing Bankers' Acceptances, each Lender, in order to satisfy the continuing liability of the Borrower to the Lender for the face amount of the maturing Bankers' Acceptances, will retain for its own account the Net Proceeds of each new Bankers' Acceptance issued by it in connection with such Rollover and the Borrower will, on the Maturity Date of the maturing Bankers' Acceptances, pay to the Agent for the benefit of the Lenders an amount equal to the difference between the face amount of the maturing Bankers' Acceptances and the aggregate Net Proceeds of the new Bankers' Acceptances.
- (c) Conversion to BA's. In the case of a Conversion from a Canadian Prime Rate Loan into an Accommodation by way of Bankers' Acceptances, each Lender, in order to satisfy the continuing liability of the Borrower to each Lender for the amount of the Canadian Prime Rate Loan being converted, will retain for its own account the Net Proceeds of each new Bankers' Acceptance issued by it in connection with such Conversion and the Borrower will, on the date of issuance of the Bankers' Acceptances pay to the Agent for the benefit of the Lenders an amount equal to the difference between the amount of the Canadian Prime Rate Loan being converted, owing to the Lenders and the Net Proceeds of such Bankers' Acceptances.
- (d) Conversion from BA's. In the case of a Conversion of an Accommodation by way of Bankers' Acceptances into a Canadian Prime Rate Loan, each Lender, in order to satisfy the liability of the Borrower to each Lender for the face amount of the maturing Bankers' Acceptances, will record the obligation of the Borrower to it as a Canadian Prime Rate Loan, unless the Borrower provides for payment to the Agent for the benefit of the Lenders of the face amount of the maturing Bankers' Acceptance in some other manner acceptable to the Lenders.
- (e) Rounding. In the case of an issue of Bankers' Acceptances, the Agent, in its sole discretion, will round allocations amongst the Lenders to ensure that each Bankers' Acceptance issued has a face amount which is a whole number multiple of Cdn. \$100,000 (and such rounded allocations shall constitute the Lenders' respective Rateable Portions for the purposes of this Agreement).

#### **9.5 Escrowed Funds.** Upon the request of the Agent after the occurrence and during the continuance of an Event of Default, the Borrower will forthwith pay to the Agent for

deposit into a non-interest bearing escrow account maintained by and in the name of the Agent for the benefit of the Lenders, an amount equal to the Lenders' maximum potential liability under then outstanding Bankers' Acceptances (the "**Escrow Funds**"). The Escrow Funds will be held by the Agent for set-off against future Obligations owing by the Borrower to the applicable Lenders in respect of such Bankers' Acceptances. If such Event of Default is either waived or cured in compliance with the terms of this Agreement, then the remaining Escrow Funds if any, will be released to the Borrower. The deposit of the Escrow Funds by a Borrower with the Agent as herein provided, will not operate as a repayment of the Aggregate Principal Amount until such time as the Escrow Funds are actually paid to the Lenders as a Principal Repayment.

**9.6 Market Disruption. If:**

- (a) the Agent (acting reasonably) 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
- (b) the Agent is advised by Lenders holding at least 25% of the Commitment Amount of all Lenders hereunder by written notice (each, a "**Lender BA Suspension Notice**") that such Lenders have determined with respect to their general banking practice concerning bankers' acceptances (acting reasonably and in good faith) that the BA 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:

- (c) the right of the Borrower to request Bankers' Acceptances or BA Equivalent Loans from any Lender shall be suspended until the Agent determines that the circumstances causing such suspension no longer exist, and so notifies the Borrower and the Lenders;
- (d) any outstanding Notice of Borrowing requesting an Advance by way of Bankers' Acceptances or BA Equivalent Loans shall be deemed to be a Notice of Borrowing requesting an Advance by way of Canadian Prime Rate Loans under the applicable Credit Facility in the amount specified in the original Notice of Borrowing;
- (e) any outstanding Notice of Conversion requesting a Conversion of an Advance by way of Bankers' Acceptances or BA Equivalent Loans shall be deemed to be a Notice of Conversion requesting a Conversion of such Advances into an Advance by way of Canadian Prime Rate Loans under the applicable Credit Facility; and
- (f) any outstanding Notice of Rollover requesting a Rollover of an Advance by way of Bankers' Acceptances or BA Equivalent Loans, shall be deemed to be a Notice of Conversion requesting a Conversion of such Advances into an Advance by way of Canadian Prime Rate Loans under the applicable Credit Facility.

The Agent shall promptly notify the Borrower and the Lenders of any suspension of the Borrower's right to request Advances by way of Bankers' Acceptances or BA Equivalent



Loans 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 2:00 p.m. (Toronto time) on a Banking Day and if not, then on the next following Banking Day, except in connection with an outstanding Notice of Drawdown, Notice of Conversion or Notice of Rollover, in which case the applicable Lender BA Suspension Notice shall only be effective with respect to such outstanding Notice of Drawdown, Notice of Conversion or Notice of Rollover if received by the Agent prior to 2:00 p.m. (Toronto time) two Banking Days prior to the proposed date of Advance, date of Conversion or date of Rollover (as applicable) applicable to such outstanding Notice of Drawdown, Notice of Conversion or Notice of Rollover, as applicable.

## **ARTICLE 10**

### **LETTERS OF CREDIT**

**10.1 Letters of Credit Commitment.** The Operating Facility Lender agrees, on the terms and conditions herein set forth, from time to time on any Banking Day, to issue Letters of Credit for the account of the Borrower; provided that at no time shall the Aggregate Principal Amount owing under the Operating Facility with respect to the face amount of outstanding Letters of Credit exceed collectively Cdn. \$[REDACTED] or the Canadian Dollar Exchange Equivalent thereof.

**10.2 Notice of Issuance.**

- (a) Notice. Each issuance of a Letter of Credit shall be made by way of a Notice of Borrowing provided in accordance with Section 5.2(c) by the Borrower to the Operating Facility Lender.
- (b) Other Documents. In addition, the Borrower shall execute and deliver to the Operating Facility Lender a customary form of letter of credit indemnity agreement; provided that, if there is any inconsistency between the terms of this Agreement and the terms of such customary form of indemnity agreement, the terms of this Agreement shall prevail.

**10.3 Form of Letter of Credit.** Each Letter of Credit to be issued hereunder shall:

- (a) be dated the date of issuance of the Letter of Credit;
- (b) have an expiration date on a Banking Day which occurs no more than 365 days after the date of such issuance (provided that Letters of Credit may have a term in excess of 365 days if the Operating Facility Lender shall agree);
- (c) have an expiration date prior to the Term Maturity Date of the Operating Facility Lender; and
- (d) comply with the definition of Letter of Credit and shall otherwise be satisfactory in form and substance to the Operating Facility Lender.

**10.4 Procedure for Issuance of Letters of Credit.**

- (a) Issue. On the date of issue, the Operating Facility Lender will complete and issue one or more Letters of Credit in favour of the beneficiary as specified by the

Borrower in its Notice of Borrowing.

- (b) Time for Honour. No Letter of Credit shall require payment against a conforming draft to be made thereunder on the same Banking Day upon which such draft is presented, if such presentation is made after 11:00 a.m. (Toronto time) on such Banking Day.
- (c) Text. Prior to the issue date, the Borrower shall specify a precise description of the documents and the verbatim text of any certificate to be presented by the beneficiary prior to payment under the Letter of Credit. The Operating Facility Lender may require changes in any such documents or certificate, acting reasonably.
- (d) Conformity. In determining whether to pay under a Letter of Credit, the Operating Facility Lender shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

**10.5 Payment of Amounts Drawn Under Letters of Credit.** If the Operating Facility Lender makes any payment pursuant to a Letter of Credit and the Borrower does not reimburse the Operating Facility Lender for any such payment on or before the next Banking Day from the proceeds of an Accommodation obtained under this Agreement or otherwise, the Operating Facility Lender shall, without receipt of a Notice of Borrowing and irrespective of whether any other applicable conditions precedent specified herein have been satisfied, make a Canadian Prime Rate Loan (or, where the Letter of Credit is denominated in a currency other than Canadian Dollars, in the Canadian Dollar Exchange Equivalent thereof on that day) to the Borrower under the Operating Facility in the amount of such required payment. The Borrower agrees to accept each such Canadian Prime Rate Loan, and hereby irrevocably authorizes and directs the Operating Lender to apply the proceeds thereof in payment of the liability of the Borrower with respect to such required payment.

## **10.6 Fees.**

- (a) Issue Fee. The Borrower shall, on the third Banking Day following the end of each Fiscal Quarter and on the Maturity Date of a Letter of Credit, pay in arrears to the Agent in relation to each such Letter of Credit for the account of the Operating Facility Lender a fee in respect of each Letter of Credit outstanding during any portion of such Fiscal Quarter equal to the issuance fee specified in Section 3.8(a), such fee to be payable in Canadian Dollars (or, where the Letter of Credit is denominated in a currency other than Canadian Dollars, in the Canadian Dollar Exchange Equivalent thereof on the immediately preceding Banking Day) and determined for a period equal to the number of days during such Fiscal Quarter that each such Letter of Credit was outstanding.
- (b) Administrative Fee. The Borrower shall pay to the Operating Facility Lender, upon the issuance of a Letter of Credit, amendment or transfer of each Letter of Credit, the Operating Facility Lender's standard documentary and administrative charges for issuing, amending or transferring standby or commercial letters of

credit or letters of guarantee of a similar amount, term and risk, such charges to be payable in Canadian Dollars (or, where the Letter of Credit is denominated in a

currency other than Canadian Dollars, in the Canadian Dollar Exchange Equivalent thereof on the immediately preceding Banking Day).

**10.7 Obligations Absolute.** The obligation of the Borrower to reimburse the Operating Facility Lender for drawings made under any Letter of Credit shall be unconditional and irrevocable and shall be fulfilled strictly in accordance with the terms of this Agreement under all circumstances, including:

- (a) any lack of validity or enforceability of any Letter of Credit;
- (b) the existence of any claim, set-off, defence or other right which the Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Operating Facility Lender, any Lender or any other Person, whether in connection with this Agreement, the Documents, the transactions contemplated herein and therein or any unrelated transaction (including any underlying transaction between the Borrower and the beneficiary of such Letter of Credit);
- (c) any draft, demand, certificate or 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;
- (d) payment by the Operating Facility Lender under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit (provided that such payment does not breach the standards of reasonable care specified in the Uniform Customs or disentitle the Operating Facility Lender to reimbursement under ISP98, in each case as stated on its face to be applicable to the respective Letter of Credit); or
- (e) the fact that a Default or an Event of Default shall have occurred and be continuing.

**10.8 Indemnification; Nature of Lenders' Duties.**

- (a) Indemnity. In addition to amounts payable as elsewhere provided in this Article 10, the Borrower hereby agrees to protect, indemnify, pay and save each Operating Facility Lender and their respective directors, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including legal fees and expenses) (a "**Loss**") which the indemnitee may incur or be subject to as a consequence, direct or indirect, of:
  - (i) the issuance of any Letter of Credit, other than as a result of the breach of the standards of reasonable care specified in the Uniform Customs or where the Operating Facility Lender would not be entitled to the foregoing indemnification under ISP98, in each case as stated on its face to be applicable to such Letter of Credit; or

- (ii) the failure of the indemnitee to honour a drawing under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* Governmental Authority, (all such acts or omissions called in this Section 10.8, "**Governmental Acts**");

provided that the above indemnity shall not apply to any Loss which arises from or relates to the gross negligence or willful misconduct of an indemnitee.

- (b) Risk. As between the Borrower, on the one hand, and the Operating Facility Lender, on the other hand, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued hereunder by, the respective beneficiaries of such Letters of Credit and, without limitation of the foregoing, the Operating Facility Lender shall not be responsible for:
  - (i) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged;
  - (ii) the invalidity or insufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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 fax, electronic transmission, mail, cable telegraph, telex 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 such Letter of Credit or of the proceeds thereof;
  - (vi) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; and
  - (vii) any consequences arising from causes beyond the control of any Lender, including any Governmental Acts.

None of the above shall affect, impair or prevent the vesting of any of the Operating Facility Lender's rights or powers hereunder. No action taken or omitted by the Operating Facility 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 put the Operating Facility Lender under any resulting liability to the Borrower (provided that the Operating Facility Lender acts in accordance with the standards of reasonable care specified in the Uniform Customs and otherwise as may be required under ISP98, in each case as stated on its face to be applicable to the respective Letter of Credit).

**10.9 Default, Maturity, etc.** Upon the earlier of the Maturity Date of the Letter of Credit and

the Agent declaring the Obligations to be due and payable pursuant to Section 15.2, and notwithstanding the expiration date of any outstanding Letters of Credit, an amount equal to the face amount of all outstanding Letters of Credit, and all accrued and unpaid fees owing by the Borrower in respect of the issuance of such Letters of Credit pursuant to Section 10.6, if any, shall thereupon forthwith become due and payable by the Borrower to the Agent for the benefit of the Operating Facility Lender and, except for any amount payable in respect of unpaid fees as aforesaid, such amount shall be held in a trust account kept by the Agent and applied against amounts payable under such Letters of Credit in respect of any drawing thereunder.

**10.10 Escrowed Funds.** If any Letter of Credit is outstanding on the Term Maturity Date, at any time that an Event of Default occurs, a demand for repayment is made hereunder, or a domestic or foreign court issues any judgment or order restricting or prohibiting payment by the Operating Facility Lender under such Letter of Credit or extending the liability of the Operating Facility Lender to make payment under such Letter of Credit beyond the expiry date specified therein, the Borrower will forthwith upon demand by the Agent or the Operating Facility Lender deposit into a cash collateral account maintained by and in the name of the Operating Facility Lender funds in the applicable currency in the amount of the Advance constituted by such Letter of Credit and such funds (together with interest thereon) will be held by the Agent for payment of the liability of the Borrower pursuant to this Article 10 or otherwise in respect of such Letter of Credit so long as the Operating Facility Lender has or may in any circumstance have any liability under such Letter of Credit, and, pending such payment, shall bear interest at the Operating Facility Lender's then prevailing rate in respect of deposits of similar amounts and of similar periods of time. Any balance of such funds and interest remaining at such time as the Operating Facility Lender does not have and may never have any liability under such Letter of Credit will nevertheless continue to be held by the Agent, if and so long as any Default or Event of Default is continuing or after a demand for repayment is made or both, as security for the remaining liabilities of the Borrower hereunder. The Agent shall have exclusive control over all amounts at any time on deposit in such cash collateral account. The deposit of such funds by the Borrower with an Operating Facility Lender as herein provided will not operate as a repayment of the Aggregate Principal Amount of the Operating Facility until such time as such funds are actually paid to the relevant Operating Facility Lender as a principal repayment.

**10.11 Records.** The Agent and the Operating Facility Lender shall maintain records showing the undrawn and unexpired amount of each Letter of Credit outstanding hereunder and each Operating Facility Lender's share of such amount and showing for each Letter of Credit issued hereunder:

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

The Agent and the Operating Facility Lender, shall make copies of such records available to the Borrower or any Operating Facility Lender upon its request.

**10.12 Notices with Respect to Letters of Credit.** Each Notice of Borrowing in respect of a

Letter of Credit shall be delivered in accordance with Section 5.2(c).

- 10.13 Existing Letters of Credit.** From and after the satisfaction of the conditions precedent in Section 2.1, the NBC LC shall be, and shall be deemed to be, a Letter of Credit issued hereunder for the account of the Borrower. For certainty, but without limiting the foregoing, the Borrower shall pay the fees and other amounts contemplated herein in respect of the NBC LC from and after the date such conditions precedent are satisfied.

## **ARTICLE 11 INCREASED COSTS**

### **11.1 Changes in Law.**

- (a) If, after the date hereof, due to either:
- (i) the introduction of, or any change in, or in the interpretation of any Law, whether having the force of law or not, resulting in the imposition or increase of reserves, deposits or similar requirements by any central bank or Governmental Authority charged with the administration thereof; or
  - (ii) the compliance with any guideline or request from any central bank or other Governmental Authority which a Lender, acting reasonably, determines that it is required to comply with,

there will be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining an Accommodation or there will be any reduction in the effective return to such Lender thereunder, then, subject to Section 11.1(b), the Borrower will, within 10 Banking Days after being notified by such Lender of such event, pay to such Lender, quarterly in arrears, that amount (the "Additional Compensation") which such Lender, acting reasonably, determines will compensate it, after taking into account all applicable Taxes and all interest and other amounts received, for any such increased costs or reduced returns incurred or suffered by such Lender.

- (b) If Additional Compensation is payable pursuant to Section 11.1(a), the Borrower will have the option to convert the Accommodation to another type of Accommodation, in accordance with this Agreement, in respect of which no further such Additional Compensation will be payable, or prepay any amount of the Credit Facility owed to the Lender entitled to receive the Additional Compensation, subject always to Section 8.2 without obligation to make a corresponding prepayment to any other Lender. If the Additional Compensation relates to outstanding Bankers' Acceptances, such Lender may require the Borrower to deposit in an interest bearing cash collateral account with such Lender such amount as may be necessary to fully satisfy the contingent obligations of such Lender for all outstanding Bankers' Acceptances in accordance with the arrangements similar to those set out in Section 9.5.

Notwithstanding anything herein to the contrary, (i) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all regulations, requests, requirements, 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 foreign 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 as clauses (a) and (b) above regardless of the date enacted, adopted or issued, in each case to the extent that such New Rules are applicable to a Lender claiming Additional Compensation.

**11.2 Changes in Circumstances.** Notwithstanding anything to the contrary herein or in any of the other Documents, if on any date a Lender determines, acting reasonably and in good faith, which determination will be conclusive and binding on the Parties, and provided notice is given to the Agent and the other Lenders and to the Borrower that its ability to maintain, or continue to offer any Accommodation has become unlawful or impossible due to:

- (a) any change in applicable Law, or in the interpretation or administration thereof by authorities having jurisdiction in the matter; or
- (b) any material adverse change in or the termination of the London Interbank Eurodollar Market for Eurodollars; or
- (c) the imposition of any condition, restriction or limitation upon such Lender which is outside of its control,

then in any such case, the Borrower will forthwith repay to such Lender all principal amounts affected thereby, together with all unpaid interest accrued thereon to the date of repayment and all other expenses incurred in connection with the termination of any such Accommodation, including any expenses resulting from the early termination of any LIBOR Period relating thereto in accordance with Section 8.2, without any obligation to make a corresponding prepayment to any other Lender. The Borrower may utilize other forms of Accommodations not so affected in order to make any required repayment and after any such repayment, the Borrower may elect to re-borrow the amount repaid by way of some other Accommodation upon complying with applicable requirements thereof.

**11.3 Application of Sections 11.1 and 11.2.** If a Lender exercises its discretion under either Section 11.1 or 11.2, then concurrently with a notice from such Lender to the Agent and the Borrower requiring compliance with the applicable Section, such Lender will provide the Borrower (with a copy to the Agent who will notify the other Lenders) with a certificate in reasonable detail outlining the particulars giving rise to such notice, confirming that its actions are consistent with actions concurrently taken by such Lender with respect to similar type provisions affecting other borrowers of such Lender in comparable circumstances and certifying (with reasonable supporting detail) the increased costs, if any, payable by the Borrower thereunder, which will be *prima facie* evidence thereof and binding on the Parties.

**11.4 Limitations on Additional Compensation.** Sections 11.1 and 11.2 will not apply to a Lender with respect to any event, circumstance or change of the nature and kind of which such Lender had actual knowledge on the Closing Date. A Lender will not be entitled to Additional Compensation to the extent such increase in costs or reduction in return is reflected in or recovered by an increase in the interest or other amounts payable hereunder (other than pursuant to Section 11.1) or relates to any period which is more

than 90 days prior to such Lender becoming aware such Additional Compensation was owing or if the Lender is not generally collecting amounts which are the equivalent to Additional Compensation from other borrowers in similar circumstances to the Borrower where it is contractually entitled to do so.

## **ARTICLE 12 FEES AND EXPENSES**

- 12.1 Agency Fee.** The Borrower will pay to the Agent, on an annual basis, the agency fee agreed upon between the Borrower and the Agent, the amount thereof to be kept confidential by the Borrower and the Agent.
- 12.2 Standby Fee.** The Borrower will, effective from and including the Closing Date to and excluding the Term Maturity Date applicable to each Lender, pay to the Agent for the benefit of the Production Facility Lenders and the Operating Facility Lender, as the case may be, a standby fee in Canadian Dollars from time to time equal to the Basis Points set forth in the Pricing Table, calculated on the basis of a 365 day calendar year, multiplied by (a) the Production Facility Commitment Amount of the Production Facility Lenders, less the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount of the Production Facility attributable to each Production Facility Lender, and (b) the Operating Facility Commitment Amount of the Operating Facility Lender, less the Canadian Dollar Exchange Equivalent of the Aggregate Principal Amount of the Operating Facility attributable to each Operating Facility Lender. The standby fees will be calculated daily and will be payable quarterly in arrears on the third Banking Day of each fiscal quarter for the previous fiscal quarter.
- 12.3 Extension Fee.** On April 30, 2013, the Borrower will pay to the Agent, for and on behalf of the Agreeing Lenders, an extension fee equal to [REDACTED] on the Commitment Amount applicable to such Agreeing Lenders.
- 12.4 Expenses.** The Borrower will pay or reimburse the Agent and the Lenders, as applicable, for all reasonable out-of-pocket expenses, including legal fees and disbursements (on a solicitor and his own client full indemnity basis) and enforcement costs, incurred by the Agent and the Lenders, as applicable, in connection with the creation, negotiation, preparation, execution, maintenance, syndication, publication, management, collection and amendment of the Documents and the Credit Facilities and the enforcement of their rights and remedies thereunder or relating thereto, as applicable.

## **ARTICLE 13 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

- 13.1 Representations and Warranties.** The Borrower hereby represents and warrants to the Agent and the Lenders that:
- (a) **Formation, Organization and Power.** Each Loan Party has been duly created, and is validly existing under the Laws of its jurisdiction of its creation, and is duly registered to carry on business in each jurisdiction in which the nature of any material business carried on by it or the character of any material property owned



or leased by it makes such registration necessary, except for jurisdictions where the failure to be so registered would not reasonably be expected to have a Material Adverse Effect, and the Borrower and each other Loan Party has full power and capacity to enter into and perform its obligations under the Documents to which it is a party, and to carry on its business as currently conducted by it.

- (b) Authorization and Status of Agreements. Each Document to which any Loan Party is a party delivered pursuant hereto has been duly authorized, executed and delivered by it and does not conflict with or contravene or constitute a default, under:
  - (i) its constating documents, by-laws, any resolution of the Directors or partners or any shareholders' or partnership agreement in respect thereof;
  - (ii) any agreement or document to which it is a party or by which any of its property is bound, the contravention of which would reasonably be expected to have a Material Adverse Effect; or
  - (iii) any applicable Law.
- (c) Enforceability. Each of the Documents constitutes a valid and binding obligation of each Loan Party that is a party thereto, and is enforceable against such Loan Party in accordance with the terms thereof, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or similar statutes affecting the enforcement of creditors' rights generally and by general principles of equity.
- (d) Litigation. There are no actions, suits or proceedings at Law or before or by any Governmental Authority existing or pending, or to the best of the Borrower's knowledge threatened, to which any Loan Party is, or to the Borrower's knowledge is threatened to be made, a party and the result of which would, if successful against it, reasonably be expected to have a Material Adverse Effect.
- (e) Environmental Law. Each Loan Party: (i) has obtained all permits, licenses and other authorizations which are required under Environmental Law; and (ii) is in compliance with Environmental Law and with the terms and conditions of all such permits, licenses and authorizations, except in each case to the extent that the failure to so obtain or comply would not reasonably be expected to have a Material Adverse Effect.
- (f) Environmental Condition of Property. The property or any part thereof owned, operated or controlled by each Loan Party, either directly or indirectly:
  - (i) is not, to the knowledge of the Borrower, the subject of any outstanding claim, charge or order from an Governmental Authority alleging violation of Environmental Law or, if subject to any such claim, charge or order, the applicable Loan Party is taking all such remedial, corrective or other

action required under the claim, charge or order or such claim, charge or order is being contested by a Permitted Contest; and

- (ii) complies in all respects with respect to each of its use and operation, with Environmental Law and with the terms and conditions of all permits, licenses and other authorizations which are required to be obtained under applicable Environmental Law;

except to the extent that any such claim, charge, order or non-compliance would not reasonably be expected to result in a claim, loss or other liability in excess of the Threshold Amount.

- (g) Title to Properties. Each Loan Party has good and valid title to its property, subject only to Permitted Encumbrances and to minor defects of title. Each Loan Party is entitled to charge or pledge its interests in its property in favour of the Agent and the Lenders as provided in this Agreement without the need to obtain any consent of or release from any other Person which has not been obtained and such property is not held in trust by any Loan Party for any Person other than a Loan Party.
- (h) Financial Condition – Audited Statements. (i) The most recent audited consolidated financial statements of each of Charger Energy Corp., Pace Oil & Gas Ltd. and AvenEx Energy Corp. heretofore or contemporaneously delivered to the Agent and the Lenders, and (ii) following the Amalgamation, the most recent audited consolidated financial statements of the Borrower delivered to the Agent and the Lenders, in each case, were prepared in accordance with GAAP and such financial statements present fairly in all material respects each such Person's consolidated financial position as at the date thereof. Since the date of such audited financial statements, there has been *no* occurrence of any event, circumstance, development or other changes in fact which would, in the aggregate reasonably be expected to have a Material Adverse Effect, other than as previously disclosed in accordance with Section 14.2(j) or disclosed in writing to the Agent and the Lenders.
- (i) Financial Condition- Pro-Forma Statements. The pro-forma combined financial statements of the Borrower heretofore or contemporaneously delivered to the Agent and the Lenders were prepared using reasonable assumptions for the creation thereof, and such financial statements present fairly in all material respects the Borrower's combined, pro-forma financial position as at the date thereof. Since the date of such financial statements, there has been no occurrence of any event, circumstance, development or other changes in fact which would, in the aggregate reasonably be expected to have a Material Adverse Effect, other than as previously disclosed in accordance with Section 14.2(j) or disclosed in writing to the Agent and the Lenders.
- (j) Information. As at the date hereof, all factual information heretofore or contemporaneously furnished by or on behalf of any Loan Party to the Agent or

the Lenders in connection with the Loan Parties or the Credit Facilities (and in the case of third parties, to the knowledge of the Borrower) was true and accurate in all material respects at the time given and the Borrower is not aware of any omission of any material fact which renders such factual information incomplete or misleading in any material way at the time given.

- (k) No Breach of Orders, Licences or Statutes. No Loan Party is in breach of:
  - (i) any order, approval or mandatory requirement or directive of any Governmental Authority;
  - (ii) any governmental licence or permit; or
  - (iii) any applicable Law,

the breach of which would reasonably be expected to have a Material Adverse Effect.
- (l) Pension. No Loan Party is party to or bound by any Pension Plan.
- (m) No Default. No Default or Event of Default has occurred and is continuing.
- (n) Insurance. Each Loan Party has in full force and effect such policies of insurance in such amounts issued by such insurers of recognized standing covering the property of the Loan Parties as required by Section 14.1(I).
- (o) Approvals. All regulatory and other approvals, consents, permits and licenses necessary for each Loan Party to carry on its business, as currently carried on, and all approvals, consents, permits and licenses necessary for each Loan Party to enter into the Documents to which it is a party and perform its obligations thereunder have, in each case, been obtained and are in good standing except to the extent that the failure to so obtain or maintain in good standing would not reasonably be expected to have a Material Adverse Effect.
- (p) Payment of Taxes. Each Loan Party has filed all tax returns which are required to be filed and have paid all material Taxes (including interest and penalties) which are due and payable, unless such payment is subject to a Permitted Contest.
- (q) Remittances. All of the material remittances required to be made by each Loan Party to the applicable federal, provincial or municipal governments have been made, are currently up to date and there are no outstanding arrears.
- (r) Subsidiaries. As at the date hereof, the Borrower has no Subsidiaries other than as set out in Schedule G and the jurisdictions of formation, the location of their respective businesses and assets, the trade names of each, if any, used in such locations as set forth in Schedule G. As at the date hereof, the legal and beneficial owners of the issued and outstanding Voting Securities of each Loan Party and its Subsidiaries are as set out in Schedule G.

- (s) Liens. No Loan Party has any Liens on its property, other than Permitted Encumbrances, nor will the entering into and performance by any Loan Party of the Documents create a Lien, other than a Permitted Encumbrance, under:
  - (i) its constating documents, by-laws, any resolution of the directors or partners or any shareholders' or partnership agreement in respect thereof;
  - (ii) any agreement or document to which it is a party or by which any of its property is bound; or
  - (iii) any applicable Law.
- (t) Indebtedness. No Loan Party has created, incurred, assumed, suffered to exist, or entered into any contract, instrument or undertaking pursuant to which, any Loan Party is now or may hereafter become liable for any Indebtedness other than Permitted Indebtedness.
- (u) No Material Adverse Effect. No event or circumstance has occurred and is continuing which has had or would reasonably be expected to have a Material Adverse Effect.
- (v) Operation of Business and Properties. All property owned or operated by the Loan Parties 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 Laws, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**13.2 Acknowledgement.** The Borrower acknowledges that the Agent and the Lenders are relying upon the representations and warranties in this Article 13 in making the Credit Facilities available to the Borrower and that the representations and warranties contained in Section 13.1, except for any representation and warranty made solely at the date hereof, will be deemed to be restated in every respect effective on the date each and every Advance is made except for Advances which are Rollovers or Conversions in which case only Section 13.1(m) will be deemed to be restated.

**13.3 Survival and Inclusion.** The representations and warranties in this Article 13 shall survive until this Agreement has been terminated. All statements, representations and warranties contained in any Compliance Certificate and in the other Documents or in any instruments delivered by or on behalf of any Loan Party pursuant to this Agreement or the other Documents shall constitute statements, representations and warranties made by the Borrower to the Agent and the Lenders under this Agreement.

## ARTICLE 14

### COVENANTS OF THE BORROWER

**14.1 Affirmative Covenants.** While any Obligations under any Credit Facility are outstanding or any Accommodation under either Credit Facility remains available:

- (a) Punctual Payment. The Borrower will pay or cause to be paid all Obligations and other amounts payable under the Documents punctually when due.

- (b) Use of Credit Facility. The Borrower will use the Credit Facilities only in accordance with Section 3.6.
- (c) Legal Existence. Except as permitted by Section 14.3(d), the Borrower will do or will cause to be done all things necessary to preserve and keep in full force and effect each Loan Party's existence in good standing under the Laws of its jurisdiction of creation.
- (d) Status. The Borrower will maintain its status as an issuer in good standing with all applicable Governmental Authorities to permit it at all times to remain listed on a recognized North American stock exchange and will remain so listed.
- (e) Wholly-Owned Status. Each Loan Party, other than the Borrower, will be a direct or indirect wholly-owned Subsidiary of the Borrower and to the extent any such Loan Party is indirectly owned, all such ownership interests will be held by Loan Parties.
- (f) Material Adverse Claims. The Borrower will, and will cause each other Loan Party to, except for Permitted Encumbrances, do all things necessary to defend, protect and maintain its property and the Security (and the priority thereof) from all material adverse claims where the failure to do so in the opinion of the Lenders, acting reasonably, threatens the intended priority or validity of the Security as herein provided, or would reasonably be expected to have a Material Adverse Effect.
- (g) Maintain Title to Properties. The Borrower will, and will cause each other Loan Party to, maintain good and valid title to its property, subject only to Permitted Encumbrances and to minor defects of title which in the aggregate do not affect their rights of ownership therein or the value thereof in any material way.
- (h) Operation of Properties. The Borrower will, and will cause each other Loan Party to, maintain and operate its respective property in accordance with sound industry practice and in accordance with applicable Law, except to the extent that the failure to comply with such Law would not reasonably be expected to have a Material Adverse Effect.
- (i) Performance of Agreements. The Borrower will, and will cause each other Loan Party to, perform its obligations under the Documents and all other material agreements relating to its properties, including payment of rentals, royalties, Taxes or other charges in respect thereof which are necessary to maintain all such agreements in good standing, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect and provided that this covenant will not restrict any right to surrender leases or terminate agreements which are uneconomic to maintain.
- (j) Comply with Law and Maintain Permits. The Borrower will, and will cause each other Loan Party to, comply with applicable Laws and obtain and maintain all permits, licenses, consents and approvals necessary to the ownership of their material property and to the conduct of their business in each jurisdiction where it

carries on material business or owns material property, including those issued or granted by Governmental Authorities, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect. The Borrower will also, and will cause each other Loan Party to, comply with applicable Environmental Laws and obtain and maintain all permits, licenses, consents and approvals necessary to the ownership of their material property and to the conduct of their business in each jurisdiction where it carries on material business or owns material property, including those issued or granted by Governmental Authorities, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

- (k) Compliance With P&NG Leases. The Borrower shall, and shall cause its Subsidiaries to, comply in all respects with the P&NG Leases relating to P&NG Rights, except to the extent the failure to do so would not have or would not reasonably be expected to have a Material Adverse Effect.
- (l) Insurance. The Borrower will, and will cause each other Loan Party to, maintain adequate insurance in respect of its material property, including all plant and equipment, as is customary in the case of businesses of established reputation engaged in the same or similar businesses and to the extent available on commercially reasonable terms, with reputable insurance companies and will provide the Agent with copies of all insurance policies or certificates relating thereto if so requested.
- (m) Subsidiary Guarantees and Security. Within 15 Banking Days of creating or acquiring any Subsidiary, the Borrower will cause such Subsidiary to provide a guarantee and the other Security listed in Section 4.1, in form and substance acceptable to the Agent, acting reasonably, together with such other supporting documentation and legal opinions as the Agent may reasonably require. The Borrower will notify the Agent upon the creation or acquisition of any new Subsidiary promptly upon the creation or acquisition thereof. The Borrower will notify the Agent of the creation of any Subsidiary and the ownership thereof no later than 30 days after any such creation or change, as applicable; provided that this notice period will extend to the next applicable quarterly reporting period under Section 14.2(b) for the creation of any new Subsidiaries provided that any such new Subsidiary has no tangible assets or other assets having a value in excess of \$750,000. Notwithstanding the foregoing, any Subsidiary that (i) is not wholly-owned by the Borrower, (ii) does not directly or indirectly own any assets included in the calculation of the Borrowing Base, and (iii) for which the Majority Lenders have consented to its exclusion (which consent may include "ring fence" covenants), will not be required to provide a guarantee or security.
- (n) Inspection of Property; Books and Records; Discussions. The Borrower will, and will cause each other Loan Party to, maintain books and records of account in accordance with GAAP and applicable Law; and permit representatives of the Agent at the Agent's expense no more than once a year while no Default or Event of Default exists and at any time at the Borrower's expense while a Default or Event of Default exists to visit and inspect any property of any of the Borrower or any Subsidiary thereof and to examine and make abstracts from any books and

records of the Borrower or any Subsidiary thereof at any reasonable time during normal business hours and upon reasonable request and notice, and subject to compliance with the Borrower's health and safety requirements, and to discuss the business, property, condition (financial or otherwise) and prospects of the Borrower or any other Loan Party with their senior officers and (in the presence of such representatives, if any, as it may designate) with its independent chartered accountants.

- (o) Payment of Royalties, Taxes, Withholdings, etc. The Borrower shall, and shall cause each other Loan Party to, from time to time pay or cause to be paid all royalties, rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, and to make and remit all withholdings, lawfully levied, assessed or imposed upon any Loan Party or any of the assets of any Loan Party, as and when the same become due and payable, except when and so long as the validity of any such royalties, rents, Taxes, rates, levies, assessments, fees, dues or withholdings is being contested by such Loan Party by a Permitted Contest, and to duly file on a timely basis all tax returns required to be filed.
- (p) Remittances. The Borrower will, and will cause each other Loan Party to, make all of the material remittances required to be made by each Loan Party to the applicable federal, provincial or municipal governments and keep such remittances up to date, except to the extent such remittances are being contested by a Permitted Contest.
- (q) Protection of Security. The Borrower will, and will cause each other Loan Party that provides Security to the extent required hereunder to, do all things reasonably requested by the Agent to protect and maintain the Security and the priority thereof in relation to other Persons.
- (r) Environmental Audit. If the Agent, acting reasonably, determines that a Material Adverse Effect has occurred or if at any time an Event of Default has occurred and is continuing then, at the request of the Agent, acting reasonably, the Borrower will, and will cause each other Loan Party and their Subsidiaries to, assist the Agent in conducting an environmental audit of the property, by an independent consultant selected by the Agent. The reasonable costs of such audit will be for the account of the Borrower. Should the result of such audit indicate that any Loan Party is in breach, or with the passage of time will be in breach, of any Environmental Law and such breach or potential breach has or could reasonably be expected to have, in the opinion of the Lenders, acting reasonably, a Material Adverse Effect, and without in any way prejudicing or suspending any

of the rights and remedies of the Agent and the Lenders under the Documents, the Borrower will forthwith commence and diligently proceed to rectify or cause to be rectified such breach or potential breach, as the case may be, and will keep the Lenders fully advised of the actions it intends to take and has taken to rectify such breach or potential breach and the progress it is making in rectifying same. The Agent will be permitted to retain, for the account of the Borrower (to the extent such account is reasonable), the services of a consultant to monitor the applicable Loan Party's compliance with this Section 14.1(r).

- (s) Payment of Preferred Claims. The Borrower shall, and shall cause each other Loan Party to, from time to time pay when due or cause to be paid when due all amounts related to wages, workers' compensation obligations, pension fund obligations and any other amount which would or would reasonably be expected to result in a lien, charge, security interest or similar encumbrance against the assets of the Borrower or such other Loan Party arising under statute or regulation, except when and so long as the validity of any such amounts or other obligations is being contested by the Borrower or any other Loan Party by a Permitted Contest.
- (t) Property Loss Event. If any Loan Party suffers a Property Loss Event with respect to any property of any Loan Party, which results in the receipt of property insurance proceeds in excess of the Threshold Amount (the "Loss **Amounts**"), the Borrower shall reinvest such amounts in new or replacement capital assets within 365 days of such Property Loss Event or, to the extent the Loss Amounts are not reinvested, repay the Production Facility on a non-permanent basis. Such Property Loss Event will be deemed to be a Material Disposition under this Agreement if the Loss Amounts (a) are not reinvested, and (b) are in excess of \$50,000,000. If the Production Facility is fully repaid after a Property Loss Event, the requirement to repay in this Section 14.1(t) shall be deemed to be satisfied in respect of such Property Loss Event.

## **14.2 Reporting Covenants.**

- (a) Financial Statements. The Borrower will furnish to the Agent (in sufficient copies for each of the Lenders) a copy of: (i) the Borrower's quarterly unaudited consolidated financial statements on or prior to 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year; and (ii) the Borrower's annual audited consolidated financial statements on or prior to 90 days after the end of each Fiscal Year provided that the requirement to deliver the foregoing may be satisfied by posting such information on [www.sedar.com](http://www.sedar.com) or on an intralinks website to which the Agent and the Lenders have access, as applicable, and, if not posted on [www.sedar.com](http://www.sedar.com), forthwith advising the Agent that such periodic reports and filings have been so posted and the details of the website on which the same have been posted.
- (b) Quarterly Compliance Certificate. Within: (i) the time period set forth in Section 14.2(a)(i) for each of the first three Fiscal Quarters of each Fiscal Year;



and (ii) 90 days after the end of each Fiscal Year, the Borrower will furnish to the Agent (in sufficient copies for each of the Lenders) a Compliance Certificate.

- (c) Projections, Forecasts and Budgets. As soon as available and in any event not later than 90 days after the end of each Fiscal Year, a copy of forecasts prepared by management of the Borrower in respect of its business operations on a consolidated basis and a statement of all of the material assumptions on which such forecasts are based, including annual cash flow projections, operating budgets and capital expenditure budgets.
- (d) Financial Instruments. Unless detailed in the financial statements furnished pursuant to Section 14.2(a), concurrently with furnishing such financial statements, a report on the status of all outstanding Financial Instruments, such report to be in a form and containing such information as may be required by the Lenders, acting reasonably, which shall in any event, (A) detail all hedging activity occurring during such Fiscal Quarter or Fiscal Year, as applicable, and (B) detail the position and market value of all Financial Instruments in effect as at the end of such Fiscal Quarter or Fiscal Year, as applicable.
- (e) Notice of Default, Event of Default or Material Adverse Effect. The Borrower will notify the Agent of the occurrence of any Default or Event of Default or any other event which would reasonably be expected to result in a Material Adverse Effect as soon as reasonably possible upon the Borrower becoming aware thereof and specify in such notice the nature of the event and the steps taken or proposed to be taken to remedy or eliminate the same.
- (f) Notice of Legal Proceedings. The Borrower will, as soon as reasonably possible upon the Borrower becoming aware thereof, notify the Agent of the commencement of any legal or administrative proceedings or any insurance claims against any Loan Party which, if adversely determined against such Loan Party, would reasonably be expected to create an obligation or liability in excess of the Threshold Amount.
- (g) Notice of Change of Control. The Borrower will, as soon as reasonably possible upon acquiring actual knowledge thereof, notify the Agent of any Change of Control or potential Change of Control.
- (h) Notice of Environmental Damage. The Borrower will, as soon as reasonably possible upon acquiring actual knowledge thereof, notify the Agent of the discovery of any Contaminant or of any Release of a Contaminant into the Environment from or upon the land or property owned (either individually or jointly), operated or controlled by any Loan Party which would reasonably be expected to create an obligation or liability in excess of the Threshold Amount.
- (i) Notice of Intended Dispositions of Borrowing Base Properties. The Borrower shall provide prior written notice to the Agent of any intended sale, transfer, assignment or other disposition (or series of related dispositions) by the Borrower

or any other Loan Party of (i) P&NG Rights included by the Lenders in the most recent determination of the Borrowing Base or (ii) any of the assets for which the Independent Engineer has assigned proved, producing reserves (including the disposition of a Loan Party holding such P&NG Rights) if the proceeds of any such disposition or series of dispositions exceeds the Threshold Amount in any Fiscal Year, such notice to be provided by the Borrower to the Agent not less than 10 Banking Days prior to the closing of any such disposition or series of dispositions.

- (j) Notices and Filings. The Borrower will, on a timely basis, furnish to the Agent (in sufficient copies for each of the Lenders) all prospectuses, material change reports (except those filed on a confidential basis, but only for so long as such confidentiality remains in effect) and material press releases filed by any Loan Party with securities commissions having jurisdiction and other documents distributed by the Borrower to its shareholders provided that the requirement to deliver the foregoing periodic reports and filings may be satisfied by posting such information on www.sedar.com or on an intralinks website to which the Agent and the Lenders have access, as applicable, and, if not posted on www.sedar.com, forthwith advising the Agent that such periodic reports and filings have been so posted and the details of the website on which the same have been posted.
- (k) Dividend and Hedging Policies. The Borrower will furnish to the Agent, the Borrower's dividend and hedging policies and any material changes thereto, in each case promptly after the approval thereof by the Borrower's board of directors.
- (l) Annual Independent Engineering Report. On or prior to March 31 of each year, an Engineering Report, effective as of December 31 of the immediately preceding year, prepared by the Independent Engineer.
- (m) Semi Annual Engineering Update. On or prior to September 30 of each year, a written update to the engineering and reserves information provided in the Engineering Report previously delivered pursuant to Section 14.2(1), effective as of June 30 of such year, or such other date as the Borrower and the Majority Lenders may agree on, prepared by the internal engineering staff of the Borrower; such update to include such updated reserve information and other information and otherwise to be in form and substance as may be required by the Agent and the Lenders, each acting reasonably.
- (n) Other Information. The Borrower will provide to the Agent such other documentation and information concerning its business operations as may be requested by the Agent or any Lender (through the Agent), acting reasonably.

**14.3 Negative Covenants.** While any Obligations under either Credit Facility are outstanding or any Accommodation under either Credit Facility remains available:

- (a) Negative Pledge. The Borrower shall not, nor shall it permit any other Loan Party to, create, issue, incur, assume or permit to exist any Liens on any of its property, undertakings or assets other than Permitted Encumbrances.
- (b) Limitation on Distributions. The Borrower will not, and will not permit any other Loan Party to, make any Distribution if a Default, Event of Default or Material Adverse Effect exists at such time or would reasonably be expected to result therefrom, as applicable.
- (c) Limitation on Financial Instruments. The Borrower will not, and will not permit any other Loan Party to, enter into or maintain any hedging contract, forward contract, swap agreement, futures contract, or other foreign exchange protection agreement or option with respect to any such transaction, in each case designed to hedge against fluctuations in foreign exchange rates, any contract for a rate swap, rate cap, rate floor, rate collar, forward rate agreement, futures or other rate protection agreement or option with respect to any such transaction, designed to hedge against fluctuations in interest rates, any contract for a commodity swap or other production agreement or option designed to protect against fluctuations in commodity prices (which, for greater certainty, includes both physically and financially settled hedges) (each, a "**Commodity Swap**") and any other derivative agreement or other similar agreement or arrangements (collectively, the "**Financial Instruments**"), unless such Financial Instrument:
  - (i) is entered into solely for hedging purposes and not for speculative purposes;
  - (ii) is entered into only in the ordinary course of business;
  - (iii) is entered into in accordance with the then current hedging policies approved by the board of directors of the Borrower; and
  - (iv) is, in the case of Commodity Swaps, for a term not to exceed 4 years, and the aggregate amounts hedged under all Commodity Swaps at the time any Commodity Swap is entered into and after giving effect thereto (a) cannot exceed seventy percent (70%) of the Combined Forecasted Average Daily Production (net of royalties) on a twenty-four (24) months forward basis, and (b) cannot exceed fifty percent (50%) of the Combined Forecasted Average Daily Production (net of royalties) on a thirty-six (36) or forty-eight (48) months forward basis, as adjusted for acquisitions and divestitures in a manner satisfactory to the Agent, acting reasonably.
- (d) Mergers, Amalgamation and Consolidations. The Borrower will not, and will not permit any other Loan Party to merge, amalgamate or consolidate with another Person other than a Loan Party.
- (e) No Dissolution. Subject to Section 14.3(d), the Borrower shall not, nor shall it permit any other Loan Party to, liquidate, dissolve or wind up or take any steps or

proceedings in connection therewith except, in the case of a Loan Party, where the successor thereto or transferee thereof is the Borrower or another Loan Party.

- (f) Limitation on Indebtedness. The Borrower shall not have or incur, or permit any other Loan Party to have or incur, any Indebtedness other than Permitted Indebtedness.
- (g) Asset Dispositions. Other than Permitted Dispositions, the Borrower will not, and will not permit any other Loan Party to, directly or indirectly, make any sale, exchange, lease, transfer or other disposition of any of its assets or properties (including the sale of the Voting Securities or other equity interests in a Loan Party) to any Person if the cumulative proceeds of all dispositions to be received by the Borrower and each other Loan Party in a period falling between annual Borrowing Base redeterminations hereunder exceeds the Permitted Disposition Limit or would otherwise reasonably be expected to have a Material Adverse Effect, without the prior consent of the Majority Lenders. Notwithstanding the foregoing, during the continuance of a Default or Event of Default, the Loan Parties will not make any Permitted Dispositions except for those described in paragraphs (a) and (c) in the definition thereof set forth in Schedule A.
- (h) Change in Business, Name, Location or Fiscal Year. The Borrower will not, and will not permit any other Loan Party to: (i) materially change the nature of their business or operations from the business of exploration, development and production of oil and gas (and activities related or ancillary to any of the foregoing), provided that for the purposes of the foregoing, "materially change" means any change in business whereby less than 90% of the Consolidated EBITDA of the Borrower is derived by the business described in this paragraph (h)(i); or (ii) change its name, trade name or locations of business from those set forth in Schedule G without giving the Agent no less than 15 days prior notice thereof. The Borrower will notify the Agent of any change of the Fiscal Year end of any Loan Party no later than 30 days after any such change.
- (i) Capital Contributions/Financial Assistance. The Borrower will not, and will not permit any Loan Party to, make any contributions of capital or any other forms of equity investment in any Person (other than another Loan Party) or provide any Financial Assistance to any Person (other than another Loan Party) in excess of Cdn. \$15,000,000 (or the Canadian Dollar Exchange Equivalent in United States Dollars or the equivalent thereof in any other currency) in the aggregate in any 12 calendar month period.
- (j) Transactions with Affiliates. The Borrower will not, and will not permit any other Loan Party to, except as otherwise specifically permitted hereunder, enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders which own more than 10% of the outstanding shares of the Borrower or with any of its Affiliates, or with any of its or their Directors or officers, or enter into, assume or suffer to exist any employment, consulting or analogous agreement or arrangement with any

such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is upon fair and reasonable terms not materially less favourable to the applicable Loan Party than it would obtain in a comparable arms-length transaction; provided that such restriction will not apply to any transaction between the Loan Parties.

- (k) Changes to Constatng Documents. The Borrower will not, and will not permit any other Loan Party to, amend the terms of its constating documents or its by-laws, any applicable partnership agreement or any similar document or instrument if, in each case, to do so would reasonably be expected to materially and adversely effect the rights of the Agent and the Lenders under the Documents.

## ARTICLE 15 EVENTS OF DEFAULT

**15.1 Event of Default.** Each of the following events will constitute an Event of Default:

- (a) Failure to Pay. If:
  - (i) the Borrower makes default in the due and punctual payment of any principal amount owing under the Documents, as and when the same becomes due and payable, whether at maturity or otherwise; or
  - (ii) the Borrower makes default in the due and punctual payment of interest or fees owing under the Documents, as and when the same become due and payable, whether at maturity or otherwise and such default continues for a period of 3 Banking Days after written notice thereof is given to the Borrower by the Agent.
- (b) Incorrect Representations. If (i) any representation or warranty made by any Loan Party in any Document or deemed to have been repeated as herein provided; (ii) any certification or information provided in accordance with Section 14.2 proves to have been incorrect when so made (or in the case of third parties, to the knowledge of the Borrower was incorrect when so made), or (iii) the Borrower was aware of any omission of any material fact which rendered such factual information incomplete or misleading in any material way at the time given; and in each case, the underlying facts, if capable of being remedied such that the representation or warranty if made at such time would be correct, are not so remedied within 30 days after notice of such incorrectness is given to the Borrower or the Borrower otherwise becomes aware thereof, whichever is earlier (but only if and for so long as the remedying thereof was and continues to be diligently and in good faith pursued and no Material Adverse Effect has occurred or is imminent as a result of such facts).
- (c) Breach of Certain Covenants. The Borrower fails to observe or perform any covenant in Sections 14.1(d) or 14.3(b).
- (d) Breach of Covenants. Except for an Event of Default set out in Section 15.1(a),

15.1(c) or elsewhere in this Section 15.1, if a Loan Party defaults in the performance or observance of any covenant, obligation or condition to be observed or performed by it pursuant to any of the Documents, and such default continues for a period of 30 days after notice thereof is given to the Borrower by the Agent or the Borrower otherwise becomes aware thereof, whichever is earlier (but only if and for so long as the remedying thereof was and continues to be diligently and in good faith pursued and no Material Adverse Effect has occurred or is imminent as a result of such facts).

- (e) Insolvency. If a judgment, decree or order of a court of competent jurisdiction is entered against a Loan Party: (i) adjudging any of them bankrupt or insolvent, or approving a petition seeking its reorganization or winding-up under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous Law; or (ii) appointing a receiver, trustee, liquidator, or other Person with like powers, over all, or substantially all, of the property of any of them; or (iii) ordering the involuntary winding up or liquidation of the affairs of any of them; or (iv) appointing any receiver or other Person with like powers over all, or substantially all, of the property of any of them, unless, in any such case, such judgment, petition, order or appointment is stayed and of no effect against the rights of the Lenders within 30 days of its entry.
- (f) Winding-Up. If: (i) an order or a resolution is passed for the dissolution, winding-up, reorganization or liquidation of a Loan Party, pursuant to applicable Law, including the *Business Corporations Act* (Alberta) (except as permitted by Section 14.3(d)); or (ii) any of them institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous Law; or (iii) any of them consents to the filing of any petition under any such Law or to the appointment of a receiver, or other Person with like powers, over all, or substantially all, of any of their property; or (iv) any of them makes a general assignment for the benefit of creditors, or becomes unable to pay its debts generally as they become due; or (v) any of them takes or consents to any action in furtherance of any of the aforesaid purposes.
- (g) Other Debt. A Loan Party (i) fails to make any payment of principal, interest or other amount in regard to any Indebtedness (other than Indebtedness pursuant to a Swap Document with a Lender), which for the purpose of this Section 15.1(g) includes obligations and liabilities under any Financial Instrument that is not a Swap Document, whatsoever owed by it after the expiry of any applicable grace period in respect thereof, to any Person other than the Agent or any Lender under the Documents, or (ii) defaults in the observance or performance of any non-monetary obligation, covenant or condition to be observed or performed by it pursuant to any agreement to which it is a party or by which any of its property is bound such that the counterparty thereto is permitted to accelerate the maturity of

the Indebtedness thereunder, in each case, where the outstanding principal amount of such Indebtedness exceeds the Threshold Amount.

- (h) Adverse Proceedings. The occurrence of any action, suit or proceeding against or affecting a Loan Party before any court or before any Governmental Authority which, if successful, would reasonably be expected to have a Material Adverse Effect, unless the action, suit, or proceedings is being contested diligently and in good faith and, in circumstances where a lower court or tribunal has rendered a decision adverse to it, any of them is appealing such decision, and has provided a reserve in respect thereof in accordance with GAAP.
- (i) Material Lien. The property of a Loan Party having a fair market value in excess of the Threshold Amount, in the aggregate, shall be seized (including by way of execution, attachment, garnishment or distraint) or any Lien thereon shall be enforced, or such property shall become subject to any charging order or equitable execution of a court, or any writ of enforcement, writ of execution or distress warrant with respect to obligations in excess of the Threshold Amount, in the aggregate, shall exist in respect of any one or more of any of them, or such property, or any sheriff, civil enforcement agent or other Person shall become lawfully entitled to seize or distrain upon such property under the *Civil Enforcement Act* (Alberta), the *Workers' Compensation Act* (Alberta), the *Personal Property Security Act* (Alberta) or any other applicable Laws whereunder similar remedies are provided, and in any case such seizure, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, shall continue in effect and not be released or discharged for more than 30 days.
- (j) Judgment. A judgment is obtained against any Loan Party for an amount in excess of the Threshold Amount, in the aggregate, which remains unsatisfied and undischarged for a period of 30 days during which such judgment shall not be on appeal or execution thereof shall not be effectively stayed.
- (k) Swap Documents. The occurrence of an event of default or other termination event under any Swap Document with respect to obligations in excess of the Threshold Amount, or any Loan Party fails to make any payment as required following a demand, an event of default or other termination event, in each case which continues for 3 Banking Days after the expiry of any applicable grace period thereunder and notice of such occurrence is given to the Borrower and to the Agent.
- (l) Cessation of Business. Except as permitted by Section 14.3(d), a Loan Party ceases or proposes to cease carrying on business, or a substantial part thereof, or makes or threatens to make a bulk sale of its property.
- (m) Enforceability of Documents. Any material provision of any Document shall at any time cease to be in full force and effect, be declared to be void or voidable or shall be repudiated, or the validity or enforceability thereof shall at any time be

contested by any Loan Party or if any Lien constituted pursuant to the Security ceases to have the priority contemplated in the Documents and in each case (other than any contest by any Loan Party) the same is not as soon as practicable effectively rectified or replaced by the Borrower.

- (n) Qualified Auditor Report. The audited financial statements that are required to be delivered to the Agent pursuant to Section 14.2(a) contain a qualification that is not acceptable to the Majority Lenders, acting reasonably, and, if unacceptable, such qualification is not rectified or otherwise dealt with to the satisfaction of the Majority Lenders within a period of 30 days after delivery of such financial statements.
- (o) Change of Control. A Change of Control occurs and is not consented to by the Majority Lenders.
- (p) Lender Financial Instruments. A Financial Instrument Demand for Payment has been delivered to the Borrower or any other Loan Party and such Person fails to make payment thereunder within 3 Banking Days.
- (q) Loss and Priority of Security. Except for Permitted Encumbrances, any of the Security shall cease to be a valid first priority security interest against the property, assets and undertaking of the Borrower or any other Loan Party as against third parties (and the same is not forthwith effectively rectified or replaced by the Borrower).
- (r) Invalidity. Any of this Agreement, any Security, or any other Loan Document or any material provision of any of the foregoing shall at any time for any reason cease to be in full force and effect, be declared to be void or voidable (and the same is not forthwith effectively rectified or replaced by the Borrower) or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by the Borrower or any other Loan Party or the Borrower or any other Loan Party shall deny that it has any or any further liability or obligation thereunder, or at any time it shall be unlawful or impossible for them to perform any of their respective Obligations.

**15.2 Remedies.** Upon the occurrence of an Event of Default which has not been waived, the Agent (on the direction of the Majority Lenders, or in the case of an Event of Default under Sections 15.1(e) and 15.1(f), automatically), shall forthwith terminate any further obligation to make Advances and declare all Obligations owing under the Credit Facilities together with unpaid accrued interest thereon and any other amounts owing under the Documents, contingent or otherwise, to be immediately due and payable, whereupon the Borrower will be obligated without any further grace period to forthwith pay such amounts and the Agent and the Lenders may exercise any and all rights, remedies, powers and privileges afforded by applicable Law or under any and all other instruments, documents and agreements made to assure payment and performance of the obligations of the Loan Parties under the Documents.



- 15.3 Waivers.** An Event of Default which relates to a breach of a provision of this Agreement which may only be waived by all Lenders may only be waived in writing by all of the Lenders.
- 15.4 Attorney in Fact.** The Borrower hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or in its own name, from time to time in the Agent's discretion, for the purpose of carrying out the terms of the Documents, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Documents and which the Borrower being required to take or execute has failed to take or execute; provided that this power of attorney will not be effective until the occurrence and during the continuance of any Event of Default. The Borrower hereby ratifies all that said attorneys will lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and will be irrevocable until all of the Obligations under the Documents have been unconditionally and irrevocably paid and performed in full. The Borrower also authorizes the Agent, at any time and from time to time, to execute any endorsements, assignments or other instruments of conveyance or transfer pursuant to the Security. If requested by the Agent, the Borrower will cause each other Loan Party to constitute and appoint the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact in accordance with the foregoing provisions of this Section 15.4.
- 15.5 Set-off.** The Borrower agrees that, upon the occurrence of an Event of Default, in addition to and without limitation of any right of set-off, bankers' lien, counterclaim or other right or remedy that the Agent and the Lenders may otherwise have, the Agent and each Lender will be entitled, at its option, to offset any and all balances and deposits held by it for the account of the Borrower at any of its offices or branches, in any currency, against any and all amounts owed by the Borrower to the Agent or such Lender hereunder (regardless of whether any such balances are then due or payable to the Borrower), including all claims of any nature or description arising out of or connected with this Agreement, including contingent obligations of the Lenders in respect of unmatured Bankers' Acceptances, in which case the Agent or such Lender will promptly notify the Borrower thereof after the occurrence thereof; provided that the Agent's or such Lender's failure to give any such notice will not affect the validity thereof. Nothing contained in the Documents will require the Agent or a Lender to exercise any right, or will affect the right of the Agent or a Lender to exercise and retain the benefits of exercising any right, with respect to any Indebtedness or other obligation of the Borrower existing otherwise than pursuant to the Documents.
- 15.6 Application of Proceeds.** Except as otherwise agreed to by all of the Lenders in their sole discretion or as otherwise expressly provided for herein, all (i) payments made by or on behalf of a Loan Party under the Documents after acceleration pursuant to Section 15.2, and (ii) proceeds resulting from any realization or enforcement of the Security, including by way of foreclosure, will be applied and distributed by the Agent or any nominee thereof in the following manner:

- (a) first, in full and final payment of any amounts due and payable by way of recoverable expenses, including all out-of-pocket realization and enforcement costs and all legal costs and disbursements (on a solicitor and his own client full indemnity basis);
- (b) second, in full and final payment of all accrued and unpaid interest, BA Stamping Fees, Letter of Credit Fees, agency fees and standby fees based on each Lender's Rateable Portion;
- (c) third, in full and final payment of the Aggregate Principal Amount under the Credit Facilities and the Hedging Obligations, pro rated in accordance with the provisions hereof;
- (d) fourth, in full and final payment of all other Obligations owing under the Documents, pro rated in accordance with the provisions hereof; and
- (e) finally, if there are any amounts remaining and subject to applicable Law, to the appropriate Loan Party.

## **ARTICLE 16**

### **CONFIDENTIALITY**

**16.1 Non-Disclosure.** All information received by the Agent and the Lenders from or in respect of any Loan Party the confidential nature of which is made known or ought to have been known to the Party receiving such information, including any information relating to a Hostile Acquisition, other than information that is required to be disclosed by applicable Law (including, for certainty, information required to be disclosed in connection with any legal proceedings, including proceedings relating to the Documents) or to any Governmental Authority of competent jurisdiction, including any central bank or other banking regulatory authority and any official bank examiners or regulators, will be held by the Parties in the strictest confidence and will not be disclosed to any Person, except as provided in Sections 16.2 and 16.3.

**16.2 Exceptions.** Section 16.1 does not apply to information:

- (a) of a Party where that Party consents in writing to its disclosure;
- (b) which becomes part of the public domain;
- (c) received from a third party without restriction on further disclosure and without breach of Section 16.1;
- (d) developed independently without breach of Section 16.1; or
- (e) to the extent required to be disclosed by order or direction of a court or Governmental Authority of competent jurisdiction.

- 16.3 Permitted Disclosures by the Agent or the Lenders.** 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 Borrower, any Subsidiaries thereof, and the Obligations and to their respective employees, auditors, accountants, legal counsel, geologists, engineers and other consultants and financial advisors retained by such Persons on a need to know basis and subject to the obligation to maintain confidentiality.
- 16.4 Survival.** The obligations of the Parties under this Article 16 will survive the termination of this Agreement.

## **ARTICLE 17 ASSIGNMENT**

- 17.1 Assignment of Interests.** Except as expressly permitted under Section 14.3(d) and this Article 17, this Agreement and the rights and obligations hereunder will not be assignable, in whole or in part, by the Borrower without the prior written consent of all of the Lenders.
- 17.2 Assignment by the Lenders.** Subject to the consent of the Borrower (such consent not to be unreasonably withheld or delayed); provided that at and after the time of the assignment, the Borrower will not be under any obligation to pay by way of withholding tax or otherwise any greater amount (other than any increase by operation of the definition of "**BA Discount Rate**") than it would have been obliged to pay if the Lender had not made an assignment, each Lender will have the right to sell or assign in minimum portions of the lesser of all of such Lender's Individual Production Facility Commitment Amount or Operating Facility Commitment Amount and Cdn. \$5,000,000 (with such Lender, where such sale or assignment is not of all of such Lender's Individual Production Facility Commitment Amount or Operating Facility Commitment Amount under the applicable Credit Facility, retaining an Individual Production Facility Commitment Amount or Operating Facility Commitment Amount under the applicable Credit Facility of at least Cdn. \$5,000,000), such Lender's Individual Production Facility Commitment Amount or Operating Facility Commitment Amount to one or more Lenders acceptable to the Agent and the Operating Facility Lender (in the case of assignments of the Operating Facility Lender's Operating Facility Commitment Amount), acting reasonably, provided that such Lender shall also assign its *pro rata* interest in the Credit Facility in which it is a Lender upon each assignment. An assignment fee of Cdn. \$[REDACTED] for each such assignment (other than to an affiliate of a Lender or to another Lender) will be payable to the Agent by the assigning Lender. In the event of such sale or assignment, the Borrower, the Agent and the other Lenders will execute and deliver all such agreements, documents and instruments as the Agent or Lender may reasonably request to effect and recognize such sale or assignment, including an Assignment. Notwithstanding the foregoing, no consent of the Borrower will be required if an assignment occurs during an Event of Default which is continuing.

**17.3 Effect of Assignment.** To the extent that any Lender sells or assigns any portion of its Individual Production Facility Commitment Amount or the Operating Facility Commitment Amount pursuant to Section 17.2 and such new Lender or new Lenders, as the case may be, has executed and delivered to the Borrower and the Agent an Assignment, such Lender will be relieved and forever discharged of any and all of its covenants and obligations under the Documents in respect of that portion of its Individual Production Facility Commitment Amount or the Operating Facility Commitment Amount so sold or assigned from and after the date of such Assignment and the Borrower's recourse under the Documents in respect of such portion so sold or assigned from and after the date of the Assignment for matters arising thereunder from and after the date of the Assignment will be to such new Lender or new Lenders only, as the case may be, and their successors and permitted assigns.

**17.4 Participations.** Any Lender may at any time sell to one or more financial institutions or other Persons (each of such financial institutions and other Persons being herein called a "**Participant**") participating interests in any of the Advances, commitments, or other interests of such Lender hereunder, provided, however, that:

- (a) no participation contemplated in this Section 17.4 will relieve such Lender from its commitments or its other obligations hereunder or under any other Document;
- (b) such Lender will remain solely responsible for the performance of its commitments and such other obligations as if such participation had not taken place;
- (c) the Agent will continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Documents;
- (d) no Participant will have any rights (through a right of consent or approval or otherwise) to require such Lender to take or refrain from taking any action hereunder or under any other Document;
- (e) the Borrower will not be required to pay any amount hereunder that is greater than the amount which it would have been required to pay had no participating interest been sold; and
- (f) in the case of any outstanding Bankers' Acceptances, the Participants execute an indemnity agreement in respect of such Bankers' Acceptances.

## **ARTICLE 18**

### **ADMINISTRATION OF THE CREDIT FACILITIES**

#### **18.1 Authorization and Action.**

- (a) Authorization and Action. Each Lender hereby irrevocably appoints and authorizes the Agent to be its agent in its name and on its behalf and to exercise such rights or powers granted to the Agent or the Lenders under the Documents to

the extent specifically provided therein and on the terms thereof, together with such powers and authority as are reasonably incidental thereto. As to any matters not expressly provided for by the Documents, the Agent will not be required to exercise any discretion or take any action, but will be required to act or to refrain from acting (and will be fully indemnified and protected by the Lenders to the greatest extent permitted by Law in so acting or refraining from acting) upon the instructions of the Majority Lenders, and such instructions will be binding upon all Lenders, provided however that the Agent will not be required to take any action which, in the opinion of the Agent, might expose the Agent to liability in such capacity, which could result in the Agent incurring any costs and expenses, or which is contrary to the spirit and intent of this Agreement.

- (b) Lenders' Determination. Where the provisions of this Agreement provide that any waiver of or any amendment to any provision of the Documents may be made or any action, consent or other determination in connection with the Documents may be taken or given, with the consent or agreement of the Lenders or the Majority Lenders (in accordance with Section 18.16), then any such waiver, amendment, action, consent or determination so made, so taken or so given with the consent or agreement of the Lenders or the Majority Lenders will be binding on all of the Lenders and all of the Lenders will cooperate in all ways necessary or desirable to implement and effect such waiver, amendment, action, consent or determination.
- (c) Deemed Non-Consent. If the Agent delivers a notice to a Lender requesting advice from such Lender as to whether it consents or objects to any matter in connection with the Documents, then, except as otherwise expressly provided herein, if such Lender does not deliver to the Agent its written consent or objection to such matter within the time period referenced in such notice, or if no such period is referenced, within 7 Banking Days of the delivery of such notice by the Agent to such Lender, such Lender will be deemed not to have consented thereto upon the expiry of such period.
- (d) Release and Discharge of Security. Each Lender hereby irrevocably authorizes the Agent to execute and deliver such releases and no-interest letters as may be required in connection with any disposition of assets by one or more Loan Parties in respect of which the Agent has received an officer's certificate of the Borrower certifying that such disposition is permitted hereunder, together with any other information from the Borrower reasonably required by the Agent, if any, to satisfy itself that any such disposition is permitted hereunder.

## **18.2 Procedure for Making Advances.**

- (a) Pro Rata Advances. Subject to Sections 3.4, 6.2, 6.3, 6.4 and 9.4(e), all Advances under each Credit Facility will be made in accordance with each Participating Lender's Rateable Portion of such Advance under such Credit Facility.
- (b) Instructions from Borrower. The Lenders, through the Agent, will make Advances under each Credit Facility available to the Borrower as required

hereunder by debiting the account of the Agent to which each Lender's Rateable Portion in respect of each Credit Facility of such Advances has been credited in accordance with Section 5.6 (or causing such account to be debited) and, in the absence of other arrangements agreed to by the Agent and the Borrower in writing, by transferring (or causing to be transferred) like funds in accordance with the instructions of the Borrower as set forth in the Notice of Borrowing, Notice of Rollover or Notice of Conversion, as the case may be, in respect of each Advance under each Credit Facility, provided that the obligation of the Agent hereunder will be limited to taking such steps as are in keeping with its normal banking practice and which are commercially reasonable in the circumstances to implement such instructions, and the Agent will not be liable for any damages, claims or costs which may be suffered by the Borrower or any of the Lenders and occasioned by the failure of such funds to reach their designated destination, unless such failure is due to the gross negligence or wilful misconduct of the Agent.

- (c) Assumption Respecting Availability. Unless the Agent has been notified by a Lender within 1 Banking Day prior to an anticipated Advance under a Credit Facility that such Lender will not make available to the Agent its Rateable Portion of such Advance, the Agent may assume, without any enquiry required on its part, that such Lender has made or will make such portion of the Advance available to the Agent on the date such Advance is to take place, in accordance with the provisions hereof and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent such Lender will not have so made its Rateable Portion of an Advance under the applicable Credit Facility available to the Agent, such Lender agrees to pay to the Agent, forthwith on demand, such Lender's Rateable Portion of the Advance and all reasonable costs and expenses incurred by the Agent in connection therewith together with interest thereon (at the rate payable thereunder by the Borrower in respect of such Advance) for each day from the date such amount is made available to the Borrower until the date such amount is paid to the Agent, provided however, that if such Lender fails to so pay, the Borrower covenants and agrees that without prejudice to any rights the Borrower may have against such Lender, it will repay the amount of such Lender's Rateable Portion of the Advance (without duplication) to the Agent for the account of the Agent after receipt of the certificate referred to below and forthwith after demand therefor by the Agent. The amount payable to the Agent pursuant hereto will be as set forth in a certificate delivered by the Agent to such non-paying Lender and the Borrower (which certificate will contain reasonable details of how the amount payable is calculated) and will be conclusive and binding, for all purposes, in the absence of manifest error. If such Lender makes the payment to the Agent as required herein, the amount so paid will constitute such Lender's Rateable Portion of the Advance under the applicable Credit Facility for purposes of this Agreement. The failure of any Lender to make its Rateable Portion of the Advance will not relieve any other Lender of its obligation, if any, hereunder to make its Rateable Portion of the Advance on the date that such Advance is to take

place, but no Lender will be responsible for the failure of any other Lender to provide its Rateable Portion of any Advance under the applicable Credit Facility.

**18.3 Remittance of Payments.** Forthwith after receipt of any payment by the Borrower hereunder and subject to Section 15.5, the Agent, if and to the extent a Lender is entitled thereto, will remit to such Lender its Rateable Portion of such payment, provided that, if the Agent, on the assumption that it will receive on any particular date a payment of principal, interest or fees hereunder, remits to a Lender its Rateable Portion of such payment and the Borrower fails to make such payment, each such Lender agrees to repay to the Agent forthwith on demand such Lender's Rateable Portion of any such payment, together with all reasonable costs and expenses incurred by the Agent in connection therewith and interest thereon at the rate and calculated in the manner customarily applicable to interbank payments for each day from the date such amount is remitted to such Lender. The exact amount of the repayment required to be made by a Lender pursuant hereto will be set forth in a certificate delivered by the Agent to such Lender, which certificate will be conclusive and binding for all purposes in the absence of manifest error.

**18.4 Redistribution of Payment.** Each Lender agrees that, subject to Section 15.5:

(a) If it exercises any right of counter-claim, set off, bankers' lien or similar right with respect to any property of any Loan Party or if under applicable Law it receives a secured claim, the security for which is a debt owed by it to the Loan Party, it will apportion the amount thereof proportionately between:

(i) amounts outstanding at the time owed by the Loan Party to such Lender under this Agreement, which amounts will be applied in accordance with this Section 18.4; and

(ii) amounts otherwise owed to it by a Loan Party,

provided that any cash collateral account held by such Lender as collateral for a letter of credit or bankers' acceptance (including a Bankers' Acceptance) issued or accepted by such Lender on behalf of a Loan Party may be applied by such Lender to such amounts owed by such Loan Party to such Lender pursuant to such letter of credit or in respect of any such bankers' acceptance without apportionment.

(b) If it receives, through the exercise of a right or the receipt of a secured claim described in Section 18.4(a) or otherwise, payment of a proportion of the aggregate amount of principal, interest and fees due to it hereunder which is greater than the proportion received by any other Lender in respect of the aggregate amount of principal, interest and fees due in respect of the applicable Credit Facility (having regard to the respective proportionate amounts advanced as Advances by each of the Lenders under the applicable Credit Facility), the Lender receiving such proportionately greater payment will purchase a participation (which will be deemed to have been done simultaneously with

receipt of such payment) in that portion of the applicable Credit Facility of the other Lenders so that their respective receipts will be *pro rata* to their respective Rateable Portions, provided however that, if all or part of such proportionately greater payment received by such purchasing Lender is otherwise recovered by it, such purchase will be rescinded and the purchase price for such participation will be returned to the extent of such recovery, but without interest. Such Lender will exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 18.4 to share in the benefits of any recovery on such secured claims.

- (c) If it does any act or thing permitted by Section 18.4(a) or 18.4(b), it will promptly provide full particulars thereof to the Agent.
- (d) Except as permitted under Section 18.4(a) or 18.4(b), no Lender will be entitled to exercise any right of counter-claim, set off, bankers' lien or similar right without the prior written consent of the other Lenders.

**18.5 Duties and Obligations.** The Agent or any of its directors, officers, agents or employees (and, for purposes hereof, the Agent will be deemed to be contracting as agent for and on behalf of such Persons) will not be liable to any Lender for any action taken or omitted to be taken by it under or in connection with the Documents, except for its own gross negligence or wilful misconduct. Without limiting the generality of the foregoing, the Agent:

- (a) may assume that there has been no assignment or transfer by the Lenders of their rights under the Documents, unless and until the Agent receives a duly executed Assignment from such Lender;
- (b) may consult with counsel (including Borrower's Counsel), independent public accountants and other experts selected by it and will not be liable for any action taken or omitted to be taken in good faith by it in accordance with or reliance upon the advice of such counsel, accountants or experts;
- (c) will incur no liability under or in respect of the Documents by acting upon any notice, consent, certificate or other instrument or writing believed by it to be genuine and signed or sent by the apparently proper Person or by acting upon any representation or warranty of any Loan Party made or deemed to be made hereunder;
- (d) may assume that no Default or Event of Default has occurred and is continuing unless it has actual knowledge to the contrary; and
- (e) may rely, as to any matter of fact which might reasonably be expected to be within the knowledge of any Person, upon a certificate signed by or on behalf of such Person.

Further, the Agent: (i) does not make any warranty or representation to any Lender nor will it be responsible to any Lender for the accuracy or completeness of the data made



available to any of the Lenders in connection with any Credit Facility, or for any statements, warranties or representations (whether written or oral) made in connection with any Credit Facility; (ii) will not have any duty to ascertain or to enquire as to the performance or observance of any of the terms, covenants or conditions of the Documents on the part of any Loan Party or to inspect the property (including books and records) of any Loan Party; and (iii) will not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of the Documents or any other instrument or document furnished pursuant hereto or thereto.

- 18.6 Prompt Notice to the Lenders.** Notwithstanding any other provision herein, the Agent agrees to provide to the Lenders, with copies where appropriate, all information, notices and reports required to be given to the Agent by the Borrower hereunder, promptly upon receipt of same, excepting therefrom information and notices relating solely to the role of the Agent hereunder.
- 18.7 Agent and Agent Authority.** With respect to its Rateable Portion of each Credit Facility and the Advances made by it as a Lender thereunder, as applicable, the Agent will have the same rights and powers under the Documents as any other Lender and may exercise the same as though it were not the Agent. The Agent may accept deposits from, lend money to, and generally engage in any kind of business with any Loan Party, any of their Subsidiaries, their respective shareholders or unitholders or any Person owned or controlled by any of them and any Person which may do business with any of them, all as if the Agent was not serving as Agent, and without any duty or obligation to account therefor to the Lenders.
- 18.8 Lenders' Credit Decisions.** It is understood and agreed by each Lender that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Loan Parties. Accordingly, each Lender confirms with the Agent that it has not relied, and will not hereafter rely, on the Agent (a) to check or inquire on its behalf into the adequacy, accuracy or completeness of any information provided by the Loan Parties or any other Person under or in connection with the Credit Facilities (whether or not such information has been or is hereafter distributed to such Lender by the Agent) or (b) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Loan Party. Each Lender acknowledges that copies of the Documents have been made available to it for review and each Lender acknowledges that it is satisfied with the form and substance of the Documents. A Lender will not make any independent arrangement with any Loan Party for the satisfaction of any Obligations owing to it under the Documents without the written consent of the other Lenders.
- 18.9 Indemnification.** The Lenders hereby agree to indemnify the Agent and its directors, officers, agents and employees (to the extent not reimbursed by the Borrower) in accordance with their respective Rateable Portions, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent or its directors, officers, agents and employees

in any way relating to or arising out of the Documents or any action taken or omitted by the Agent under or in respect of the Documents in its capacity as Agent, provided that no Lender will 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 Rateable Portion of any reasonable out-of-pocket expenses (including legal fees, on a solicitor and his own client full indemnity basis) incurred by the Agent in connection with the preservation of any right of the Agent or the Lenders under, or the enforcement of, or legal advice in respect of rights or responsibilities under, the Documents, to the extent that the Agent is not reimbursed for such expenses by the Borrower. This indemnity will survive the termination of the other provisions of this Agreement as a separate and continuing covenant of the Lenders.

**18.10 Successor Agent.** The Agent may, as hereinafter provided, resign at any time by giving 30 days' notice (the "**Resignation Notice**") thereof to the Lenders and the Borrower. The remaining Lenders, with the consent of the Borrower, such consent not to be unreasonably withheld, will forthwith upon receipt of the Resignation Notice unanimously appoint a successor agent (the "**Successor Agent**") to assume the duties hereunder of the resigning Agent. Upon the acceptance of any appointment as agent hereunder by a Successor Agent, such Successor Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties as agent under the Documents of the resigning Agent. Upon such acceptance, the resigning Agent will be discharged from its further duties and obligations as agent under the Documents, but any such resignation will not affect such resigning Agent's obligations hereunder as a Lender, including for its Rateable Portion of the applicable Commitment Amount. After the resignation of the Agent as agent hereunder, the provisions of this Article 18 will continue to enure to its benefit as to any actions taken or omitted to be taken by it while it was the agent of the Lenders hereunder. Notwithstanding the foregoing, if the remaining Lenders fail to appoint a Successor Agent within 30 days of receipt of the Resignation Notice, the resigning Agent may and with the approval of the Borrower prior to an Event of Default, such approval not to be unreasonably withheld, appoint a Successor Agent from among the Lenders.

**18.11 Taking and Enforcement of Remedies.** Except as otherwise provided herein, each Lender hereby acknowledges that, to the extent permitted by applicable Law, rights and remedies provided under the Documents to the Lenders are for the benefit of the Lenders collectively and not severally and further acknowledges that its rights and remedies thereunder are to be exercised not severally but collectively through the Agent upon the decision of the Lenders (with the required majority or unanimity as herein provided), regardless of whether acceleration of Obligations hereunder was made, and accordingly, notwithstanding any of the provisions contained herein, each of the Lenders hereby covenants and agrees that it will not be entitled to take any action with respect to the Credit Facility, including any acceleration of Obligations thereunder, but that any such action will be taken only by the Agent with the prior written direction of the Lenders (with the required majority or unanimity as herein provided). Notwithstanding the foregoing, in the absence of written instructions from the Lenders, and where in the sole

opinion of the Agent the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the circumstances. Each of the Lenders hereby covenants and agrees that it has not heretofore and will not seek, take, accept or receive any security for any of the Obligations of the Loan Parties under the Documents and will not enter into any agreement with any of the Parties relating in any manner whatsoever to the Credit Facilities, unless all of the Lenders under the Credit Facilities will at the same time obtain the benefit of any such security or agreement, as the case may be.

**18.12 Reliance Upon Agent.** The Borrower will be entitled to rely upon any certificate, notice or other document or other advice, statement or instruction provided to it by the Agent pursuant to the Documents, and the Borrower will be entitled to deal with the Agent with respect to matters under the Documents which the Agent is authorized hereunder to deal with, without any obligation whatsoever to satisfy itself as to the authority of the Agent to act on behalf of the Lenders and without any liability whatsoever to the Lenders for relying upon any certificate, notice or other document or other advice, statement or instruction provided to them by the Agent, notwithstanding any lack of authority of the Agent to provide the same.

**18.13 Agent May Perform Covenants.** If the Borrower fails to perform any covenant on its part herein contained, the Agent may give notice to the Borrower of such failure and if, within 10 days of such notice (or after the expiry of such other time or cure period as may be required in this Agreement), such covenant remains unperformed, the Agent on behalf of the Lenders may, in its sole discretion but need not, perform any such covenant capable of being performed by it and, if the covenant requires the payment or expenditure of money, the Agent may make such payment or expenditure and all sums so expended will be forthwith payable by the Borrower to the Agent on behalf of the Lenders and will bear interest at the Canadian Prime Rate plus the applicable margin for Canadian Prime Rate Loans plus [REDACTED] %.

**18.14 No Liability of Agent.** The Agent, in its capacity as agent of the Lenders under the Documents, will have no responsibility or liability to the Borrower or the Lenders on account of the failure of any Lender to perform its obligations hereunder, or to any Lender on account of the failure of the Borrower to perform its obligations under the Documents.

**18.15 Nature of Obligations under this Agreement.**

- (a) Obligations Separate. The obligations of each Lender and the Agent under this Agreement are separate. The failure of any Lender to carry out its obligations hereunder will not relieve the other Lenders, the Agent or the Borrower of any of their respective obligations hereunder.
- (b) No Liability for Failure by Other Lenders. Neither the Agent nor any Lender will be liable or otherwise responsible for the obligations of any other Lender hereunder.

**18.16 Lender Consent.**

- (a) Unanimity. Notwithstanding anything herein to the contrary and without limiting in any way the context of any provision in this Agreement requiring the consent, approval, action or agreement of all Lenders, the following matters will require the consent, approval action or agreement, as the context requires, of all Lenders:
- (i) the reduction or forgiveness of any Obligations payable by any Loan Party under the Credit Facilities or under any of the Documents;
  - (ii) the postponement of any maturity date of any Obligations of any Loan Party to the Lenders or under any of the Documents;
  - (iii) the release or discharge of the Security, or any part thereof, unless otherwise expressly permitted or provided in this Agreement, or any change in the ranking or priority of the Security;
  - (iv) any change in the nature of Advances;
  - (v) any change to the covenants referred to in Sections 3.1, 3.2, 3.4, 3.6, 3.7, 4.2, 6.1, 6.2, 12.2, 14.1(a), 14.3(g), 15.5 and 15.6;
  - (vi) any amendment to Sections 5.7, 11.4, 15.3 or to this Section 18.16(a);
  - (vii) any decrease in the applicable margins set out in Section 3.8;
  - (viii) any increase in the Production Facility Commitment Amount or Operating Facility Commitment Amount; and
  - (ix) any change to the definition of "Majority Lenders", "LIBOR Period" or "Permitted Encumbrances".

Provided that (A) any change to Article 10 will require the consent of the Operating Facility Lender and the Agent, (B) any change to Article 20 will require the consent of the Agent, (C) any change to the Individual Production Facility Commitment Amount or the Operating Facility Commitment amount can only be made with the consent of the applicable Lender; (D) any change which only effects the Production Facility Lenders, Operating Facility Lender, the Operating Facility Lender or the Agent, respectively, shall only require the consent of the affected Persons.

- (b) Majority Consent. Subject to Section 18.16(a), any waiver of or any amendment to any provision of the Documents and any action, consent or other determination in connection with the Documents will bind all of the Lenders if such waiver, amendment, action, consent or other determination is agreed to in writing by the Majority Lenders.

**18.17 Departing Lenders.** If a Lender: (a) is a Non-Agreeing Lender; (b) is a Defaulting Lender; (c) seeks Additional Compensation in accordance with Article 11; (d) refuses to give timely consent to an amendment, modification or waiver of this Agreement that, pursuant to Section 18.16(a), requires consent of all the Lenders (and the consent of the Majority Lenders has been given with respect thereto); (a **"Non-Consenting Lender"**); or (e) invokes Sections 8.3 or 9.6, which continues for at least 30 days, unless all Lenders are invoking the same (collectively, the **"Departing Lenders"**), then the Borrower may:

- (a) replace the Departing Lender with another financial institution acceptable to the Agent, acting reasonably, who purchases at par the Aggregate Principal Amount of a Credit Facility owing to the Departing Lender and such Lender's entire Individual Production Facility Commitment Amount and Operating Facility Commitment Amount and assumes the Departing Lender's Individual Production Facility Commitment Amount and Operating Facility Commitment Amount and all other obligations of the Departing Lender hereunder, provided that prior to or concurrently with such replacement:
  - (i) the Departing Lender shall have received payment in full of all principal, interest, fees and other amounts through such date of replacement and a release from any further obligations to make Advances under the Documents after the date of such replacement;
  - (ii) the assignment fee required to be paid by Section 17.2 shall have been paid to the Agent;
  - (iii) all of the requirements for such assignment contained in Section 17.2 shall have been satisfied, including, without limitation, the consent of the Agent and the Operating Facility Lender and the receipt by the Agent of such agreements, documents and instruments as the Agent may reasonably require; and
  - (iv) in the case of a Departing Lender who is a Non-Consenting Lender, each assignee consents, at the time of such assignment, to each matter in respect of which such Non-Consenting Lender was a Non-Consenting Lender and the Borrower also requires each other Lender that is a Non-Consenting Lender to assign the Aggregate Principal Amount owing to it under each Credit Facility and its Individual Production Facility Commitment Amount and Operating Facility Commitment Amount; or
- (b) provided that no Default or Event of Default has occurred or is continuing, elect to terminate the Departing Lender's Individual Production Facility Commitment Amount and the Operating Facility Commitment Amount, in which case the Production Facility Commitment Amount and Operating Facility Commitment Amount shall be reduced by an amount equal to the amount of any Individual Commitment Amount so cancelled (provided that prior to or concurrently with such cancellation the Departing Lender shall have received payment in full of all principal, interest, fees and other amounts through such date of cancellation

(including breakage and other costs in accordance with Section 8.2, the provision of Escrow Funds to the Agent on behalf of such Lender in respect of outstanding Bankers' Acceptances accepted by such Lender and, in the case of the Operating Facility Lender, cash collateralization in full of any contingent obligations in respect of any outstanding Letters of Credit) and a release from any further obligations to make Advances under the Documents after such termination); or

- (c) exercise any combination of the rights under (a) and (b) above; provided that in each case, each Departing Lender is treated rateably with the other Departing Lenders, if any.

## ARTICLE 19 MISCELLANEOUS

**19.1 Notices.** Unless otherwise provided in the Documents, any notice, consent, determination, demand or other communication required or permitted to be given or made thereunder, will be in writing and will be sufficiently given or made if:

- (a) left at the relevant address set forth below; or
- (b) telecopied or sent by other means of recorded electronic communication; and

if to NBC, as Agent, addressed to NBC at:

for purposes of all notices of utilization, conversion, renewal or repayment and the delivery of the financial information:

**NATIONAL BANK OF CANADA**  
Commercial Loan Servicing - Syndication and Agency Group

**[REDACTED]**

for all other purposes:

**NATIONAL BANK FINANCIAL**  
Loan Structuring & Syndication- Corporate & Investment Banking Group

**REDACTED**

if to NBC, as Operating Facility Lender, addressed to NBC at:

**NATIONAL BANK OF CANADA****[REDACTED]**

if to any Loan Party, addressed to such Loan Party at:

**SPYGLASS RESOURCES CORP.**

Livingston Place, West Tower  
 1700, 250- 2nd Street S.W.  
 Calgary, Alberta T2P OC1

Attention: Chief Financial Officer  
 Telecopier: (403) 264-0085

- (c) The Parties each covenant to accept service of judicial proceedings arising under the Documents at its respective address set forth herein.
- (d) Any notice or other communication given or made in accordance with this Section 19.1 will be deemed to have been received on the day of delivery if delivered as aforesaid or on the day of receipt of same by telecopy or other recorded means of electronic communication, as the case may be, provided such day is a Banking Day and that such notice is received prior to 12:00 noon local time and, if such day is not a Banking Day or if notice is received after 12:00 noon local time, on the first Banking Day thereafter.
- (e) Each Party may change its address and telecopier number for purposes of this Section 19.1 by notice given in the manner provided in this Section 19.1 to the other Parties.
- (f) Any notice given under any of the Documents to the Agent will be deemed to also be given to and received by the Agent in its capacity as Lender.

**19.2 Telephone Instructions.** Any verbal instructions given by the Borrower in relation to this Agreement will be at the risk of the Borrower and neither the Agent nor the Lenders will have any liability for any error or omission in such verbal instructions or in the interpretation or execution thereof by the Agent or a Lender, as the case may be, provided that the Agent or Lender, as the case may be, acted without gross negligence in the circumstances. The Agent will notify the Borrower of any conflict or inconsistency between any written confirmation of such verbal instructions received from the Borrower and the said verbal advice as soon as practicable after the conflict or inconsistency becomes apparent to the Agent.

- 19.3 No Partnership, Joint Venture or Agency.** Except as expressly provided for herein, the Parties agree that nothing contained in this Agreement nor the conduct of any Party will in any manner whatsoever constitute or be intended to constitute any Party as the agent or representative or fiduciary of any other Party nor constitute or be intended to constitute a partnership or joint venture among the Parties or any of them, but rather each Party will be separately responsible, liable and accountable for its own obligations under the Documents, or any conduct arising therefrom and for all claims, demands, actions and causes of action arising therefrom. The Parties agree that no Party will have the authority or represent that it has, or hold itself out as having, the authority to act for or assume any obligation or responsibility on behalf of any other Party, save and except as may be expressly provided for in this Agreement.
- 19.4 Judgment Currency.** If, for the purposes of obtaining judgment in any court or any other related purpose hereunder, it is necessary to convert an amount due hereunder in the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applicable will be the daily noon day rate quoted by the Bank of Canada on the relevant date to purchase in Toronto, Ontario the Original Currency with the Second Currency and includes any premium and costs of exchange payable by the purchaser in connection with such purchase. Each Party (the "**First Party**") agrees that its obligation in respect of any Original Currency due from it to another Party hereunder will, notwithstanding any judgment or payment in the Second Currency, be discharged only to the extent that on the Banking Day following the receipt of any sum so paid in the Second Currency, the other Parties may, in accordance with normal banking procedures, purchase in the Toronto Ontario foreign exchange market the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the First Party agrees that the deficiency will be a separate and continuing obligation of it, independent from its obligations under this Agreement, and will constitute in favour of the other Parties a cause of action which will continue in full force and effect notwithstanding any such judgment, or order to the contrary, and the First Party agrees, notwithstanding any such payment or judgment, to indemnify the other Parties against any such loss or deficiency. The Borrower acknowledges and agrees that any Indebtedness, obligations or liabilities it may incur or suffer under this Section 19.4 will form part of the Obligations and be secured by the Security.
- 19.5 Environmental Indemnity of Borrower.** The Borrower hereby indemnifies and holds harmless each of the Agent and the Lenders, including their respective directors, officers, employees and agents (collectively, the "**Indemnified Parties**"), for any costs, losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (in this Section 19.5 collectively a "**Claim**") suffered or incurred by an Indemnified Party, arising out of, or in respect of:
- (a) the Release of any Contaminant into the Environment from or into any property, owned, operated or controlled, directly or indirectly, by any Loan Party or otherwise in which any Loan Party has an interest; and



- (b) the remedial action, if any, required to be taken by the Agent or the Lenders in respect of any such Release,

except in such cases where and to the extent that such Claims arise from the gross negligence or wilful misconduct of any of the Indemnified Parties. This indemnity will survive repayment or cancellation of the Credit Facilities or any part thereof, including any termination of the other provisions of this Agreement. Other than for costs and expenses incurred by the Indemnified Parties for investigating, defending or denying a Claim or preparing any necessary environmental assessment report or other reports in connection with any Claim (the reasonable costs thereof to be paid forthwith by the Borrower on demand therefor), the Indemnified Parties will not request indemnification from the Borrower unless an Indemnified Party is required by Law, based on the advice of such Indemnified Party's counsel, to honour a Claim or any part thereof. During the continuation of an Event of Default, the Indemnified Parties will be entitled, but not obligated, to negotiate any settlement of a Claim in consultation with the Borrower, and any such settlement will be binding on the Parties.

**19.6 General Indemnity.** In addition to any liability of the Borrower to the Lenders under any other provision hereof, the Borrower will and does hereby indemnify each Indemnified Party and hold each Indemnified Party harmless against any losses, claims, costs, damages or liabilities (including reasonable out-of-pocket expenses and reasonable legal fees on a solicitor and his own client full indemnity basis) incurred by the same as a result of or in connection with: (a) any cost or expense incurred by reason of the liquidation or re-deployment in whole or in part of deposits or other funds required by any Lender to fund any Bankers' Acceptance or to fund or maintain any Advance as a result of the Borrower's failure to complete a Drawdown or to make any payment, repayment or prepayment on the date required hereunder or specified by it in any notice given hereunder; (b) subject to permitted or deemed Rollovers and Conversions, the Borrower's failure to provide for the payment to the Agent for the account of the Lenders of the full principal amount of each Bankers' Acceptance on its Maturity Date; (c) the Borrower's failure to pay any other amount, including any interest or fees, due hereunder on its due date after the expiration of any applicable grace or notice periods; (d) the prepayment of any outstanding Bankers' Acceptance before the Maturity Date of such Bankers' Acceptance; (e) the Borrower's repayment or prepayment of a LIBOR Based Loan otherwise than on the last day of its LIBOR Period; (f) the Borrower's failure to give any notice required to be given by it to the Agent or the Lenders hereunder; (g) the failure of any Loan Party to make any other payment due hereunder or under any of the other Documents; (h) the inaccuracy of any Loan Party's representations and warranties contained in any Document; (i) any failure of any Loan Party to observe or fulfil its covenants under any Document; (j) the occurrence of any other Default or Event of Default; or (k) any use of the proceeds of the Credit Facilities, including to pay the purchase price of any acquisition; provided that this Section 19.6 will not apply to any losses, claims, costs, damages or liabilities that arise by reason of the gross negligence or wilful misconduct of the Indemnified Party claiming indemnity hereunder. The provisions of this Section 19.6 shall survive repayment of the Obligations of the Borrower under the Documents.

**19.7 Further Assurances.** The Borrower will, from time to time forthwith at the Agent's request and at the Borrower's own cost and expense (to the extent reasonable), do, make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, financing change statements, assignments, acts, matters and things which may be reasonably required by the Agent with respect to the Credit Facilities, the Security or any part thereof and to give effect to any provision of the Documents.

**19.8 Waiver of Law.** To the extent legally permitted, the Borrower hereby irrevocably and absolutely waives the provisions of any applicable Law which may be inconsistent at any time with, or which may delay or limit in any way, the enforcement of the Documents in accordance with their terms.

**19.9 Attornment and Waiver of Jury Trial.** The Parties hereto do hereby irrevocably:

- (a) 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 the Documents or any of the transactions contemplated thereby; and
- (b) to the extent legally permitted, waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to the Documents or any of the transactions contemplated thereby.

**19.10 Interest on Payments in Arrears.**

- (a) Except as otherwise provided in this Agreement, interest will be paid by the Parties as follows:
  - (i) on amounts for which any Party has actually incurred an out-of-pocket expense and for which another Party has an obligation under the Documents to reimburse such amounts to the Party incurring the expenses, interest will be payable on such amount at the Canadian Prime Rate plus the applicable margin for Canadian Prime Rate Loans plus 200 Basis Points from and including the day on which the amount was incurred to but excluding the day on which the amount is reimbursed if, commencing on the date which is 3 Banking Days following a demand for payment of the amount in accordance with the terms of the Documents, such expense has not been paid; and
  - (ii) on amounts payable by one Party to another Party under the Documents where such payment is in default but the non-payment of such amount has not required an actual out-of-pocket expense by the Party to whom such payment is due, at the Canadian Prime Rate plus the applicable margin for Canadian Prime Rate Loans plus [REDACTED] from and including the day on which the payment was due to, but excluding the day on which the payment is made whether before or after judgment, but if such payment is a reimbursement by the Lenders to the Borrower for overpayment by it to

the Lenders or is in respect of an inadvertent underpayment by the Agent, the Lenders or the Borrower to another Party (based on information provided by such other Party), such interest will only be calculated from the date which is 3 Banking Days following a demand for payment by the Party entitled to it.

- (b) All interest referred to in this Section 19.10 will be simple interest calculated daily on the basis of a 365 year. For the purposes of the *Interest Act* (Canada), the annual rates of interest to which such rates are equivalent are the rates so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by 365.

**19.11 Payments Due on Banking Day.** Whenever any payment hereunder will be due on a day other than a Banking Day, such payment will be made on the next succeeding Banking Day, and such extension of time will in such case be included in the computation of payment of interest thereunder.

**19.12 Anti-Money Laundering Legislation.**

- (a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws, whether within Canada 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, their respective directors, authorized signing officers, direct or indirect shareholders or unitholders or other Persons in control of any Loan Party and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (b) If, upon the written request of any Lender, the Agent has ascertained the identity of the Borrower or any Loan Party or any authorized signatories of the Borrower or any 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 preceding sentence, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower, or any Loan Party or any authorized signatories of the Borrower or any Loan Party, on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any Loan Party or any such authorized signatory in doing so.

**19.13 Whole Agreement.** This Agreement and the other Documents constitute the entire agreement between the Agent and the Lenders on one hand and the Borrower on the other hand, and cancels and supersedes any other agreements, undertakings, declarations, representations and warranties, written or verbal among all such Parties in respect of the subject matter of this Agreement.

**19.14 Counterparts.** The Documents may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

*[The remainder of this page has intentionally been left blank.]*

**THIS AGREEMENT** has been executed effective the date first written above.

**SPYGLASS RESOURCES CORP.,  
as Borrower**

Per: “signed”  
Name: **[REDACTED]**  
Title:

**NATIONAL BANK OF CANADA, as Agent**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**NATIONAL BANK OF CANADA, as Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**NATIONAL BANK FINANCIAL INC.,  
as Co-Lead Arranger and Sole Bookrunner**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:



**TD SECURITIES,  
as Co-Lead Arranger and Syndication Agent**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**THE TORONTO DOMINION BANK, as  
Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

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

Per: “signed”  
Name: [REDACTED]  
Title:

Per: “signed”  
Name: [REDACTED]  
Title:

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

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**HSBC BANK CANADA, as Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**WELLS FARGO BANK, N.A., CANADIAN  
BRANCH, as Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

**ALBERTA TREASURY BRANCHES, as  
Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**UNION BANK, CANADA BRANCH, as Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:



**CANADIAN WESTERN BANK, as  
Lender**

Per: “signed”  
Name: **[REDACTED]**  
Title:

Per: “signed”  
Name: **[REDACTED]**  
Title:

**SCHEDULE A**  
**SPYGLASS RESOURCES CORP.**  
**CREDIT AGREEMENT**  
**DATED MARCH 28, 2013**

**DEFINITIONS**

**"Accommodation"** means an accommodation referred to in Section 3.7.

**"Accounting Change"** has the meaning attributed to it in Section 1.16.

**"Accounting Change Notice"** has the meaning attributed to it in Section 1.16.

**"Additional Compensation"** has the meaning attributed to it in Section 11.1(a).

**"Advance"** means, with respect to a Drawdown, Rollover or Conversion:

- (a) in respect of Accommodations other than Bankers' Acceptances or Letters of Credit, the disbursement or credit of funds to, or to the credit of, the Borrower;
- (b) in respect of Bankers' Acceptances, the acceptance by the Lenders of drafts issued under the Agreement by the Borrower and, where the Lenders are purchasing such drafts, the disbursement of the Net Proceeds to the Borrower as provided hereunder; or
- (c) in respect of Letters of Credit, the issuance of Letters of Credit.

**"Affiliate"** has the meaning attributed to it in the *Securities Act* (Alberta).

**"After-Acquired Property"** has the meaning attributed to it in Section 4.5.

**"Agent"** means initially NBC or any successor to NBC appointed as agent pursuant to Section 18.10.

**"Aggregate Principal Amount"** means when the context requires, (a) the aggregate of the amount of principal outstanding from time to time under the Production Facility, including the face amount of all unmatured Bankers' Acceptances issued thereunder; (b) where the context so requires, the aggregate of the amount of principal outstanding from time to time under the Operating Facility, including the undrawn amount of outstanding Letters of Credit and the face amount of all unmatured Bankers' Acceptances issued thereunder, or (c) the aggregate of the amount of principal outstanding from time to time under the Credit Facilities, including the face amount of all unmatured Bankers' Acceptances and Letters of Credit issued thereunder.

**"Agreeing Lender"** the meaning ascribed thereto in Section 3.2(f)

**"Agreement" or "this Agreement"** means the credit agreement in writing dated effective March 28, 2013 between the Borrower, the Lenders and the Agent entitled "Credit Agreement"

inclusive of all Schedules, including this Schedule A, as amended, confirmed, replaced or restated from time to time and "**hereto**", "**hereof**", "**herein**", "**hereby**" and "**hereunder**", and similar expressions mean and refer to the Agreement and, unless the context otherwise requires, not to any particular Article, Section, paragraph or other subdivision thereof.

"**Amalgamation**" has the meaning attributed to it in the Preamble hereto.

"**AML Legislation**" has the meaning ascribed thereto in Section 19.12.

"**Arrangement Agreement**" means the Arrangement Agreement among Charger Energy Corp., Avenex Energy Corp. and Pace Oil & Gas Ltd. dated December 20, 2012.

"**Assignment**" means an agreement whereby a financial institution becomes a Lender substantially in the form of Schedule I, with the blanks completed.

"**BA Discount Rate**" means:

- (a) in relation to a Bankers' Acceptance accepted by a Schedule I Lender or Alberta Treasury Branches, the CDOR Rate; and
- (b) in relation to a Bankers' Acceptance accepted by a Schedule II Lender or by a Schedule III Lender, the lesser of:
  - (i) the discount rate then applicable to Bankers' Acceptances as quoted by such non-Schedule I Lenders; and
  - (ii) the CDOR Rate plus [REDACTED] per annum,provided that if both such rates are equal, then the "BA Discount Rate" applicable thereto shall be the rate specified in (i) above; and
- (c) in relation to a BA Equivalent Loan:
  - (i) made by a Schedule II Lender or by a Schedule III Lender, the rate determined in accordance with subparagraph (b) of this definition; and
  - (ii) made by any other Lender, the CDOR Rate plus [REDACTED] per annum.

"**BA Equivalent Loan**" means Canadian Dollar Accommodations made pursuant to Section 9.3.

"**BA Stamping Fee**" has the meaning attributed to it in Section 3.8(a)(iii).

"**Bank Act (Canada)**" means the *Bank Act*, S.C. 1991, c. 46 including the regulations made and, from time to time, in force under that Act.

"Bankers' Acceptance" means depository bills as defined in the *Depository Bills and Notes Act* (Canada) in Canadian Dollars that are signed by the Borrower, made payable to CDS and accepted by a Lender pursuant to this Agreement.

"Banking Day" means any day, other than a Saturday or Sunday, on which financial institutions are open for domestic and foreign exchange business in Calgary, Alberta, Montreal, Quebec, Toronto, Ontario and New York, New York and, for purposes of LIBOR Based Loans, also must be a LIBOR Banking Day.

"*Bankruptcy and Insolvency Act* (Canada)" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, including the regulations made and, from time to time, in force under that Act.

"Basis Point" or "bps" means one one-hundredth of 1%.

"Borrower" means Spyglass Resources Corp. and its successors and permitted assigns.

"Borrower's Account" means one or more current accounts maintained by the Borrower at a branch of the Agent or such other account as may be agreed to by the Agent and the Borrower.

"Borrower's Counsel" means Norton Rose Canada LLP or another firm of barristers and solicitors in an appropriate jurisdiction retained by the Loan Parties and acceptable to the Agent, acting reasonably.

"Borrowing Base" means the aggregate limit for Advances under the Credit Facilities (expressed in Canadian Dollars) established from time to time by the Lenders in accordance with Section 3.10, taking into consideration their assessment of the lending value of the hydrocarbon reserves of the Loan Parties and their respective usual and customary petroleum and natural gas lending criteria and practices in effect at the time of determination for loans to borrowers in the petroleum and natural gas industry in the jurisdictions in which such reserves are located.

"*Business Corporations Act* (Alberta)" means the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended, including the regulations made, from time to time, under that Act.

"Canadian Dollar Exchange Equivalent" means with reference to Canadian Dollars, the amount thereof expressed in Canadian Dollars, and with reference to any amount (the "Original Amount") expressed in U.S. Dollars (the "Original Currency"), the amount expressed in Canadian Dollars on the date when such amount is being determined as herein provided, required to purchase the Original Amount of the Original Currency at the Noon Rate on the Banking Day immediately preceding the date such conversion is to be made.

"Canadian Dollars" or "Canadian\$" or "Cdn. \$" or "\$" each means such currency of Canada which, as at the time of payment or determination, is legal tender in Canada for the payment of public or private debts.

"Canadian Prime Rate" means the variable rate of interest quoted by the Agent from time to time as the reference rate of interest which it employs to determine the interest rate it will charge for demand loans in Canadian Dollars to its customers in Canada and which it designates as its

prime rate, provided that if such rate of interest is less than the CDOR Rate applicable to 1 month Bankers' Acceptances plus 100 Basis Points per annum (the "**Floor Rate**"), then the Canadian Prime Rate will equal the Floor Rate.

**"Canadian Prime Rate Loan"** means an Advance in Canadian Dollars which bears interest at a rate based on the Canadian Prime Rate.

**"Capital Lease Obligations"** means, for any Person, any payment obligation of such Person under an agreement for the lease or rental of or right to use property that, in accordance with GAAP, is required or permitted to be capitalized; provided that any present or future lease that would have been treated as an operating lease under GAAP as in effect on December 31, 2012 shall be deemed to be an operating lease for all purposes of this Agreement.

**"CDOR Rate"** means the arithmetic average of the yields to maturity for bankers' acceptances accepted by each Schedule I Lender quoted on the Reuter's Canadian Deposit Offered Rate screen, at 10:00 a.m., (Toronto time) on the applicable date on which an Advance shall take place, for bankers' acceptances having a term similar to the term requested for each Bankers' Acceptance issued pursuant to the applicable Advance; provided, however, that if such a rate does not appear on the Reuters' screen as contemplated, then the CDOR Rate, on any day, shall be the arithmetic average of the discount rates (expressed to 5 decimal places) quoted by the Agent which would be applicable in respect of a purchase by the Schedule I Lenders of bankers' acceptances issued on such day (determined as of 10:00 a.m. (Toronto time) on the applicable date on which an Advance shall take place, in a comparable amount and having a term equal or comparable to those proposed to be issued by the Borrower.

**"CDS"** has the meaning attributed to it in Section 9.2(c).

**"Change of Control"** means if, after the Closing Date, any Person acquires, directly or indirectly, alone or in concert (within the meaning of the *Securities Act* (Alberta)) with other Persons, over a period of time or at any one time, Voting Securities in the capital of the Borrower aggregating in excess of [REDACTED]% of all of the then issued and outstanding Voting Securities of the Borrower or otherwise acquires the power to elect a majority of the board of directors of the Borrower (regardless of whether such Person or Persons are owned or controlled by the same Persons which owned or controlled such Voting Securities of the Borrower).

**"Claim"** has the meaning attributed to it in Section 19.5.

**"Closing Certificate"** means the officer's certificate of a Loan Party in a form acceptable to the Lenders, acting reasonably.

**"Closing Date"** means, subject to Section 2.1, March 28, 2013 or such later date as may be agreed upon in writing between the Borrower and the Agent.

**"Closing Opinion"** means the opinions of the Borrower's Counsel, addressed to the Agent and its legal counsel as agreed to by the Agent and its legal counsel, each acting reasonably.

"Co-Lead Arrangers" means National Bank Financial Inc. and TD Securities, and "Co-Lead Arranger" means any one of them in such capacity.

"Combined Forecasted Average Daily Production" means combined forecasted average daily oil & gas production of the Borrower and the other Loan Parties on a "Proved Developed Producing" basis, based on the most recently delivered Engineering Report as required pursuant to Section 14.2(1) or 14.2(m), as applicable.

"Commitment Amount" means the aggregate of the Production Facility Commitment Amount and the Operating Facility Commitment Amount.

"Companies' Creditors Arrangement Act (Canada)" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, including the regulations made and, from time to time, in force under that Act.

"Compliance Certificate" means the certificate of the Borrower substantially in the form of Schedule C, with the blanks completed.

"Consolidated Debt" means in respect of the Borrower, all indebtedness and obligations in respect of amounts borrowed which, in accordance with GAAP, on a consolidated basis, would be recorded in the Borrower's consolidated financial statements (including the notes thereto), and in any event including, without duplication:

- (a) the stated amount of letters of credit supporting obligations which would otherwise constitute Consolidated Debt within the meaning of this definition or any other letters of credit if drawn and not reimbursed;
- (b) amounts that are then due and owing under any Financial Instrument;
- (c) obligations secured by any purchase money security interest (but excluding operating leases);
- (d) Capital Lease Obligations;
- (e) sale-leaseback payment obligations;
- (f) Indebtedness secured by any Lien existing on property owned, whether or not the obligations secured thereby will have been assumed; and
- (g) guarantees in respect of Indebtedness of another Person, including the types of obligations described in (a) through (f) above,

excluding, in any event, Non-Recourse Debt.

"Consolidated EBITDA" means, on a consolidated basis (excluding Non-Recourse Assets) for any period and without duplication, the aggregate of the net income of the Borrower for any such period determined in accordance with GAAP,

- (a) plus, to the extent deducted in the determination thereof, the sum of:
  - (i) depreciation, depletion, amortization and accretion;
  - (ii) interest expense;
  - (iii) all provisions for any federal, provincial or other income and capital taxes;
  - (iv) transaction costs associated with (x) the Amalgamation, (y) all Material Acquisitions and (z) all Material Dispositions, in each case, in accordance with GAAP; and
  - (v) the non-cash items deducted in determining earnings which are added back in accordance with GAAP in the statement of cash flows of the Borrower; and
- (b) minus, to the extent added in the determination thereof, all non-cash gains added in determining net earnings such as non-cash income and unrealized gains relating to hedging transactions.

Consolidated EBITDA will be adjusted for Material Acquisitions and Material Dispositions and to include or exclude, as applicable, Consolidated EBITDA associated with any such acquisition or disposition made within the applicable period, as if that acquisition or disposition had been made at the beginning of such period (in a manner satisfactory to the Majority Lenders, acting reasonably).

**"Consolidated Debt to EBITDA Ratio"** means, as at the end of each Fiscal Quarter, the ratio of Consolidated Debt as at the last day of such Fiscal Quarter to Consolidated EBITDA for the 12 months ending on the last day of such Fiscal Quarter.

**"Contaminants"** means those substances, pollutants, wastes and special wastes which are defined as contaminants, hazardous, toxic, or a threat to public health or to the Environment under any applicable Environmental Law, including any radioactive materials, urea formaldehyde foam insulation, asbestos or polychlorinated biphenyls (PCB's).

**"Contributing Lender"** has the meaning ascribed thereto in Section 5.7.

**"Conversion"** means in relation to an Advance, a conversion of an Advance into another type of Advance made pursuant to the Agreement.

**"Credit Facilities"** means, collectively, the Production Facility and the Operating Facility, and **"Credit Facility"** means any of them.

**"Criminal Code (Canada)"** means the *Criminal Code*, R.S.C. 1985, c. C-46, including the regulations made and, from time to time, in force under that Act.

**"DBRS"** means Dominion Bond Rating Services Limited, and its successors.

"Default" means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

"Defaulting Lender" means any Lender or, in the case of paragraph (e) below, a Lender's parent (being any Person that directly or indirectly controls a Lender where control has the same meaning as in the definition of Affiliate):

- (a) that is a Non-Paying Lender;
- (b) that has failed to fund any payment or its portion of any Advances required to be made by it hereunder within 1 Banking Day;
- (c) that has notified the Agent or the Borrower (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;
- (d) that has failed, within 3 Banking Days after request by the Agent or the Borrower, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Advances;
- (e) that becomes insolvent, has been deemed insolvent by a court of competent jurisdiction, or becomes the subject of bankruptcy or insolvency proceeding; or
- (f) that is generally in default of its obligations under other existing credit or loan documentation under which it has commitments to extend credit.

"Departing Lender" has the meaning ascribed thereto in Section 18.17.

"*Depository Bills and Notes Act (Canada)*" or "DBNA" means the *Depository Bills and Notes Act (Canada)*, S.C. 1998, c. 13, including the regulations made and, from time to time, in force under that Act.

"Determination Period" has the meaning attributed to it in Section 3.1O(c).

"Director" means a director of a corporation and reference to action by the directors or board of directors when used with respect to a corporation means action by the directors of such corporation as a board or, whenever duly empowered, by an executive committee or any other duly authorized committee of the board.

"Discount Fraction" means:

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+ (the BA Discount Rate (expressed as a decimal) x the number of days in the term of the Bankers' Acceptance divided by 365)



**"Discount Proceeds"** means the actual amount (based on the BA Discount Rate) received by the Borrower from the sale of a Bankers' Acceptance hereunder without deduction for the stamping fee and which, in the case of a purchase of Bankers' Acceptances by the Lenders, means an amount equal to the face amount of the Bankers' Acceptances multiplied by the Discount Fraction (rounded up or down to the fifth decimal place with .000005 being rounded up).

**"Distribution"** means any:

- (a) payment of any cash dividend on or in respect of any shares, units or other ownership interests of any class in the capital of a Loan Party (including any thereof acquired through the exercise of warrants or rights of conversion, exchange or purchase);
- (b) redemption, retraction, purchase or other acquisition or retirement, in whole or in part, of shares, units or other ownership interests of any class in the capital of a Loan Party (including any thereof acquired through the exercise of warrants or rights of conversion, exchange or purchase);
- (c) payment of principal, interest or other amounts in whole or in part, of any Indebtedness of a Loan Party (including any Indebtedness incurred or assumed by a Loan Party pursuant to a capital lease or operating lease) to any shareholder of the Borrower which owns more than 10% of the outstanding shares of the Borrower or any Affiliate of such shareholder (other than a Lender), whether made or paid in or for cash, property or both;

to (in the case of paragraph (a) of this definition) or by or from (in the case of paragraph (b) of this definition) any shareholder or any Affiliate of a shareholder of a Loan Party (other than a Lender), whether made or paid in or for cash, property or both, or

- (a) transfer of any property for consideration of less than fair market value by a Loan Party to any shareholder or to any Affiliate of a shareholder of a Loan Party;

but excluding any such payment, acquisition or transfer between Loan Parties.

**"Documents"** means this Agreement and any other instruments or agreements entered into by the Parties relating to the Credit Facilities, including the Security, and any document or agreement resulting from the operation of Section 4.1.

**"Draft"** has the meaning attributed to it in Section 9.2(b).

**"Drawdown"** means a borrowing or credit of funds by way of Advances, other than an Advance by way of Rollover or Conversion.

**"Drawdown Date"** means the date specified in a Notice of Borrowing as the date on which a Drawdown will occur and which date will be a Banking Day, and which in the case of a LIBOR Based Loan will be a LIBOR Banking Day.

**"Effective Date"** has the meaning attributed to it in Section 3.8(e).

**"Elbow River Asset Purchase Agreement"** means the asset purchase agreement made as of December 20, 2012 among Elbow River Corp., Elbow River USA Corp., Parkland Fuel Corporation, Elbow River Marketing Limited Partnership, Elbow River Marketing USA Inc., Elbow River Marketing Corp. and AvenEx Energy Corp., as amended.

**"Elbow River Sale"** means the sale of the Purchased Assets by the "Vendors" to the "Purchasers" (each as defined in the Elbow River Asset Purchase Agreement) under and pursuant to the Elbow River Asset Purchase Agreement.

**"Engineering Report"** means a report (in form and substance satisfactory to the Majority Lenders, acting reasonably) prepared by the Independent Engineer respecting the reserves of Petroleum Substances attributable to the assets and undertakings of the Loan Parties, which report shall, as of the effective date of such report, set forth, *inter alia*, (a) the proved, developed producing reserves of Petroleum Substances, (b) proved, developed nonproducing reserves of Petroleum Substances, (c) proved and undeveloped reserves of Petroleum Substances, and (d) the probable reserves of Petroleum Substances, in each case, attributable to the assets and undertakings of the Loan Parties and, for each 12 month period ending on the date of such report: anticipated rates of production, depletion and reinjection of Petroleum Substances; Crown, freehold and overriding royalties and freehold mineral taxes with respect to Petroleum Substances produced from or attributable to such assets and undertakings; production, revenue, value-added, wellhead or severance Taxes with respect to Petroleum Substances produced from or attributable to such assets and undertakings; operating costs; gathering, transporting, processing, marketing and storage fees payable with respect to Petroleum Substances produced from or attributable to such assets and undertakings; capital expenditures expected to be necessary to achieve anticipated rates of production; and net cash flow with respect to such assets and undertakings, including all revenues, expenses and expenditures described above.

**"Environment"** means all components of the earth, including all layers of the atmosphere, air, land (including all underground spaces and cavities and all lands submerged under water), soil, water (including surface and underground water), organic and inorganic matter and living organisms, and the interacting natural systems that include the components referred to in this definition.

**"Environmental Law"** means any Law relating, in whole or in part, to the protection or enhancement of the Environment, including occupational safety, product liability, public health, public safety and transportation or handling of dangerous goods.

**"Escrow Funds"** has the meaning attributed to it in Section 9.5.

**"Event of Default"** means an event specified in Section 15.1.

**"Excess"** has the meaning attributed to it in Section 5.8.

**"Existing Credit Facilities"** means the offer letter dated July 20, 2012 between National Bank of Canada and Charger Energy Corp., the credit agreement dated March 20, 2012 between

National Bank of Canada and AvenEx Energy Corp. and the credit agreement dated June 29, 2010 among Midnight Oil Exploration Ltd. (predecessor by amalgamation to Pace Oil & Gas Ltd.), Canadian Imperial Bank of Commerce, National Bank of Canada and the other lenders party thereto from time to time, in each case, as amended to the date hereof.

**"Extension"** has the meaning attributed to it in Section 3.2(a).

**"Extension Request"** has the meaning attributed to it in Section 3.2(a).

**"Federal Funds Rate"** means, for any day, the rate of interest per annum set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Board (including any such successor, the **"H.15(519)"**) for such day opposite the caption "Federal Funds (Effective)". If on any relevant day such rate is not yet published in H.15(519), the rate for such day will be the rate of interest per annum set forth in the daily statistical release designated as the Composite 3:30p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any successor, the **"Composite 3:30 p.m. Quotations"**) for such day under the caption "Federal Funds Effective Rate". If on any relevant day the appropriate rate per annum for such day is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations, the rate for such day will be the arithmetic mean of the rates per annum for the last transaction in overnight Federal funds arranged prior to 9:00a.m. (New York time) on that day by each of three major brokers of Federal funds transactions in New York City, selected by the Agent in its sole discretion, acting reasonably.

**"Federal Reserve Board" or "Federal"** means the Board of Governors of the Federal Reserve System of the United States of America or any successor thereof.

**"Financial Assistance"** means with respect of 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 Indebtedness or to comply with agreements relating thereto or otherwise to assure or protect creditors of the other Person against loss in respect of Indebtedness of the other Person and includes any guarantee of or indemnity in respect of the Indebtedness 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 Indebtedness 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 Indebtedness or to assure the holder thereof against loss;
- (c) guarantee, indemnify, hold harmless or otherwise become liable any creditor of any other Person from or against any losses, liabilities or damages in respect of Indebtedness;

- (d) make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof to a Person; 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 Indebtedness 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 Instruments"** has the meaning attributed to it in Section 14.3(c).

**"Financial Instrument Demand for Payment"** means a demand made by a Lender or its Hedging Affiliate pursuant to a Financial Instrument demanding payment of the obligations which are then due and payable relating thereto and shall include any notice under any agreement evidencing a Financial Instrument which, when delivered, would require an early termination thereof and a payment by the Borrower or another Loan Party in settlement of obligations thereunder as a result of such early termination.

**"First Party"** has the meaning attributed to it in Section 19.4.

**"Fiscal Quarter"** means any fiscal quarter of the Borrower.

**"Fiscal Year"** means any fiscal year of the Borrower, and is currently January 1 to December 31 of each year.

**"Floor Rate"** has the meaning attributed to it in the definition of Canadian Prime Rate.

**"Former Lender"** has the meaning ascribed thereto in Section 4.8.

**"GAAP"** means generally accepted accounting principles which are in effect from time to time in Canada.

**"Governmental Acts"** has the meaning attributed to it in Section 10.8.

**"Governmental Authority"** means any domestic or foreign, national, federal, provincial, state, municipal or other local government or regulatory body and any division, agency, ministry, commission, board or authority or any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing, and any domestic, foreign or international judicial, quasi-judicial, arbitration or administrative court, tribunal, commission, board or panel acting under the authority of any of the foregoing.

**"Hedging Obligations"** means the actual Indebtedness or obligations of any Loan Party to a Swap Lender under or pursuant to a Swap Document.

**"Hostile Acquisition"** means an acquisition, which is required to be reported to applicable securities regulatory authorities, of shares of a corporation where the board of directors of that corporation has not approved such acquisition nor recommended to the shareholders of the corporation that they sell their shares pursuant to the proposed acquisition or of units of a trust where the trustee or manager or administrator of that trust has not approved such acquisition nor recommended to the unitholders of the trust that they sell their units pursuant to the proposed acquisition or of units of a partnership where the board of directors of the general partner(s) thereof has not approved such acquisition nor recommended to the partners of the partnership that they sell their units pursuant to the proposed acquisition.

**"IFRS"** means International Financial Reporting Standards adopted by the International Accounting Standards Board from time to time.

**"includes"** means "includes without limitation" and **"including"** means "including without limitation".

**"Indebtedness"** means, without duplication, the aggregate amount of all obligations, liabilities and indebtedness of a Person which would be classified under GAAP as indebtedness for borrowed money upon the consolidated balance sheet of such Person, including all long-term borrowings, the current portion of long-term borrowings, short-term borrowings, obligations under capital leases (classified as such under GAAP) plus all monetary obligations of such Person arising in respect of a Financial Instrument that are due and owing and all monetary obligations, contingent or otherwise, of any of the foregoing arising from any guarantee made by such Person in respect of any of the foregoing.

**"Indemnified Parties"** has the meaning attributed to it in Section 19.5.

**"Independent Engineer"** means such firm or firms of independent engineers as may be selected from time to time by the Borrower and approved by the Lenders, acting reasonably.

**"Individual Commitment Amount"** means, from time to time, in respect of a Lender, that portion of the Commitment Amount which such Lender has severally agreed to make available to the Borrower in accordance with the terms and conditions of the Agreement, subject to adjustment pursuant to the terms of the Agreement.

**"Individual Production Facility Commitment Amount"** means, from time to time, in respect of a Production Facility Lender, that portion of the Production Facility Commitment Amount which such Production Facility Lender has severally agreed to make available to the Borrower in accordance with the terms and conditions of the Agreement, subject to adjustment pursuant to the terms of the Agreement.

**"Interest Act (Canada)"** means the *Interest Act*, R.S.C. 1985, c. I-15, including the regulations made and, from time to time, in force under that Act.

**"Investment Grade Rating"** means an unsecured long term debt rating of the Borrower of at least BBB-, Baa3 or BBB(low) from any two of S&P, DBRS or Moody's, as applicable.

**"ISP98"** means the International Standby Practices ISP98, as published by the International Chamber of Commerce and in effect from time to time.

**"Judgment Interest Act (Alberta)"** means the *Judgment Interest Act*, R.S.A. 2000, c. J-1, including the regulations made and from time to time in force under that Act.

**"Law"** means all constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws, whether domestic, foreign or international, any judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Authority, and any policies, voluntary restraints, practices or guidelines of any Governmental Authority, and including any principles of common law and equity.

**"Lender BA Suspension Notice"** has the meaning attributed to it in Section 9.6(b).

**"Lender LIBOR Suspension Notice"** has the meaning attributed to it in Section 8.3(c).

**"Lenders"** means, initially, the Lenders identified in Schedule B, and thereafter, each Person which may become a Lender under this Agreement, as a lender, by executing and delivering to the Agent an Assignment, and each of their respective successors and permitted assigns, and "Lender" means any one of them in such capacity.

**"Letters of Credit"** means letters of credit or letters of guarantee in Canadian Dollars or such other currency acceptable to the Operating Facility Lender, issued under Article 10.

**"Letter of Credit Fee"** has the meaning attributed to it in Section 3.8(a)(v).

**"LIBOR" or "LIBOR Rate"** means, with respect to any LIBOR Based Loan, the rate per annum equal to the rate determined by the Agent to be the offered rate that appears on the page of the LIBOR 01 screen (or any successor thereto) that displays the average British Banker Association Interest Settlement Rate for deposits in U.S. Dollars (for delivery on the first day of the relevant LIBOR Period at 11:00 a.m. (London time), two (2) LIBOR Banking Days before the first day of the applicable LIBOR Period in an amount substantially equal to the LIBOR Based Loan and for a period equal to such LIBOR Period, or if such rate does not appear on such Reuters display, or if such display or such rate is not available for any reason, the rate of interest per annum, expressed on the basis of a three hundred and sixty (360) day year, rounded upwards, if necessary, to the nearest whole multiple of 1/100<sup>th</sup> of one percent, at which the Agent, in accordance with its normal practice, would be prepared to offer to prime banks in the London Interbank Market, at or about 11:00 a.m. London time two Banking Days prior to the commencement of the period of such Libor Based Loan, for deposits in U.S. Dollars of amounts comparable to such Libor Based Loans of the same duration and commencing on the same date.

**"LIBOR Banking Day"** means any Banking Day on which commercial banks are open for international business (including dealings in U.S. Dollar deposits in the London interbank market) in London, England.

**"LIBOR Based Loan"** means an Advance in U.S. Dollars which bears interest at a rate based on the LIBOR.

**"LIBOR Period"** means a period of 1, 2, 3 or 6 months selected by the Borrower and readily available in the London Interbank Eurodollar Market, or such other period as may be agreed to by the Lenders.

**"Lien"** means any mortgage, lien, pledge, charge (whether fixed or floating), security interest, conditional sale or title retention agreement (other than operating leases which are not in the nature of financing transactions), trust or deposit arrangements in the nature of a security interest or other encumbrance of any kind, contingent or absolute but excludes any contractual right of set-off created in the ordinary course of business and any writ of execution, or other similar instrument, arising from a judgment relating to the non-payment of indebtedness.

**"Loan Parties"** means the Borrower and all of the Borrower's Subsidiaries, and, **"Loan Party"** means any one of them except, so long as they have no tangible assets or other assets in excess of \$750,000, ERM US Holdings Company Inc. and Elbow River Marketing USA Inc.

**"Lowest Borrowing Base Lender"** has the meaning attributed to it in Section 3.10(d).

**"Majority Lenders"** means (i) if there are two or less Lenders, all Lenders or (ii) if there are three or more Lenders, the Lenders holding, in aggregate, at least 66 <sup>2</sup>/<sub>3</sub>% of the Commitment Amount.

**"Material Acquisition"** means an acquisition by a Loan Party of shares or other assets from a third party (other than a Loan Party) completed in the immediately preceding four Fiscal Quarters for net consideration in excess of \$[REDACTED].

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the financial condition of the Loan Parties taken as a whole;
- (b) the Loan Parties' collective ability to perform their respective material obligations under the Documents or the validity or enforceability of a material provision of the Documents; or
- (c) the property, business, operations, assets or liabilities of the Loan Parties taken as a whole.

**"Material Dispositions"** means a sale, disposition or other transfer of assets or shares by a Loan Party to a third party (other than a Loan Party) (to the extent permitted hereunder) completed in the immediately preceding four Fiscal Quarters which results in net proceeds in excess of \$[REDACTED].

**"Maturity Date"** means the date, which must be a Banking Day, or a LIBOR Banking Day with respect to a LIBOR Based Loan, on which the applicable LIBOR Period expires in respect of a LIBOR Based Loan or a Bankers' Acceptance, a BA Equivalent Loan or Letter of Credit, matures.

**"Moody's"** means Moody's Investors Services, Inc. and its successors.

**"NBC"** means National Bank of Canada and its successors and permitted assigns.

**"NBC LC"** means the Letter of Credit issued by NBC in respect of an Existing Credit Facility in favour of Avenex Energy Corp., maturing November 2, 2013.

**"Net Proceeds"** means the Discount Proceeds of a Bankers' Acceptance (or in the case of a BA Equivalent Loan, the amount of such BA Equivalent Loan), less the applicable stamping fee as provided hereunder in respect of Bankers' Acceptances.

**"Non-Agreeing Lender"** the meaning ascribed thereto in Section 3.2(±).

**"Non-BA Lender"** means a Lender that (a) is not a bank chartered under the *Bank Act* (Canada); or (b) has notified the Agent in writing that it is unwilling or unable to accept bankers' acceptance drafts.

**"Non-Consenting Lender"** has the meaning ascribed thereto in Section 18.17. **"Non-**

**Participating Lender"** has the meaning attributed to it in Section 6.3. **"Non-Paying**

**Lender"** has the meaning ascribed thereto in Section 5.7(a).

**"Non-Recourse Assets"** means assets owned by a Loan Party which are encumbered by Non-Recourse Debt.

**"Non-Recourse Debt"** means any indebtedness or other obligations (including obligations secured by Purchase Money Liens), and guarantees, indemnities, endorsements (other than endorsements for collection in the ordinary course of business) or other contingent obligations in respect of obligations of another Person which, in each case, are incurred to finance the creation, development, construction or acquisition of assets and any increases in or extensions, renewals or refunding of any such indebtedness, liabilities and obligations, provided that the recourse of the lender thereof or any agent, trustee, receiver or other Person acting on behalf of the lender in respect of such indebtedness, liabilities and obligations or any judgment in respect thereof is limited in all circumstances (other than in respect of false or misleading representations or warranties and customary indemnities provided with respect to such financings) to the assets created, developed, constructed or acquired in respect of which such indebtedness, liabilities and obligations has been incurred and to any receivables, inventory, equipment, chattel paper, intangibles and other rights or collateral arising from or connected with the assets created, developed, constructed or acquired (including the shares or other ownership interests in any single purpose entity which holds only such collateral) and to which the lender has recourse provided such Indebtedness was not created in contemplation of Non-Recourse Assets being purchased or a Person who owns such Non-Recourse Assets becoming a Loan Party.

**"Noon Rate"** means, in relation to the conversion of one currency into another currency, the rate of exchange for such conversion as quoted by the Bank of Canada (or, if not so quoted, the spot rate of exchange quoted for wholesale transactions made by the Agent at Toronto, Ontario at approximately noon (Toronto time)).



**"Notice of Borrowing"** means, in relation to Advances, a notice by the Borrower to the Agent substantially in the form of Schedule E, with the blanks completed, as applicable.

**"Notice of Rollover or Notice of Conversion"** means, in relation to Advances, a notice by the Borrower to the Agent substantially in the form of Schedule F, with the blanks completed.

**"Obligations"** means, as the contract requires, without duplication: (a) the aggregate amount of all obligations, liabilities and Indebtedness, contingent or otherwise, of a Loan Party to the Agent or any Lender under the Documents (including, for greater certainty, the Swap Documents) and obligations arising from centralized banking arrangements entered into among the Loan Parties and the Co-Lead Arrangers and their Affiliates; in the event that neither Co-Lead Arranger can provide the required services, another financial institution may be selected to provide such services; or (b) with respect to the Credit Facilities or either of them, all of the foregoing outstanding under the Credit Facilities.

**"Operating Facility"** means the Credit Facility established pursuant to Section 3.1(b), subject to the terms and conditions of this Agreement.

**"Operating Facility Commitment Amount"** means, initially, Cdn. \$25,000,000 (or the Canadian Dollar Exchange Equivalent in U.S. Dollars), as otherwise determined pursuant to this Agreement.

**"Operating Facility Lender"** means NBC in its capacity as the provider of the Operating Facility or any Lender in replacement thereof requested by the Borrower and consented to by the Agent and such Lender.

**"Original Currency"** has the meaning attributed to it in Section 19.4.

**"Outstanding LC's"** means certain letters of credit issued by Canadian Imperial Bank of Commerce pursuant to an Existing Credit Facility.

**"P&NG Leases"** means, collectively, any and all documents of title including leases, reservations, permits, licences, unit agreements, assignments, trust declarations, participation, exploration, farm-out, farm-in, royalty, purchase or other agreements by virtue of which the Borrower or any Loan Party is entitled to explore for, drill for, recover, take or produce Petroleum Substances of any kind whatsoever from or with respect to P&NG Rights owned by the Borrower or any Loan Party (as applicable), or to share in the production or proceeds of production or any part thereof or proceeds of royalty, production, profits or other interests out of, referable to or payable in respect of Petroleum Substances of any kind whatsoever from or with respect to P&NG Rights owned by the Borrower or any Loan Party (as applicable), and the rights of the Borrower or Loan Party (as applicable) thereunder.

**"P&NG Rights"** means all of the right, title, estate and interest, whether contingent or absolute, legal or beneficial, present or future, vested or not, and whether or not an "interest in land", of the Borrower and its Subsidiaries in and to any of the following, by whatever name the same are known:

- (a) rights to explore for, drill for and produce, take, save or market Petroleum Substances;
- (b) rights to a share of the production of Petroleum Substances;
- (c) rights to a share of the proceeds of, or to receive payments calculated by reference to the quantity or value of, the production of Petroleum Substances;
- (d) rights to acquire any of the rights described in subparagraphs (a) through (c) of this definition;
- (e) interests in any rights described in subparagraphs (a) through (d) of this definition; and
- (f) all extensions, renewals, replacements or amendments of or to the foregoing items described in subparagraphs (a) through (e) of this definition;

and including interests and rights known as working interests, royalty interests, overriding royalty interests, gross overriding royalty interests, production payments, profits interests, net profits interests, revenue interests, net revenue interests, economic interests and other interests and fractional or undivided interests in any of the foregoing and freehold, leasehold or other interests.

**"Partial Extension"** has the meaning attributed to it in Section 3.2(d).

**"Participant"** has the meaning attributed to it in Section 17.4.

**"Participating Lender"** has the meaning attributed to it in Section 6.3.

**"Parties"** means the Borrower, the Agent and the Lenders and their respective successors and permitted assigns, and **"Party"** means any one of the Parties.

**"Pension Plan"** means any retirement or pension benefit plan that is established by a Person for the benefit of its employees, that requires such Person to make periodic payments or contributions.

**"Permitted Contest"** means action taken by or on behalf of a Loan Party in good faith by appropriate proceedings diligently pursued to contest a Tax, claim or Lien, provided that:

- (a) the Person to which the Tax, claim or Lien being contested is relevant (and, in the case of a Loan Party, the Borrower on a consolidated basis) has established reasonable reserves therefor if and to the extent required by GAAP;
- (b) proceeding with such contest does not have, and would not reasonably be expected to have, a Material Adverse Effect; and

- (c) proceeding with such contest will not create a material risk of sale, forfeiture or loss of, or interference with the use or operation of, a material part of the property of the Loan Parties.

**"Permitted Dispositions"** means any:

- (a) sale or disposition in the ordinary course of business and in accordance with sound industry practice of any Loan Party's (i) inventory or production or (ii) other tangible personal property that is obsolete, no longer useful for its intended purpose or being replaced in the ordinary course of business;
- (b) sales or dispositions of assets made in the ordinary course of business for fair market value to third parties having an aggregate fair market value in any Fiscal Year not exceeding the Permitted Disposition Limit applicable as at the time of such determination; and
- (c) subject to Section 14.3(g), sales or dispositions of assets between any of the Loan Parties.

**"Permitted Disposition Limit"** means an amount equal to 10% of the Borrowing Base between annual Borrowing Base redeterminations hereunder.

**"Permitted Encumbrances"** means:

- (a) undetermined or inchoate Liens arising in the ordinary course of and incidental to construction or current operations which have not been filed pursuant to Law or in respect of which no steps or proceedings to enforce such Lien have been initiated or which relate to obligations which are not due or delinquent or if due or delinquent, any Lien which any Loan Party is contesting at the time by a Permitted Contest;
- (b) Liens incurred or created in the ordinary course of business and in accordance with sound industry practice in respect of the joint operation of oil and gas properties or related production or processing facilities as security in favour of any other Person conducting the development or operation of the property to which such Liens relate costs and expenses of such development or operation, provided such costs or expenses are not due or delinquent or if due or delinquent, any Lien which the Borrower is contesting at the time by a Permitted Contest;
- (c) easements, rights-of-way, servitudes, zoning or other similar rights or restrictions in respect of land (including rights-of-way and servitudes for railways, sewers, drains, pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) which, either alone or in the aggregate, would not reasonably be expected to have a Material Adverse Effect;

- (d) any Lien or trust arising in connection with worker's compensation, employment insurance, pension and employment Law;
- (e) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant or permit acquired or by any statutory provision to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;
- (f) all reservations in the original grant from the Crown of any lands and premises or any interests therein and all statutory exceptions, qualifications and reservations in respect of title;
- (g) public and statutory Liens not yet due and similar Liens arising by operation of Law;
- (h) the Security;
- (i) Liens for Taxes, assessments or governmental charges not at the time due or delinquent or, if due or delinquent, the validity of which is contested at the time by a Permitted Contest;
- (j) Liens under or pursuant to any judgment rendered, or claim filed, against the Borrower or other Loan Party, which the Borrower is contesting at the time by a Permitted Contest;
- (k) Liens granted to a public utility or any municipality or governmental or other public authority when required by such utility or municipality or other authority in connection with the operations of the Loan Parties, all in the ordinary course of its business which individually or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of the Loan Parties, taken as a whole;
- (l) bankers' liens, rights of set-off and other similar Liens existing solely with respect to cash on deposit *in* one or more accounts maintained by the Loan Parties granted in the ordinary course of business in favour of a Lender or Lenders with which such accounts are maintained, securing amounts owing to such Lender or Lenders with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;
- (m) pledges or deposits to secure performance of (i) bids, tenders, contracts (other than contracts for the payment of money) or (ii) leases of real property, in each case, to which a Loan Party is a party;
- (n) any Lien from time to time which is consented in writing to by all of the Lenders;

- (o) any Lien from time to time over the equity of any Loan Party substantially all of whose assets are Non-Recourse Assets and which secures Non-Recourse Debt;
- (p) any Lien or cash collateral in respect of the Outstanding LC's;
- (q) any other Liens (including in respect of Non-Recourse Debt, Purchase Money Liens and capital leases) which are not otherwise Permitted Encumbrances; provided that the aggregate principal amount of Indebtedness or other obligations secured thereby does not exceed the Threshold Amount; and
- (r) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Lien referred to in the preceding paragraphs (a) to (q) inclusive of this definition, so long as any such extension, renewal or replacement of such Lien is limited to all or any part of the same property that secured the Lien extended, renewed or replaced (plus improvements on such property) and the Indebtedness, liability or obligation secured thereby is not increased.

**"Permitted Indebtedness"** means the following:

- (a) the Obligations;
- (b) any Indebtedness owing by Loan Party to another Loan Party;
- (c) Indebtedness of any Loan Party arising in connection with operating leases entered into in the ordinary course of business (which, for certainty, shall not include any operating leases entered into in connection with any Sale-Leaseback) which would have been operating leases under GAAP as in effect on December 31, 2010;
- (d) Indebtedness consisting of Financial Assistance permitted under Section 14.3(i);
- (e) Indebtedness of the Borrower or any other Loan Party arising in connection with capital leases;
- (f) Indebtedness of any Loan Party under the Outstanding LC's.
- (g) Purchase Money Obligations of the Borrower or any other Loan Party; and
- (h) other Indebtedness which is not otherwise Permitted Indebtedness; provided that the aggregate outstanding principal amount of all such obligations does not, in the aggregate at any time, exceed Cdn. \$15,000,000 (or the Canadian Dollar Exchange Equivalent thereof in United States Dollars or the equivalent thereof in any other currency).

**"Person"** means an individual, a partnership, a corporation, a company, a trust, an unincorporated organization, a union, a government or any department or agency thereof

(collectively an "entity") and the heirs, executors, administrators, successors, or other legal representatives, as the case may be, of such entity.

**"Petroleum Substances"** means any one or more of crude oil, bitumen, synthetic crude oil, petroleum, natural gas, natural gas liquids, related hydrocarbons and any and all other substances, whether liquid, solid or gaseous, whether hydrocarbons or not, produced or producible in association with any of the foregoing, including hydrogen sulphide and sulphur.

**"Pricing Table"** means the pricing table labelled "Pricing Table" set forth in Section 3.8(a).

**"Principal Repayment"** means the repayment by or for and on behalf of the Borrower to the Lenders of all or a portion of any Aggregate Principal Amount under any Credit Facility.

**"Production Facility"** means the Credit Facility established pursuant to Section 3.1(a), subject to the terms and conditions of this Agreement.

**"Production Facility Commitment Amount"** means, initially, Cdn. \$375,000,000 (or the Canadian Dollar Exchange Equivalent thereof in U.S. Dollars) as such amount may be determined pursuant to this Agreement.

**"Production Facility Lenders"** means those Lenders who have an Individual Production Facility Commitment Amount, and **"Production Facility Lender"** means any of them.

**"Property Loss Event"** means, with respect to any property, any loss of or damage to such property or any taking of such property or condemnation thereof.

**"Purchased Assets"** has the meaning attributed to it in the Elbow River Asset Purchase Agreement.

**"Purchase Money Lien"** means a Lien, whether given to a vendor, lender or any other Person, securing Indebtedness assumed or incurred as, or to provide, all or part of the purchase price or other acquisition cost of property, which Lien is limited exclusively to such property (including assumed or fixed improvements, if any, erected or constructed thereon) and any proceeds thereof and any extension, renewal, refinancing or replacement thereof.

**"Purchase Money Obligation"** means any monetary obligation created or assumed as part of the purchase price of real or tangible personal property, whether or not secured, any extensions, renewals or refundings of any such obligation, provided that the principal amount of such obligation outstanding on the date of such extension, renewal or refunding is not increased and further provided that any security given in respect of such obligation shall not extend to any property other than the property acquired in connection with which such obligation was created or assumed and fixed improvements, if any, erected or constructed thereon and the proceeds thereof.

**"Rateable Portion"** means, at any time, subject to adjustment pursuant to Sections 3.4 or 6.3:

- (a) the proportion of the Individual Commitment Amount of a Lender relative to the Commitment Amount of all Lenders; and
- (b) the proportion of the Individual Production Facility Commitment Amount of a Production Facility Lender, relative to the Production Facility Commitment Amount of all Production Facility Lenders.

**"Release"** includes releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

**"Replacement Lender"** has the meaning attributed to it in Section 3.2(g)(i).

**"Resignation Notice"** has the meaning attributed to it in Section 18.10.

**"Revolving Lender"** has the meaning attributed to it in Section 3.2(a).

**"Revolving Period"** means (i) initially, the period commencing on the Closing Date and terminating on April 30, 2013; and (ii) each further period of up to 364 days for which the Revolving Period is extended in accordance with Section 3.2.

**"Rollover"** means, with respect to an Advance:

- (a) in relation to a LIBOR Based Loan, the continuation of all or any portion of such LIBOR Based Loan for an additional LIBOR Period subsequent to the initial or any subsequent LIBOR Period applicable thereto; and
- (b) in relation to maturing Banker's Acceptances, the issuance of new Bankers' Acceptances in respect of all or any portion of such Bankers' Acceptances at their Maturity Date.

**"Second Currency"** has the meaning attributed to it in Section 19.4.

**"Security"** has the meaning attributed to it in Section 4.1 and includes any other Lien hereafter granted to secure the payment of Obligations in connection with the Credit Facilities and any Hedging Obligations.

**"S&P"** means Standard & Poor's Rating Services and its successors.

**"Subsidiary"** means any Person of which more than 50% of the outstanding Voting Securities are owned, directly or indirectly by or another Person, provided that the ownership of such securities confers the right to elect at least a majority of the board of directors of such Person, or a majority of Persons serving similar roles, and includes any legal entity in like relationship to a Subsidiary.

**"Successor Agent"** has the meaning attributed to it in Section 18.10.

**"Swap Documents"** has the meaning attributed to it in Section 4.1.

**"Swap Lender"** means any Lender or any Affiliate thereof that is a hedge provider under a Swap Document entered into prior to such Swap Lender or relevant Affiliate ceasing to be a Lender, which, for certainty, includes a Lender or relevant Affiliate that entered into a Financial Instrument with a Loan Party prior to becoming a Lender hereunder (each such Affiliate, a **"Hedging Affiliate"**). For greater certainty, any Person who enters into a Swap Document after such Person ceases to be a Lender or a Hedging Affiliate, as applicable, is not a Swap Lender.

**"Taxes"** means all taxes of any kind or nature whatsoever including income taxes, capital taxes, minimum taxes, levies, imposts, stamp taxes, royalties, duties, charges to tax, value added taxes, commodity taxes, goods and services taxes, and all fees, deductions, compulsory loans, withholdings and restrictions or conditions resulting in a charge imposed, levied, collected, withheld or assessed as of the date hereof or at any time in the future by any governmental or quasi-governmental authority of or within any jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon and any instalments in respect thereof.

**"TD"** means The Toronto-Dominion Bank, a Canadian chartered bank, and its successors and permitted assigns.

**"Term Maturity Date"** means, in respect of each Lender, the date which is three hundred and sixty six (366) days after the Term Out Date of such Lender (as such Term Out Date may be extended hereunder);

**"Term Out Date"** means, in respect of each Lender:

- (a) April 30, 2013; and
- (b) if the Term Out Date is thereafter further extended pursuant to Section 3.2, that date which is three hundred sixty-four (364) days after its then current Term Out Date;

**"Term Period"** means, for each Lender, the period commencing on its Term Out Date and ending on its Term Maturity Date;

**"Threshold Amount"** means 5% of the Borrowing Base.

**"Uniform Customs"** means the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce current at the time of issuance of the applicable Letter of Credit.

**"U.S. Base Rate"** means the greater of: (a) variable rate of interest quoted by the Agent from time to time as the reference rate of interest which it employs to determine the interest rate it will charge for demand loans in U.S. Dollars to its customers in Canada and which it designates as its "U.S. Base Rate"; and (b) the Federal Funds Rate plus 100 Basis Points.

**"U.S. Base Rate Loan"** means an Advance bearing interest at a fluctuating rate determined by reference to the U.S. Base Rate.



**"U.S. Dollars" or "U.S.\$"** each means such currency of the United States of America which, as at the time of payment or determination, is legal tender therein for the payment of public or private debts.

**"Voting Securities"** means securities of capital stock of any class of any corporation, partnership units in the case of a partnership, trust units in the case of a trust, or other evidence of ownership serving similar purposes, carrying voting rights under all circumstances, provided that, for the purposes of this definition, shares which only carry the right to vote conditionally on the happening of an event will not be considered Voting Securities, whether or not such event will have occurred, nor will any securities be deemed to cease to be Voting Securities solely by reason of a right to vote accruing to securities of another class or classes by reason of the happening of such event.

