

MAXIM POWER CORP.

as Borrower

-and-

ATB FINANCIAL

as Administrative Agent

-and-

**THOSE INSTITUTIONS AND OTHER PERSONS WHO ARE
DESCRIBED ON THE EXECUTION PAGES HEREOF
UNDER THE HEADING "LENDERS" AND OTHERS THAT
FROM TIME TO TIME BECOME LENDERS HEREUNDER
as Lenders**

CREDIT AGREEMENT

December 19, 2019

Burnet, Duckworth & Palmer LLP

McCarthy Tétrault LLP

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	1
1.1 Defined Terms.....	1
1.2 Computation of Time Periods	43
1.3 Accounting Terms	44
1.4 Incorporation of Schedules	44
1.5 Gender; Singular, Plural, Etc.	44
1.6 Terms Generally.....	44
1.7 Interpretation Not Affected by Headings, Etc.....	45
1.8 General Provisions as to Certificates and Opinions, Etc.	45
1.9 Payment for Value.....	45
1.10 Currency.....	45
1.11 Permitted Encumbrances and Permitted Debt	45
1.12 Knowledge of the Borrower and each other Loan Party	46
1.13 Authority of GPs	46
ARTICLE 2 THE CREDIT FACILITIES	46
2.1 Credit Facilities.....	46
2.2 Conversion, Amortization and Repayment	50
2.3 Mandatory Prepayments and Reductions.....	52
2.4 Voluntary Reductions and Prepayments	53
2.5 Payments	54
2.6 Computations	56
2.7 <i>Criminal Code</i> (Canada)	57
2.8 Agency Fees	57
2.9 Interest on Overdue Amounts.....	57
2.10 Account Debit Authorization.....	57
2.11 Administrative Agent’s Discretion on Allocation.....	58
2.12 Payments by the Borrower; Presumptions by the Administrative Agent	58
2.13 Rollover and Conversion.....	58
ARTICLE 3 ADVANCES	59
3.1 Advances	59
3.2 Making the Advances.....	60
3.3 Interest on Canadian Prime Rate Advances and CDOR Advances	62
3.4 Bankers’ Acceptance Fees	62
3.5 Standby Fee.....	63
3.6 Substitute Basis of Advance	63
ARTICLE 4 BANKERS’ ACCEPTANCES AND BA EQUIVALENT ADVANCES	64
4.1 Acceptance of Bankers’ Acceptances.....	64
4.2 Delivery of Notice	64
4.3 Payment to Borrower	64
4.4 Waiver of Presentment and Other Conditions	65

4.5	Term of each Bankers' Acceptance	65
4.6	Power of Attorney.....	66
4.7	Failure to Give Notice of Repayment.....	67
4.8	Execution of Bankers' Acceptances.....	67
4.9	Lenders to Purchase	67
4.10	Prepayment.....	67
4.11	BA Equivalent Advances.....	67
4.12	Administrative Agent's Duties re Bankers' Acceptances and BA Equivalent Advances	68
ARTICLE 5 LETTERS OF CREDIT.....		69
5.1	Letter of Credit Commitment.....	69
5.2	Letter of Credit Advance Request.....	69
5.3	Form of Letter of Credit	69
5.4	Procedure for Letter of Credit Advances.....	69
5.5	LC Lender – Authorization to Review	70
5.6	Payment of Amounts Drawn Under Letters of Credit.....	70
5.7	Records	71
5.8	Fees	71
5.9	Obligations Absolute	71
5.10	Indemnification; Nature of Lenders' Duties	72
5.11	Maturity and Default.....	73
5.12	Letter of Credit (Cash Collateralized).....	74
ARTICLE 6 CONDITIONS PRECEDENT.....		74
6.1	Conditions to Closing	74
6.2	Conditions to Each Drawdown under the Construction Facility and the Revolver Facility #1 prior to the Completion Date and under the Term Facility on the Completion Date	82
6.3	Conditions to Each Drawdown under Revolver Facility #1 after the Completion Date.....	86
6.4	Conditions to Each Drawdown under Revolver Facility #2	86
6.5	Conditions to Each Drawdown under the Letter of Credit Facility	87
6.6	Conditions Precedent to Completion	88
6.7	Conversions and Rollovers	90
6.8	Conditions Solely for the Benefit of the Lenders.....	90
6.9	No Waiver	90
ARTICLE 7 REPRESENTATIONS AND WARRANTIES		90
7.1	Status	91
7.2	Authorizations	92
7.3	Enforceability.....	92
7.4	Security	92
7.5	No Breach	93
7.6	Litigation.....	93
7.7	Ownership Structure and Equity Holdings	93

7.8	Pension Plans	94
7.9	No Other Business	94
7.10	Compliance	94
7.11	No Default	94
7.12	Material Project Contracts.....	95
7.13	Permits	96
7.14	Real Property Interests	97
7.15	Environmental	97
7.16	Other Approvals	98
7.17	Ownership of Assets	98
7.18	Sufficiency of Rights.....	99
7.19	Location of Tangible Assets.....	99
7.20	Intellectual Property	99
7.21	Tax Returns.....	99
7.22	Financial Statements.....	100
7.23	Expropriation	100
7.24	Information and the Financial Model.....	100
7.25	Disclosure	100
7.26	First Nations Matters	101
7.27	Insolvency	101
ARTICLE 8 SECURITY		101
8.1	Administrative Agent and Security	101
8.2	Continued Perfection of Security	102
8.3	Security for Hedge Liabilities	102
8.4	Action Under the Security	102
8.5	Registrations and Renewals	103
8.6	Extensions, Etc.	103
8.7	Security Effective Notwithstanding Date of Advance.....	103
8.8	No Merger	103
8.9	After-Acquired Property	103
8.10	Guarantee and Security from Additional Material Subsidiaries	104
8.11	Material Subsidiary Designation	104
8.12	BLA Lien Matters.....	105
8.13	Collateral Accounts	105
8.14	Environmental – Administrative Agent and Administrative Agent Disclaimer.....	106
ARTICLE 9 INSURANCE		106
9.1	Insurance	106
9.2	Other Insurance Requirements.....	113
9.3	Certification of Compliance	114
9.4	No Duty to Verify Insurance Compliance	114
9.5	Waivers of Insurance Requirements.....	114
9.6	Payment of Premiums.....	115

9.7	Use of Proceeds.....	115
ARTICLE 10 COVENANTS.....		117
10.1	Affirmative Covenants.....	117
10.2	Negative Covenants.....	129
10.3	Administrative Agent May Perform Covenants.....	134
ARTICLE 11 CHANGES IN CIRCUMSTANCES.....		134
11.1	Illegality.....	134
11.2	Circumstances Re CDOR Advances.....	135
11.3	Increased Costs.....	135
11.4	Taxes, Costs, Etc.....	137
ARTICLE 12 EVENTS OF DEFAULT.....		139
12.1	Events of Default.....	139
12.2	Effect.....	144
12.3	Right of Set-Off.....	145
12.4	Priorities and Application of Realization Proceeds.....	146
12.5	Payments to be Held in Trust.....	147
ARTICLE 13 THE ADMINISTRATIVE AGENT AND THE LENDERS.....		148
13.1	Authorization and Action.....	148
13.2	Reliance by Administrative Agent.....	148
13.3	Exculpatory Provisions.....	149
13.4	Non-Reliance on Administrative Agent and Other Lender Parties.....	150
13.5	Administrative Agent and Affiliates.....	150
13.6	Lender Party Credit Decision.....	150
13.7	Collective Action of the Lender Parties.....	151
13.8	No Other Duties, Etc.....	151
13.9	Indemnification of Administrative Agent.....	152
13.10	Replacement of Administrative Agent.....	152
13.11	Sub-Agent or Co-Agent.....	153
ARTICLE 14 MISCELLANEOUS.....		153
14.1	Sharing of Payments; Records.....	153
14.2	Amendments, Etc.....	155
14.3	Notices, Etc.....	156
14.4	No Waiver; Remedies.....	159
14.5	Expenses.....	159
14.6	Indemnification by the Borrower.....	160
14.7	Reimbursement by Lenders.....	161
14.8	Waiver of Consequential Damages, Etc.....	161
14.9	Payments.....	162
14.10	Judgment Currency.....	162
14.11	Governing Law and Jurisdiction.....	162
14.12	Successors and Assigns.....	163

14.13	Conflict	167
14.14	Severability.....	167
14.15	Prior Understandings	168
14.16	Time of Essence	168
14.17	Waiver of Jury Trial	168
14.18	Treatment of Certain Information: Confidentiality	168
14.19	Counterparts: Effectiveness: Electronic Execution	169
14.20	Indemnity Survival.....	170
14.21	<i>U.S.A. Patriot Act</i> Notification	170

SCHEDULES:

Schedule 1	Lenders and Commitments
Schedule 2	Advance Request
Schedule 3	Amortization Schedule
Schedule 4A	Drawdown Certificate – Construction Facility/ Term Facility
Schedule 4B	Drawdown Certificate – Letter of Credit Facility
Schedule 5	Independent Engineer’s Drawdown Certificate
Schedule 6.1.31	Insurance Consultant Certificate
Schedule 6	Accounts
Schedule 7	Material Project Contracts
Schedule 8	Security Agreements
Schedule 9	Permits
Schedule 10	Site Lands and Real Property Interests
Schedule 11	Ownership Structure and Equity Holdings
Schedule 12	Lender Assignment and Assumption Agreement
Schedule 13	Borrower’s Closing Date Certificate
Schedule 14	Borrower’s Completion Date Certificate
Schedule 15	Independent Engineer’s Completion Date Certificate
Schedule 16	Financial Model
Schedule 17	Form of Compliance Certificate
Schedule 18	Intentionally Omitted
Schedule 19	Intentionally Omitted
Schedule 20	Consents
Schedule 21	Project Budget
Schedule 22	Project Schedule

Schedule 23	Project Performance Tests
Schedule 24	Intentionally Omitted
Schedule 25	Power of Attorney Terms – Bankers' Acceptances and BA Equivalent Advances
Schedule 26	Intentionally Omitted
Schedule 27	Pension Plan Disclosure
Schedule 28	<i>Redacted</i>

THIS AGREEMENT is dated as of December 19, 2019.

AMONG:

MAXIM POWER CORP., a corporation incorporated pursuant to the laws of the Province of Alberta

(as **Borrower**)

AND:

ATB FINANCIAL, a body corporate established pursuant to the *ATB Financial Act, c.A. 45.2, R.S.A. 2000*, having an office in Calgary, Alberta, in its capacity as administrative agent for the Lenders

(as **Administrative Agent**)

AND:

Those institutions and other persons who are described on the Execution Pages hereof under the heading "**Lenders**" and others that from time to time become Lenders under and in accordance with this Agreement

(as **Lenders**)

WHEREAS the Borrower has requested that the Lenders make available to it various credit facilities in respect of the Project, and the Lenders have agreed to do so on the terms and conditions set forth herein.

NOW THEREFORE in consideration of the mutual covenants and agreements herein set forth 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 Defined Terms

As used in this Agreement, including the recital and the Schedules, unless there is something in the subject matter or the context inconsistent therewith, the following terms shall have the following meanings:

"Additional Material Project Contracts" means each EPC Subcontract upon the EPC Contract Warranty End Date and each other contract and agreement material to the ownership, construction, testing or Operation of the Project entered into by a Loan Party subsequent to the Closing Date which is not listed in Schedule 7 attached hereto and in respect of which payments made to or from a Loan Party during the term of such contract or agreement (including any renewal term) or payments to be made upon termination thereof in the aggregate equal or exceed **\$Redacted**, or is otherwise material to the Project. [**Commercially sensitive amount redacted**]

“Additional Permit” means a Permit not listed in Schedule 9 attached hereto to be obtained by a Loan Party or the Project, which comes to the attention of the Borrower after the Closing Date, that is material to the ownership, construction, testing or Operation of the Project.

“Administrative Agent” means ATB and any successor administrative agent appointed in accordance with Article 13.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Advance” means a borrowing by the Borrower by way of a Canadian Prime Rate Advance, a CDOR Advance, a Bankers’ Acceptance, a BA Equivalent Advance or a Letter of Credit Advance, including deemed Advances, Conversions and Rollovers of existing Advances. A Canadian Prime Rate Advance, a CDOR Advance, a Bankers’ Acceptance, a BA Equivalent Advance and a Letter of Credit Advance is each a “type” of Advance.

“Advance Date” means a Business Day specified in an Advance Request as the date on which an Advance shall occur.

“Advance Request” means a notice of request for an Advance substantially in the form attached as Schedule 2 hereto, or such other form as the Administrative Agent may from time to time specify.

“AESO Plant Accounts Receivable” means the accounts receivable payable to one or more Loan Parties by AESO for the export of generated electricity from the Plant on to the AIES.

“AESO Losses Receivable” means the account receivable anticipated to be payable to Milner Power LP by the AESO in respect of overpayments made by Milner Power in favour of the AESO for the historical period from January 1, 2006 to December 31, 2016 in the approximate amount of \$50,000,000 in connection with AUC Decisions:

- (a) 790 2012-104 (Phase 1);
- (b) 2581 2014-110 (Phase 1 Review and Variance);
- (c) 790 D02-2015 (Phase 2 – Module A);
- (d) 790 D04-2016 (Phase 2 – Module C (Preliminary Matters)); and
- (e) 790 D06-2017 (Phase 2 – Module C).

“Affiliate” means, with respect to any person (the **“first person”**), any other person which directly or indirectly through one or more intermediaries, Controls, or is under common Control with, or is Controlled by, the first person.

“After-Acquired Property” has the meaning specified in Section 8.9.

“AIES” has the meaning given to the term “interconnected electric system” in the *Electric Utilities Act* (Alberta).

“**Alberta Power Market Report**” means the third quarter report dated August 12, 2019 prepared by EDC Associates Ltd.

“**A.M. Best**” means A.M. Best Company, Inc.

“**Applicable Cure Period**” means:

- (a) with respect to a default or breach by a party (other than a Loan Party) under a Material Project Contract, the Counterparty Cure Period;
- (b) with respect to a default or breach by a Loan Party under a Material Project Contract in respect of which an Approved Consent is obtained, the Loan Party Cure Period; and
- (c) with respect to a default or breach by a Loan Party under a Material Project Contract in respect of which a Non-Approved Consent or no Consent is obtained, one-half of the Loan Party’s Initial Cure Period.

“**Applicable Margin**” means, in respect of the following types of Advances, the following corresponding margins expressed as basis points per annum:

CDOR Advances (bps)	Canadian Prime Rate Advances (bps)	Bankers’ Acceptances and BA Equivalent Advances (bps)	Letters of Credit (which are not Cash Collateralized) (bps)	Letters of Credit (Cash Collateralized) (bps)	Standby Fee (bps)
<i>Redacted</i>	<i>Redacted</i>	<i>Redacted</i>	<i>Redacted</i>	<i>Redacted</i>	<i>Redacted</i>

[Commercially sensitive amounts redacted]

Provided that:

- (a) The above rates per annum applicable to all Advances, standby fees and Letter of Credit Fees are expressed on the basis of a year of 365 days;
- (b) The standby fee will accrue on the daily undrawn portion of the Construction Facility, Revolver Facility #1 and Revolver Facility #2; and
- (c) Upon the occurrence and during the continuance of any Event of Default, each of the Applicable Margins will increase by **Redacted** bps, other than the Applicable Margin for Letters of Credit (Cash Collateralized) which will remain unchanged. **[Commercially sensitive amount redacted]**

“**Approved Consents**” means those Consents that provide the Administrative Agent with the right for at least 30 Business Days after the Loan Party Cure Period has expired to remedy or cure breaches and defaults of a Loan Party under the applicable Material Project Contract referred to therein.

“**Approved Securities**” means:

- (a) a senior debt instrument or deposit that:
 - (i) is denominated in Canadian Dollars;
 - (ii) is not a bearer instrument; and
 - (iii) represents:
 - (A) marketable senior direct obligations issued or unconditionally guaranteed by the Government of Canada, any Province of Canada, or any agency of such governments (provided the obligations of such agency are guaranteed by such governments), the rating of which senior debt instrument is:
 - (I) at the time the Approved Securities are purchased, at least AA(low) / Aa3 / AA- from at least two of DBRS, Moody's and S&P; and
 - (II) at any time after the initial purchase of the Approved Securities, at least A(high) / A1 / A+ from at least two of DBRS, Moody's and S&P; or
 - (iv) is otherwise approved by the Administrative Agent; and
- (b) if DBRS, Moody's and S&P are no longer providing Ratings as set out above, an equivalent Rating or better from a nationally recognized rating agency.

"Asset Disposition" means, in respect of any person, any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) of property or other assets (each referred to for the purposes of this definition as a "disposition") by or on behalf of such person (including any disposition by means of a merger, amalgamation, arrangement, consolidation or similar transaction) whereby any of the property, assets and undertaking of such person becomes the property of another person.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Schedule 12 or any other form approved by the Administrative Agent.

"ATB" means ATB Financial.

"AUC" means Alberta Utilities Commission.

"Available Funds" means, at any time and in respect of the period up to the Completion Date, the sum of the following (without duplication):

- (a) all cash or Approved Securities held in the Construction Accounts or the BLA Holdback Account;
- (b) the amount of the Remaining Commitment;

- (c) the amount of any remaining commitment available to the Borrower under the Permitted Subordinated Debt;
- (d) the proceeds of insurance received or to be received by the Borrower (as confirmed by the Independent Engineer to the satisfaction of the Administrative Agent) and available to pay Project Costs in accordance with Section 9.7; and
- (e) such other funds as shall be committed and available to the Borrower on terms and conditions satisfactory to the Majority Lenders, acting reasonably, after consultation with the Independent Engineer.

“BA Discount Proceeds” means, in respect of any Bankers’ Acceptance denominated in Canadian Dollars purchased by a Lender hereunder, the net cash proceeds payable to the Borrower from the sale of such Bankers’ Acceptance hereunder (rounded to the nearest whole cent with one half of one cent being rounded-up) determined as of the applicable Advance Date, Conversion Date or Rollover Date which is equal to:

Face Amount x Price

where **“Face Amount”** is the face amount of such Bankers’ Acceptance and **“Price”** is equal to:

$$\frac{1}{\left[1 + \left(Rate \times \frac{Term}{365} \right) \right]}$$

where the **“Rate”** is the applicable BA Discount Rate expressed as a decimal on the Advance Date, Conversion Date or Rollover Date, as the case may be; the **“Term”** is the term of such Bankers’ Acceptance expressed as a number of days; and the Price as so determined is rounded up or down to the fifth decimal place, with .000005 being rounded-up.

“BA Discount Rate” means on any day:

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

“BA Equivalent Advance” means an advance made in Canadian Dollars by ATB or any other Non-Acceptance Lender as part of an Advance by way of Bankers’ Acceptance.

“BA Period” means, in relation to an issuance of Bankers’ Acceptances, the term to maturity selected by the Borrower, commencing on the date that the relevant Bankers’ Acceptances are issued in connection with such issuance; provided that:

- (a) in the case of a Rollover, the last day of each BA Period shall be also the first day of the next BA Period; and

- (b) the last day of each BA Period shall be a Business Day, and if the last day of a BA Period selected by the Borrower is not a Business Day the Borrower shall be deemed to have selected a BA Period the last day of which is the Business Day next following the last day of the BA Period selected.

"Bankers' Acceptance Fees" has the meaning ascribed thereto in Section 3.4.

"Bankers' Acceptances" means bankers' acceptances denominated in Canadian Dollars issued by the Borrower which have been accepted and purchased by the Lenders at the request of the Borrower pursuant to this Agreement and all references in this Agreement to **"Bankers' Acceptances"** shall, unless otherwise expressly provided in this Agreement or unless the context otherwise requires, be deemed to include BA Equivalent Advances made by a Non-Acceptance Lender as part of an accommodation by way of Bankers' Acceptances.

"Base Amortization Payment" has the meaning ascribed thereto in Section 2.2.3.

"Base Amortization Payment Date" has the meaning ascribed thereto in Section 2.2.3.

"Basel IV" means the international bank capital adequacy rules and rules for minimum and appropriate forms of bank liquidity issued by the Basel Committee on Banking Supervision in December 2017.

"basis point" or **"bps"** means 1/100 of 1% (.01%).

"Beneficiary" means, in respect of any Letter of Credit, the beneficiary specified therein.

"Bilateral Agreement" means the bilateral agreement dated as of March 24, 2011 between Milner Power LP and Balancing Pool, as amended by an amending agreement to the bilateral agreement dated as of May 24, 2016 between Milner Power LP and Balancing Pool.

"BLA" means the *Builders' Lien Act* (Alberta).

"BLA Holdback Account" means the Canadian Dollar holdback account established by Milner Power II LP with the Administrative Agent for the purpose of depositing such portion of the BLA Holdback Amount which is withheld in cash by Milner Power II LP pursuant to a Project Contract or otherwise in respect of a Loan Party in compliance with the BLA.

"BLA Holdback Amount" means the amount (as certified by the Independent Engineer) required to be withheld by any Loan Party under the BLA at any time in regard to the Project taking into account the amount of any BLA Holdback Letter of Credit held by Milner Power II LP from time to time.

"BLA Holdback Letter of Credit" means the irrevocable, non-transferable, standby letter of credit naming Milner Power II LP as beneficiary, provided by the EPC Contractor pursuant to the EPC Contract as security for the amount required to be held back by Milner Power II LP under the BLA in regard to payments under the EPC Contract.

"Borrower" means Maxim Power Corp.

"Borrower Cash Collateral Account" means an account with the Administrative Agent, from which the Borrower does not have any withdrawal rights or privileges to the extent of the cumulative Face Amount of the Letters of Credit (Cash Collateralized) then outstanding, except to apply the amount represented thereby to the Outstanding Credit Obligations in regard to any such Letter of Credit (Cash Collateralized) if it is drawn by the Beneficiary thereof, which account and all funds credited thereto and interest earned thereon (which interest shall be at the prevailing rate of the Administrative Agent or such other financial institution, as the case may be, for demand deposits of comparable amounts) shall be the subject of a Security Interest in favour of the Administrative Agent on behalf of the Lenders.

"Borrower's Completion Date Certificate" means a certificate in the form of Schedule 14 attached hereto.

"Business Day" means a day (other than Saturday or Sunday) on which banks are open for business in Calgary, Alberta and Toronto, Ontario.

"Canadian Dollars", "Cdn. Dollars", "Cdn.\$" and "\$" each mean lawful money of Canada.

"Canadian Prime Rate" means, at any time, the rate of interest per annum established and reported by the Administrative Agent from time to time as the reference rate of interest it charges to its customers in Canada for Canadian Dollar loans made by it and designated as its "prime rate" and as to which a certificate of the Administrative Agent, absent manifest error, shall be conclusive evidence from time to time. With each quoted or published change in such rate due to a change in the rate established and reported by the Administrative Agent there shall be a corresponding change in any rate of interest payable under this Agreement based on the Canadian Prime Rate all without the necessity of any notice thereof to the Borrower or any other person, provided that if the Canadian Prime Rate is less than zero, it shall be deemed to be zero.

"Canadian Prime Rate Advance" means an Advance denominated in Canadian Dollars bearing interest at the Canadian Prime Rate plus the Applicable Margin.

"Canadian Schedule I Bank" means any bank listed in Schedule I to the *Bank Act* (Canada).

"Cash Flow Available for Debt Service" means, for any period:

- (a) EBITDA plus any loss on the sale of derivative financial instruments and plus, without duplication, the net amount of any ordinary course receipts (but not, for greater certainty, receipts for the termination thereof) of the Lender Hedges in accordance with the terms hereof,

minus

- (b) without duplication, for the same period, any gain on the sale of derivative financial instruments, cash Taxes, dividends, unfunded capital expenditures and DLN2.6+ Payments, together with the net amount of any ordinary course payment (but not, for greater certainty, payments for the termination thereof) of the Lender Hedges in accordance with the terms hereof, and, for greater certainty, such expenses specifically excluding all amounts included in Debt Service.

“CDOR Advance” means an Advance in Canadian Dollars which bears interest at a rate based on the CDOR Rate.

“CDOR Rate” means on any day the annual rate of interest which is the rate determined as being the arithmetic average of the quotations of all institutions listed in respect of the rate for Canadian Dollar denominated bankers’ acceptances for the relevant period displayed and identified as such on the “Reuters Screen CDOR Page” (as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time) as of 10:00 a.m. (Calgary time) on such day and, if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 a.m. (Calgary time) to reflect any error in a posted rate of interest or in the posted average annual rate of interest with notice of such adjustment in reasonable detail evidencing the basis for such determination being concurrently provided to the Borrower); provided that if such rates are not available on the Reuters Screen CDOR Page on any particular day, then the CDOR Rate on that day shall be the rate applicable to Canadian Dollar bankers’ acceptances for the relevant period quoted by the Administrative Agent for its customers in Canada as of 10:00 a.m. (Calgary time) on such day; or if such day is not a Business Day, then on the immediately preceding Business Day; provided further that at no time shall the “CDOR Rate” be less than 0. Each determination of the CDOR Rate by the Administrative Agent shall be conclusive and binding, absent demonstrated error.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following:

- (a) the adoption or taking effect of any Law;
- (b) any change in any Law or in the administration, interpretation or application thereof by any Official Body; or
- (c) the making or issuance of any Law by any Official Body,

and shall without limitation include the implementation by a Lender of Basel IV and/or Dodd-Frank and changes thereto.

“Change of Control” means the occurrence, after the Closing Date, of any of the following events:

- (a) any person or persons (other than W. Brett Wilson or M. Bruce Chernoff, or any Affiliate of W. Brett Wilson or M. Bruce Chernoff) acting jointly or in concert (within the meaning of the *Securities Act* (Alberta), as amended), shall beneficially, directly or indirectly, hold or exercise control or direction over and/or has the right to acquire or control or exercise direction over (whether such right is exercisable immediately or only after the passage of time), more than 50% of the issued and outstanding Voting Shares of the Borrower; or
- (b) the Borrower, directly or indirectly, ceases to own and control 100% of the issued and outstanding Shares of each other Loan Party.

“Change Order” means a change to the specifications or scope of:

- (a) the EPC Contract, as contemplated by a “Change Order” described therein; and

- (b) any other Material Project Contract which results in a change to the work to be completed or materials to be supplied thereunder.

“Closing” means the closing of the transactions contemplated in this Agreement in accordance with the terms hereof.

“Closing Consents” means those Consents set out in Part I of Schedule 20.

“Closing Date” means December 19, 2019, or such other date as the Borrower and the Lenders shall agree.

“Closing Date Certificate” means a certificate substantially in the form of Schedule 13 attached hereto.

“Collateral” means all property from time to time subject to, or intended by the terms of the Security to be subject to, the Liens of the Security, including, without limitation, the Project Assets and all other present and future, real and personal, property of any Loan Party.

“Collateral Accounts” means the Borrower Cash Collateral Account, the Construction Accounts and the BLA Holdback Account that are listed and described in Schedule 6 and any other account established with the Administrative Agent as a segregated account pursuant to this Agreement.

“Commercially Reasonable Efforts” means efforts which are designed to enable a party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transaction contemplated by this Agreement and which do not require the performing party to expend funds.

“Commitment” means, for a Lender in respect of a Credit Facility, the amount in respect of such Credit Facility set forth opposite such Lender’s name under the heading **“Commitment”** on Schedule 1 hereto as it may be amended from time to time, to the extent not permanently reduced, cancelled or terminated pursuant to this Agreement and, includes, in the case of the LC Lender, its Letter of Credit Commitment.

“Commodity Hedge” means an agreement entered into between a Person and a counterparty on a case by case basis, the purpose and effect of which is to mitigate or eliminate such Person's exposure to fluctuations in commodity prices, whether physically or financially settled.

“Commodity Hedge Facility” has the meaning set forth in Section 2.1.1(h).

“Commodity Hedge Lender” has the meaning set out in the definition of “Lender”.

“Completion” means the fulfillment of the conditions specified in Section 6.6.

“Completion Date” means the date upon which Completion occurs.

“Completion Project Costs” means all Project Costs remaining to be paid as of the Construction Term-Out Date, including any unfunded Final Punch List Items, but excluding any such Project Costs that constitute Debt and the DLN2.6+ Payments.

“Completion Reserve Amount” means an amount sufficient to pay 100% of the Completion Project Costs.

“Compliance Certificate” means a certificate delivered by the Borrower to the Administrative Agent pursuant to Section 10.1.8(c), in the form of Schedule 17 attached hereto.

“Consents” means consent and acknowledgement agreements, in a form acceptable to the Lenders, entered into by the Administrative Agent and a Counterparty with respect to a Material Project Contract (including the Closing Consents), that provide for, among other things, the taking of security over the applicable Material Project Contract.

“Consolidated Tangible Assets” means, as at any date of determination, all consolidated assets of the Borrower as shown in the most recent consolidated balance sheet of the Borrower delivered to the Administrative Agent (or the Equivalent Amount in any other currency), less the aggregate of the following amounts reflected upon such balance sheet:

- (a) all goodwill, deferred assets, patents, trademarks, copyrights and other similar intangible assets;
- (b) to the extent not already deducted in computing such assets and without duplication, depreciation, depletion, amortization, reserves and any other account which reflects a decrease in the value of an asset or a periodic allocation of the cost of an asset; provided that no deduction shall be made under this subparagraph (b) to the extent that such account reflects a decrease in value or periodic allocation of the cost of any asset referred to in subparagraph (a) above;
- (c) minority interests in a person not directly or indirectly owned or held by the Borrower or one of its Subsidiaries; and
- (d) investments in and advances to Affiliates or Subsidiaries of the Borrower which are not Guarantors or Material Subsidiaries, all as determined in accordance with GAAP.

“Construction Account Cdn.” means the Canadian Dollar project construction account established pursuant to Section 10.1.16(a) or such other Canadian Dollar account as may be agreed by the Administrative Agent and the Borrower from time to time and notified by the Administrative Agent to the Lenders.

“Construction Account U.S.” means the U.S. Dollar project construction account established pursuant to Section 10.1.16(a) or such other U.S. Dollar account as may be agreed by the Administrative Agent and the Borrower from time to time and notified by the Administrative Agent to the Lenders.

“Construction Accounts” means, collectively, the Construction Account Cdn. and the Construction Account U.S., and **“Construction Account”** means either one of them.

“Construction Facility” means the construction credit facility to be made available hereunder to the Borrower by way of the type of Advances described in Section 2.1.3 on a non-revolving basis for the purpose set forth in Section 2.1.2(a).

“Construction Loan Commitment” means \$30,000,000, as such amount may be permanently reduced from time to time in accordance with the terms hereof.

“Construction Report” has the meaning set forth in Section 9.1.2(e)(i).

“Construction Term-Out Date” means the earlier of (a) the Completion Date, and (b) the Outside Date.

“Contesting in Good Faith” or **“Contested in Good Faith”** means where the Borrower, another Loan Party or a person on its behalf, as the case may be:

- (a) is contesting in good faith and with due diligence and by proper proceedings the existence, amount or extent of any obligations, Taxes, assessments, claims or Liens;
- (b) has established, a reserve in accordance with GAAP, unless there is a reasonable likelihood that the obligations, Taxes, assessments, claims or Liens subject to such contest will be required to be paid or satisfied, in which case such Loan Party shall establish a reserve for, or deposit with a court of competent jurisdiction or the assessing authority, or with such other person as is acceptable to the Administrative Agent, acting reasonably, sufficient funds or a surety bond, for the total amount of the obligation, Tax, assessment, claim or Lien, where the application of such reserve, deposit, funds or bond would result in the payment and the discharge of such obligations, Taxes, assessments, claims or Liens and all related interest, costs and expenses; and
- (c) if such obligations, Taxes, assessments, claims or Liens arose on or prior to the Construction Term-Out Date, has arranged for the postponement or stay of enforcement of the rights of the person asserting such obligations, Taxes, assessments, claims or Liens against such Loan Party, or
- (d) if such obligations, Taxes, assessments, claims or Liens arose after the Construction Term-Out Date, the Borrower has provided evidence to the Administrative Agent, which is satisfactory to the Administrative Agent in its reasonable discretion, that proceeding with such contest will not create a material risk of sale, forfeiture or loss of, or interference with the use or operation of the Project, any material part of the Project or any other Collateral of the Loan Parties.

“Control” means the possession, directly or indirectly, of (a) the power to vote more than 50% of the Voting Shares (on a fully-diluted basis) of such person, or (b) the power to direct or cause the direction of the management or policies of such person, whether by contract or otherwise, and **“Controlling”** and **“Controlled”** have corresponding meanings.

“Conversion” means, in respect of any Advance, the conversion of such Advance into another type of Advance.

“Conversion Date” means a Business Day specified in an Advance Request as the date on which a Conversion shall occur.

“Cost Overrun” means Project Costs which in the aggregate (net of Delay Liquidated Damages which are not under dispute and which have been paid to and received by a Loan Party) are in excess of the Project Costs included in the Project Budget.

“Cost to Complete” means, at any time, the aggregate remaining Project Costs required to be expended in order to achieve Completion as certified by the Independent Engineer from time to time, including, for greater certainty, the cost of work completed but not yet paid for, incremental AIES interconnection cost increases and any expected liquidated damages payable under any Project Contract (also taking into account, without duplication, any BLA Holdback Amounts) but net of any Delay Liquidated Damages which are not under dispute and which have been paid to and received by a Loan Party and excluding any remaining DLN2.6+ Payments.

“Counterparty” means a person (other than a Loan Party) that is a party to a Material Project Contract.

“Counterparty Cure Period” means the period of time set out in a Material Project Contract within which the Counterparty has the right to remedy or cure breaches or defaults of such Counterparty thereunder, before a Loan Party is entitled to enforce its rights and remedies as a result of such default or breach or terminate such Material Project Contract.

“Credit Facilities” means the Construction Facility, the Letter of Credit Facility, Revolver Facility #1, Revolver Facility #2, the Term Facility and the Hedge Facilities and each such facility is a **“Credit Facility”**.

“Credit Facility Documents” means this Agreement, the Security, the agreements evidencing the Lender Hedges, each Bankers’ Acceptance, indemnities relating to Letters of Credit and all other agreements from time to time entered into by a Loan Party with one or more of the Administrative Agent or the Lenders in order to implement the financing comprised in the Credit Facilities.

“Crossing Agreements” means the agreements entered into from time to time between a Loan Party and third parties to permit the collection lines, telecommunication lines, service roads and other parts of the Project to cross the easements, rights of way and other property rights which have been granted in favour of the applicable third parties over the Site Lands and which such parts of the Project are required to cross for the ownership, construction, testing or Operation of the Project, and each such agreement is a **“Crossing Agreement”**.

“CSA Parts Agreement” means the agreement which may be entered into by Milner Power II LP with the DLN2.6+ Supplier for the advance purchase of spare parts required for major maintenance of the Project.

“CSA Parts Payments” means payments owing by Milner Power II LP to the DLN2.6+ Supplier for spare parts for the Project and as included in the Financial Model pursuant to the CSA Parts Agreement.

“Currency Hedge” means an agreement, whether in the form of an ISDA Master Agreement, a futures contract, a swap, a forward rate, currency exchange contract or otherwise, entered into for or in connection with a forward rate, currency swap or currency exchange and other similar currency-related transactions, the purpose and effect of which is to manage, mitigate or eliminate currency exchange rate risk.

“Currency Hedge Facility” has the meaning set forth in Section 2.1.1(f).

“Currency Hedge Lender” has the meaning set out in the definition of “Lender”.

“**DBRS**” means DBRS Limited.

“**Debt**”, for any fiscal period ending at a particular time and as determined in accordance with GAAP on a consolidated basis in respect of the Borrower, the sum of (without duplication):

- (a) all indebtedness for borrowed money, including by way of overdraft, obligations with respect to bankers' acceptances, indebtedness represented by notes payable, bonds, debentures, loan agreements and similar instruments;
- (b) all indebtedness for contingent reimbursement obligations with respect to letters of credit, letters of guarantee and surety bonds;
- (c) all indebtedness for the deferred purchase price of property or services where such deferral is for 6 months or longer, other than: (i) amounts payable under Material Project Contracts, including without limitation the DLN2.6+ Payments; and (ii) trade indebtedness accounted for as accounts payable and incurred in the ordinary course of business;
- (d) all indebtedness secured by any Lien on the assets of the Borrower or a Subsidiary (even though the rights and remedies of the seller or lender thereunder in the event of default are limited to repossession or sale of the purchased property);
- (e) all obligations created or arising under any Purchase Money Mortgages or under capital leases (determined in accordance with GAAP provided that a lease of property which would have been classified as an operating lease under GAAP as in effect prior to December 31, 2018 will not be a capital lease for purposes of this Agreement);
- (f) all obligations with respect to any Shares issued by a Borrower or a Subsidiary and which are by their terms or pursuant to any contract, agreement or arrangement:
 - (i) redeemable, retractable, payable or required to be purchased or otherwise retired or extinguished, or convertible into debt of such person:
 - (A) at a fixed or determinable date; or
 - (B) at the option of the holder thereof; or
 - (C) upon the occurrence of a condition not solely within the control and discretion of such person; or
 - (ii) convertible into any other Shares described in paragraph (i) above; and
- (g) all Debt of the kinds referred to in (a) through (f) which is directly or indirectly guaranteed by a Borrower or a Subsidiary or which such person has agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which such person has otherwise assured a creditor against loss by means of an indemnity, security or bond (whether or not such person has assumed or become liable for the payment of such Debt).

Provided that in all cases, “Debt” shall exclude (i) the amount of any Letters of Credit (Cash Collateralized), (ii) the Permitted Subordinated Debt and any other Debt of the Loan Parties which

is subordinated on terms and conditions satisfactory to the Lenders, acting reasonably, and (iii) the unrealized portion of any hedging gains or losses.

“Debt Service” means, in respect of any period, all cash interest payments, fee payments (such as Letter of Credit Fees, stamping fees and standby fees, in each case prorated with respect to the period), breakage costs, Base Amortization Payments and scheduled principal repayments on all other Debt of the Borrower on a consolidated basis, together with the net amount of any ordinary course payment or receipts (but not, for greater certainty, payments or receipts for termination thereof) of the Permitted Hedges.

“Debt Service Coverage Ratio” or **“DSCR”** means, at any time, in relation to the Borrower on a consolidated basis, Cash Flow Available for Debt Service for the four most recently completed Financial Quarters divided by Debt Service for the same four Financial Quarters. Historical DSCR shall be calculated on actual cash flow and projected DSCR shall be calculated on the financial projections set out in the Financial Model or Updated Financial Model, as appropriate for the respective quarters. For the purposes of calculations effected prior to the completion of the first four full Financial Quarters after the Construction Term-Out Date, only full Financial Quarters commencing after the Construction Term-Out Date are to be taken into account, and the DSCR will be calculated as follows:

- (a) for the first full Financial Quarter ending after the Construction Term-Out Date, using (a) the actual Cash Flow Available for Debt Service for such Financial Quarter and multiplying it by four (4), and (b) the actual Debt Service for such Financial Quarter and multiplying it by four (4);
- (b) for the second full Financial Quarter ending after the Construction Term-Out Date, using (a) the actual Cash Flow Available for Debt Service for the first two full Financial Quarters ending after the Construction Term-Out Date and multiplying it by two (2), and (b) the actual Debt Service for the first two full Financial Quarters ending after the Construction Term-Out Date and multiplying it by two (2); and
- (c) for the third full Financial Quarter ending after the Construction Term-Out Date, using (a) the actual Cash Flow Available for Debt Service for the first three full Financial Quarters ending after the Construction Term-Out Date and multiplying it by four thirds (4/3), and (b) the actual Debt Service for the first three full Financial Quarters ending after the Construction Term-Out Date and multiplying it by four thirds (4/3).

Notwithstanding the foregoing, for the purposes of calculating Debt Service prior to the completion of the first four full Financial Quarters after the Construction Term-Out Date, DLN2.6+ Payments and CSA Payments shall be calculated as follows:

- (d) for the first full Financial Quarter ending after the Construction Term-Out Date, using the actual DLN2.6+ Payments and CSA Parts Payments for such Financial Quarter plus the projected DLN2.6+ Payments and CSA Parts Payments for the three Financial Quarters following such first full Financial Quarter as set out in the Financial Model;
- (e) for the second full Financial Quarter ending after the Construction Term-Out Date, using the actual DLN2.6+ Payments and CSA Parts Payments for such first two full Financial Quarters plus the projected DLN2.6+ Payments and CSA Parts Payments for the two

Financial Quarters following such first two full Financial Quarters as set out in the Financial Model; and

- (f) for the third full Financial Quarter ending after the Construction Term-Out Date, using the actual DLN2.6+ Payments and CSA Parts Payments for such first three full Financial Quarters plus the projected DLN2.6+ Payments and CSA Parts Payments for the Financial Quarter following such first three full Financial Quarters as set out in the Financial Model.

“Debt to EBITDA Ratio” means, as of the last day of any Financial Quarter, the ratio of Debt on the last day of such Financial Quarter to EBITDA for the applicable period ending on the last day of such Financial Quarter.

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

“Delay Liquidated Damages” means liquidated damages received or to be received (and as confirmed by the Independent Engineer) by a Loan Party under a Material Project Contract resulting from any delay in the performance or non-performance by the Counterparty of its obligations under such Material Project Contract.

“Distribution” by any person means:

- (a) any payment, dividend, return of capital or other distribution on or in respect of Shares issued by such person (other than by the issuance of other Shares that do not constitute Debt of such person);
- (b) any purchase, redemption, retraction or other acquisition by such person of any of its issued Shares (other than by the issuance of other Shares that do not constitute Debt of such person);
- (c) any consulting, licensing, management, royalty or administration fee or charge or any similar fee or charge paid or payable to any holder of Shares issued by such person, to any Affiliate of such holder or any Affiliate of such person;
- (d) any payment by such person on account of any principal of any loans or advances owed by it to any of its directors, officers, partners or holders of Shares issued by such person or any of its or their respective Affiliates;
- (e) any loan or advance provided to any of the directors, officers, partners or holders of Shares of such person or any of its or their respective Affiliates, or any other person not dealing at arm’s length with such person or any of such directors, officers, partners, shareholders or Affiliates; or
- (f) any transfer by a person of any of its property for consideration of less than the fair market value thereof to any of its directors or officers, partners or holders of Shares of such person or any of its or their respective Affiliates.

"DLN2.6+ Payments" means payments owing by Milner Power II LP to the DLN2.6+ Supplier pursuant to the DLN2.6+ Purchase Order.

"DLN2.6+ Purchase Order" means the agreement for DLN2.6+ upgrade for the Milner Power II 7F.05 unit 299142 pursuant to proposal number 1361199 Rv 6 dated April 11, 2019 and purchase order number: MPI-003 order date April 11, 2019 by Milner Power II LP to the DLN2.6+ Supplier, relating to the commitment to purchase and install an upgraded combustion system for the GE 7FA.05 gas turbine for the Project, as such agreement may be amended, supplemented, restated or replaced from time to time.

"DLN2.6+ Supplier" means *Redacted. [Confidential counterparty name redacted]*

"Dodd-Frank" means the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

"Easements" means any restrictions, easements, rights of way, servitudes or other similar rights in land or immovable property (including rights of way and servitudes for railways, roads, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power, electric transmission and telephone, communication or telegraph or cable television conduits, poles, wires, footings, towers, guide-lines, cross arms, anchors and cables and related equipment).

"EBITDA" means, for any fiscal period ending at a particular time and as determined in accordance with GAAP on a consolidated basis in respect of the Borrower, the sum of:

- (a) all Net Income for such period;
- (b) all Financing Charges to the extent deducted in determining such Net Income;
- (c) all amounts deducted in the calculation of such Net Income in respect of the provision for income taxes;
- (d) all amounts deducted in the calculation of such Net Income in respect of non-cash items, including depreciation and depletion (other than depreciation and depletion related to any asset being leased under an operating lease), accretion, future taxes, non-cash losses resulting from foreign currency obligations (in accordance with GAAP), non-cash losses resulting from the mark-to-market of outstanding Hedge Agreements (in accordance with GAAP), stock-based compensation and the write down or impairment of assets;
- (e) all losses attributable to minority interests, to the extent deducted in the calculation of such Net Income; and
- (f) all losses attributable to extraordinary and non-recurring losses, in each case to the extent deducted in the calculation of such Net Income;
- (g) to the extent included in such Net Income, losses from asset sales;

less (on a consolidated basis, without duplication):

- (h) earnings attributable to extraordinary and non-recurring earnings and gains, in each case to the extent included in the calculation of such Net Income;

- (i) earnings attributable to minority interests, to the extent included in the calculation of such Net Income (unless and to the extent actually distributed to the Borrower or a Subsidiary of the Borrower);
- (j) to the extent included in such Net Income, gains from asset sales;
- (k) the net income of any Subsidiary of the Borrower which is not a Loan Party, to the extent that the distribution by that Subsidiary of amounts of such Net Income to the Borrower is restricted by a contract, operation of law or otherwise;
- (l) all cash payments during such period relating to non-cash charges which were added back in determining EBITDA in any prior period; and
- (m) to the extent included in such Net Income, any other non-cash items increasing such Net Income for such period including non-cash gains resulting from the mark-to-market of outstanding Hedge Agreements (in accordance with GAAP).

For the purposes of calculations effected prior to the completion of the first four full Financial Quarters ending after the Construction Term-Out Date, EBITDA will be calculated as follows:

- (i) for the first full Financial Quarter ending after the Construction Term-Out Date, using the actual EBITDA for such Financial Quarter and multiplying it by four (4);
- (ii) for the second full Financial Quarter ending after the Construction Term-Out Date, using the actual EBITDA for the first two full Financial Quarters ending after the Construction Term-Out Date and multiplying it by two (2); and
- (iii) for the third full Financial Quarter ending after the Construction Term-Out Date, using the actual EBITDA for the first three full Financial Quarters ending after the Construction Term-Out Date and multiplying it by four thirds (4/3).

“Eligible Assignee” means any person (other than a natural person or any Affiliate of the Borrower) that is an assignee of a Lender hereunder and, in respect of which any consent that is required by Section 14.12.2, such consent has been obtained.

“Enforcement Action” means any action or proceeding by the Administrative Agent for the enforcement of the Liens constituted by the Security, including without limitation, the taking of possession of the Collateral, the sale, lease or other disposition of the Collateral, the carrying on of the business of the Loan Parties, the foreclosure of the Liens constituted by the Security, the private appointment of a receiver and the institution of proceedings for the appointment of a receiver, receiver manager, trustee in bankruptcy or similar official.

“Environmental Consultant” means Thurber Engineering Ltd. or such other consultant satisfactory to the Administrative Agent and the Borrower.

“Environmental Laws” means all applicable Laws (including Permits and consent decrees as to which a Loan Party is a party or otherwise subject, and administrative orders of any Official Body which may affect the Loan Parties, provided that in the case of guidelines or other non-binding requirements they are customarily complied with by persons prudently operating a similar business as the Loan Parties) relating to public health and safety, protection of the environment

(including protection of flora and fauna), the presence, handling, storage, disposal, shipment, packing, sale, transportation, generation, use, treatment or Release of Hazardous Materials, above-ground or underground storage tanks and occupational health and safety.

“Environmental Liabilities” means, with respect to any person, all liabilities, obligations, responsibilities, costs (including any response, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs), losses, damages (including any punitive damages, property damages, natural resource damages, consequential damages, treble damages) and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, administrative order, investigation order (including judicial and administrative orders), proceeding or demand by any person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, regulation, equity or common law, including any arising under or related to any Environmental Laws, Permits, or in connection with any Release or threatened Release or presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

“EPC Contract” means the Engineering, Procurement and Construction Contract for the Project dated August 26, 2019 between Milner Power II LP and the EPC Contractor, as amended, supplemented or extended from time to time as permitted hereunder, including without limitation by the issuance of Change Orders thereunder (as permitted by the terms thereof).

“EPC Contract Guarantors” means, collectively, Overland Contracting Canada Inc. and PCL Industrial Management Inc. and **“EPC Contract Guarantor”** means either one of them.

“EPC Contract Warranty End Date” means the date on which the “Warranty Period” (under and as defined in the EPC Contract) expires and includes any extensions or continuations thereof.

“EPC Contractor” means BPC Milner, a joint venture by and between Overland Contracting Canada Inc. and PCL Industrial Management Inc.

“EPC Subcontract” means each subcontract entered into between the EPC Contractor and an EPC Subcontractor and includes (i) any and all warranties provided by such EPC Subcontractor to the EPC Contractor, (ii) any guarantee by a person that has guaranteed the obligations of such subcontractor to the EPC Contractor, and (iii) any assignment of such warranties and guarantees by the EPC Contractor to Milner Power II LP.

“EPC Subcontractor” means each subcontractor that has provided a warranty to the EPC Contractor in connection with the supply of goods, materials, equipment and services required under the EPC Contract and includes any person that has guaranteed the obligations of such subcontractor to the EPC Contractor.

“Equivalent Amount” means, on a particular date in respect of any amount expressed in a particular currency (the **“original currency”**), the equivalent amount expressed in a second designated currency (the **“second currency”**) determined by reference to the Bank of Canada 4:30 pm (ET) rate at which the original currency may be exchanged into the second currency as published on the Reuters Screen page BOFC. In the event that such rate does not appear on such Reuters page, such rate shall be ascertained by reference to any other means (as selected

by the Administrative Agent) by which such rate is quoted or published from time to time by the Bank of Canada; provided that, if at the time of any such determination, for any reason, no such exchange rate is being quoted or published, the Administrative Agent may use such reasonable method as it considers appropriate to ascertain such rate, and the resulting determination shall be conclusive absent manifest error.

“Event of Default” has the meaning given to it in Section 12.1.

“Excluded Tax” means, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder:

- (a) Taxes imposed on or measured by its net income or capital, and franchise Taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located, in which it carries on business or, in the case of any Lender, in which its applicable Lending Branch is located; and
- (b) any branch profits Taxes or any similar tax imposed by any jurisdiction in which the Lender is located or carries on business.

“Existing Plant” means the existing 150 MW dual fuel (coal and natural gas) power stations owned by Milner Power LP situated on the Site Lands.

“Face Amount” means:

- (a) in respect of a Letter of Credit, the maximum amount that may from time to time be payable to the Beneficiary thereof and where used in a context referring to more than one Letter of Credit means the aggregate of the Face Amounts thereof; and
- (b) in respect of a Bankers’ Acceptance, the face amount of such Bankers’ Acceptance and where used in a context referring to more than one Bankers’ Acceptance means the aggregate of the face amounts thereof.

“Fee Letter” means the fee letter dated as of the date hereof, addressed to the Borrower by the Administrative Agent and the Sole Lead Arranger.

“Final Maturity Date” means the earlier of: (A) the date which is 35 months following the Closing Date, as such date may be extended pursuant to the provisions hereof, (B) the date which is 1 month prior to the date upon which all outstanding obligations under the Subordinated Credit Agreement must be repaid by the Borrower in full, and (C) the date on which all Outstanding Obligations become due and payable hereunder.

“Final Punch List Items” means the punch list items under the Material Project Contracts remaining to be paid as of the Completion Date.

“Financial Model” means the financial model prepared by the Borrower and approved by the Lenders, and attached hereto as Schedule 16 on the Closing Date.

"Financial Quarter" means a period of three consecutive months ending on each of March 31, June 30, September 30 and December 31, as the case may be.

"Financial Year" means a financial year commencing on January 1 of each calendar year and ending on December 31 of such calendar year.

"Financing Charges" means, for any fiscal period, without duplication, interest expense of the Borrower determined on a consolidated basis in accordance with GAAP, as the same would be set forth or reflected in a consolidated statement of operations of the Borrower and, in any event, shall include:

- (a) all interest accrued or payable in respect of such period, including capitalized interest and imputed interest with respect to lease obligations included as Debt;
- (b) all fees (including standby and commitment fees, acceptance fees in respect of bankers' acceptances and fees payable in respect of letters of credit, letters of guarantee and similar instruments) accrued or payable in respect of such period, prorated (as required) over such period;
- (c) any difference between the face amount and the discount proceeds of any bankers' acceptances, commercial paper and other obligations issued at a discount, prorated (as required) over such period;
- (d) the aggregate of all purchase discounts relating to the sale of accounts receivable in connection with any asset securitization program; and
- (e) all net amounts charged or credited to interest expense under any Interest Hedge in respect of such period.

Provided however that Financing Charges shall not include any DLN2.6+ Payments or any portion thereof, or any interest expenses arising from Mark-to-Market calculations on any Interest Hedge.

"First Nations" means any Indian or Indian Band (as those terms are defined in the Indian Act (Canada), band council, aboriginal treaty nation or other aboriginal person or people, or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in Alberta whether or not identified by the Crown, before or after the date of this Agreement, as an Indian, Indian band, band council, aboriginal treaty nation or other aboriginal person or people, or aboriginal governing body.

"First Nations Claims" means any material claims, assertions or demands, written or oral, whether proven or unproven, made by any First Nations against any Loan Party or an Official Body, or any representatives thereof, in respect of aboriginal rights, aboriginal title, treaty rights or any other aboriginal interest in or to all or any portion of the Project or the Site Lands.

"GAAP" means generally accepted accounting principles which are in effect from time to time in Canada, and which effective January 1, 2011 encompass International Financial Reporting Standards ("**IFRS**") as issued by the International Accounting Standards Board and interpretations of the International Financial Reporting Interpretations Committee as issued by the International Accounting Standards Board.

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity to the Project or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Plant, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies are available to meet the Plant’s needs under reasonable conditions and reasonably anticipated abnormal conditions;
- (b) the Plant is operated properly, efficiently and taking into account manufacturers’ guidelines and specifications; and
- (c) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

“GP” means either of Milner Power or Milner Power II.

“GST” means the goods and services tax payable in accordance with the Part IX of the *Excise Tax Act* (Canada).

“Guarantors” means, collectively, those Material Subsidiaries of the Borrower (other than the Unrestricted Subsidiaries) which have executed a Loan Party Guarantee and other Security in accordance with the provisions of Article 8.

“Hazardous Materials” means:

- (a) any oil, flammable substances, explosives, radioactive materials, hazardous waste or substances, toxic waste or substances or any other waste, contaminants, materials or pollutants defined in or controlled or regulated by Environmental Laws, including those which may:
 - (i) pose a hazard, or are likely to pose a hazard, to the Site Lands, the natural environment (including flora and fauna) or to human health, or to any other property owned or controlled by any Loan Party, or to persons on or about the Site Lands or any other property owned or controlled by any of the Loan Parties; or
 - (ii) cause the Site Lands, or any other property owned or controlled by any of the Loan Parties, to be in violation of any Law;

- (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of limits prescribed by Law, or radon gas;
- (c) any chemical, material or substance defined in or regulated pursuant to Environmental Law, including those included in the definition of “contaminant”, “pollutant”, “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “special waste” or “toxic substance”, “waste” or similar definitions under any Law; and
- (d) any other chemical, material or substance, exposure to which, or Release of which is prohibited, limited or regulated by any Official Body or which may or could pose a hazard to the occupants of the Site Lands, the natural environment (including flora and fauna) or human health, or to any other property owned or controlled by any of the Loan Parties, or to the owners or occupants of property adjacent to or surrounding the Site Lands, or any other property owned or controlled by any of the Loan Parties, or to any other person coming upon the Site Lands or any other property owned or controlled by any of the Loan Parties or adjacent or surrounding property.

“Hedge Agreement” means an agreement, whether in the form of an ISDA Master Agreement, a futures contract, a swap transaction, an option, a cap transaction, floor transaction, collar transaction, forward sale, put, or otherwise, designed for managing, mitigating or eliminating risks relating to credit exposure, Shares, interest rates, currency or commodities.

“Hedge Facilities” means, collectively, the Currency Hedge Facility, the Interest Hedge Facility and the Commodity Hedge Facility.

“Hedge Lenders” has the meaning set out in the definition of “Lender”.

“Hedge Liabilities” means at any time and from time to time all net liabilities of the Borrower which are owing as at such time with respect to hedging transactions entered into by the Borrower pursuant to any Lender Hedge, including any liability of the Borrower regarding any cost incurred or loss suffered by a Hedge Lender under and in accordance with the applicable Lender Hedge.

“Increased Costs” means any amounts payable by the Borrower to the Administrative Agent or a Lender under any of Sections 3.2.3, 5.10, Article 11, Sections 14.5 and 14.6.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning ascribed thereto in Section 14.6.1.

“Independent Engineer” or **“IE”** means BTY Group or any successor independent engineer appointed by the Majority Lenders to act as technical and environmental consultant to the Lenders and provided that no Default or Event of Default has occurred and is continuing, approved by the Borrower (such approval not to be unreasonably withheld). If at any time there is no Independent Engineer, or the Independent Engineer is not in the opinion of the Majority Lenders discharging its duties and responsibilities hereunder, the Majority Lenders shall appoint a replacement Independent Engineer with the consent of the Borrower (provided that, if a Default or

an Event of Default has occurred and is continuing, no such consent is required), such consent not to be unreasonably withheld or delayed.

“Independent Engineer’s Certificate” has the meaning ascribed to such term in Section 6.1.21 substantially in the form of Schedule 5 attached hereto.

“Independent Engineer’s Closing Report” has the meaning ascribed to such term in Section 6.1.21.

“Independent Engineer’s Completion Date Certificate” means a certificate in the form of Schedule 15 attached hereto.

“Independent Engineer’s Monitoring Confirmation” has the meaning ascribed to such term in Section 10.1.8(d)(i).

“Initial Advance” means the first Advance to the Borrower under this Agreement.

“Insolvency Event of Default” means each Event of Default described in Section 12.1.6 and Section 12.1.7.

“Insurance Consultant” means Intech Risk Management or such other person appointed by the Majority Lenders to act as insurance consultant to the Lenders and, provided that no Default or Event of Default has occurred and is continuing, approved by the Borrower (such approval not to be unreasonably withheld). If at any time there is no Insurance Consultant, or the Insurance Consultant is not in the opinion of the Majority Lenders discharging its duties and responsibilities hereunder, the Majority Lenders shall appoint a replacement Insurance Consultant with the consent of the Borrower (provided that, if a Default or an Event of Default has occurred and is continuing, no such consent is required), such consent not to be unreasonably withheld or delayed.

“Interest Hedge” means an agreement, whether in the form of an ISDA Master Agreement, a futures contract, a swap transaction, an interest rate option, a cap transaction, floor transaction, collar transaction or otherwise, designed for managing, mitigating or eliminating risks relating to interest rate fluctuations.

“Interest Hedge Facility” has the meaning set forth in Section 2.1.1(f).

“Interest Hedge Lender” has the meaning set out in the definition of “Lender”.

“Interest Period” means, for each CDOR Advance, a period commencing:

- (a) in the case of the initial Interest Period for such CDOR Advance, on the date of such Advance; and
- (b) in the case of any subsequent Interest Period for such CDOR Advance in accordance with a Rollover, on the last day of the immediately preceding Interest Period, and ending, in either case, on the last day of such period as shall be selected by the Borrower in accordance with the provisions below.

If another type of Advance is converted to a CDOR Advance, the initial Interest Period for such CDOR Advance shall commence on the date of such Conversion. The duration of each Interest Period for a CDOR Advance shall (subject to availability) be: (i) before the Construction Term-Out date, one, two, three or six months, and (ii) on or after the Construction Term-Out Date, three or six months, in each case, as the Borrower may select in the applicable Advance Request, or such other period to which the Lenders may agree. No Interest Period may be selected which would end on a day after the Final Maturity Date for the Term Facility or, in the opinion of the Administrative Agent, conflict with any repayment stipulated herein. Whenever the last day of an Interest Period would otherwise occur on a day other than a Business Day, such Interest Period shall be extended so the last day occurs on the next succeeding Business Day; provided that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the immediately preceding Business Day.

"ISO" means the Independent System Operator formed under the *Electric Utilities Act* (Alberta).

"ISO Rules" means the rules of the ISO made under section 20 of the *Electric Utilities Act* (Alberta).

"Law" means:

- (a) any domestic or foreign statute, law (including common and civil law), treaty, convention, accord, code, ordinance, rule, regulation, restriction or bylaw (zoning or otherwise);
- (b) any judgment, order, writ, injunction, decision, ruling, decree or award; or
- (c) any regulatory policy, practice, guideline, requirement or directive binding on or affecting the property of any person, in each case whether or not having the force of law.

"LC Lender" has the meaning set out in the definition of "Lenders".

"Lease" means the lease of a portion of the Site Lands dated September 10, 2019 with Milner Power as lessor and Milner Power II LP as lessee.

"Lender Hedges" means those Commodity Hedges, Currency Hedges and Interest Hedges entered into by the Borrower and a Hedge Lender from time to time, including without limitation, the Required Hedges that are Commodity Hedges, Interest Hedges and Currency Hedges.

"Lender Parties" means, collectively, the Lenders and the Hedge Lenders and **"Lender Party"** means any one of them.

"Lenders" means those financial institutions whose names are set forth on the execution pages hereof under the heading "Lenders" and identified in Schedule 1 annexed hereto, and their respective permitted successors and assigns and includes: (i) **"LC Lender"** which means ATB (or an Affiliate thereof) providing the Letter of Credit Facility pursuant hereto and Letter of Credit Advances under Revolver Facility #1, (ii) **"Interest Hedge Lenders"** which means ATB (or any Affiliate thereof) providing the Interest Hedge Facility pursuant hereto, (iii) **"Commodity Hedge Lenders"** which means ATB and any other Lender (or affiliates thereof) providing the Commodity Hedge Facility pursuant hereto, (iv) **"Currency Hedge Lenders"** which means ATB (or any Affiliate thereof) providing the Currency Hedge Facility pursuant hereto, and (v) **"Hedge Lenders"**

which means, collectively, the Interest Hedge Lenders, the Commodity Hedge Lenders and the Currency Hedge Lenders.

“Lenders’ Counsel” means McCarthy Tétrault LLP, or such other law firm or firms as may from time to time be chosen by the Lenders to act on their behalf in connection with the Credit Facilities.

“Lending Branch” means, in respect of a particular Lender, the branch whose address is set forth in Schedule 1 hereto, or such other branch as such Lender may designate from time to time by notice given to the Administrative Agent and the Borrower provided that any assignment or transfer by such Lender to, or designation of, another Lending Branch must be made in accordance with Section 14.12.2 hereof.

“Letter of Credit” means a standby, performance or commercial letter of credit or a letter of guarantee for a specified amount in Canadian Dollars issued under the Letter of Credit Facility or Revolver Facility #1 by the LC Lender for the purpose set forth in Section 2.1.2(b).

“Letter of Credit Advance” means the issuance by the LC Lender of one or more Letters of Credit for the account of the Borrower under either of the Letter of Credit Facility and the Revolver Facility #1 pursuant to an Advance Request and includes a Rollover of any Letter of Credit.

“Letter of Credit Advance Date” means any Business Day fixed in accordance with the provisions of this Agreement for a Letter of Credit Advance under the Letter of Credit Facility or Revolver Facility #1, as applicable.

“Letter of Credit (Cash Collateralized)” means a Letter of Credit which the Borrower has designated in writing to the Administrative Agent and the LC Lender as a Letter of Credit (Cash Collateralized) and has provided to the Administrative Agent, for the benefit of the LC Lender, cash collateral in accordance with Section 4.12 hereof.

“Letter of Credit Commitment” means the LC Lender’s obligation to issue Letters of Credit under the Letter of Credit Facility in an aggregate principal amount not exceeding the Letter of Credit Facility Limit.

“Letter of Credit Facility” means the credit facility to be made available hereunder to the Borrower by the LC Lender by way of Letters of Credit issued in Canadian Dollars by the LC Lender for the purpose set forth in Section 2.1.2(b).

“Letter of Credit Facility Limit” means up to the amount of Cdn.\$8,000,000.00.

“Letter of Credit Fee” means the fee charged by the LC Lender for issuing a Letter of Credit which shall be calculated in accordance with Section 5.8.1.

“Leverage True-Up” means on the Construction Term-Out Date, the amount, if any, by which the aggregate Outstanding Principal under the Construction Facility and the Revolver Facility #1 is less than 27% of the Project Costs certified by the Independent Engineer.

“Leverage True-Up Payment” means a payment (if any) to the holder of the Permitted Subordinated Debt on the Construction Term-Out Date by way of an Advance under the Construction Facility in an amount equal to the Leverage True-Up pursuant to Section 2.2.2.

“Lien” means any mortgage, pledge, lien, hypothecation, security interest or other encumbrance or charge (whether fixed, floating or otherwise) or title retention and any deposit of monies or prepayment of obligations under any agreement or arrangement whereby such monies may be withdrawn or refunded only upon fulfillment of any condition as to the discharge of any other indebtedness or other obligation to any creditor, or any right of or arrangement of any kind with any creditor to have its claims satisfied prior to other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired.

“Loan Parties” means collectively, the Borrowers and the Guarantors, and **“Loan Party”** means any one of them.

“Loan Party Cure Period” means the period of time set out in a Material Project Contract within which the Borrower or any other Loan Party, as applicable, has the right to remedy or cure breaches or defaults of the Borrower or such other Loan Party thereunder before another party to such Material Project Contract is entitled to enforce its rights and remedies as a result of such default or breach or terminate such Material Project Contract.

“Loan Party Guarantee” means an unlimited, joint and several guarantee and indemnity (including any additional agreements executed in connection therewith), executed by each Loan Party in favour of the Administrative Agent in respect of the Obligations of each other Loan Party.

“Loan Party’s Initial Cure Period” means the initial portion of the Loan Party Cure Period which is granted to a Loan Party under a Material Project Contract, excluding any extensions of such Loan Party Cure Period that may be available to such a Loan Party as a result of the attempt of a Loan Party to remedy or cure such default or breach or take such other actions to extend such initial Loan Party Cure Period.

“LP” means either of Milner Power LP or Milner Power II LP.

“MAE” or **“Material Adverse Effect”** means any event or occurrence of whatever nature that could reasonably be expected to result in a material adverse effect on:

- (a) the ability (financial or otherwise) of the Borrower, any other Loan Party or any other person to pay or perform or comply with any of its obligations under the Credit Facility Documents or the Material Project Contracts;
- (b) the validity, perfection or priority of the Liens on the Collateral in favour of the Administrative Agent and Lenders or the value of the Collateral (other than a change in value of the Collateral as a result of a change in market conditions and, with respect to priority of the Liens, subject to Permitted Encumbrances that, pursuant to applicable Law, are entitled to a higher priority than the lien of the Administrative Agent or Lenders);
- (c) the ability of the Administrative Agent or any Lender to enforce their respective rights and remedies under any of the Credit Facility Documents, Material Project Contracts or any related document, instrument or agreement;
- (d) the validity or enforceability of any of the Credit Facility Documents; or
- (e) the business, condition (financial or otherwise), prospects or operations of the Loan Parties taken as a whole or the Project, provided that such effect shall be determined,

measured or assessed without regard to any macroeconomic financial condition generally.

“Major Counterparty” has the meaning specified in Section 12.1.15.

“Majority Lenders” means: (a) if there are less than three (3) Lenders, all of the Lenders; and (b) if there are three (3) or more Lenders, at any time prior to the occurrence of an Event of Default, at least two (2) Lenders whose respective individual Commitments aggregate more than 66⅔% of the total Commitments of all Lenders under all Credit Facilities (excluding for greater certainty, the Currency Hedge Facility, the Interest Hedge Facility and the Commodity Hedge Facility) at such time and, at any time after the occurrence of an Event of Default, at least two (2) Lenders whose share of Outstanding Principal is in aggregate more than 66⅔% of all Outstanding Principal; for greater certainty, the **“Majority Lenders”** shall be calculated without regard to the Letter of Credit Commitment; provided however, if after an Event of Default, all of the Outstanding Credit Obligations have been fully and finally paid, **“Majority Lenders”** shall mean Hedge Lenders whose share of Outstanding Obligations is in the aggregate more than sixty-six and two thirds percent (66%) of all Outstanding Obligations. Notwithstanding the foregoing, the unfunded Commitment of any defaulting Lender, the outstanding Advances of any defaulting Lender and the Outstanding Obligations of any Hedge Lender that is a defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders.

“Mark-to-Market” means, in respect of any Hedge Agreement and for any day on which the Mark-to-Market is calculated, the amount, if any, that would be payable by any Loan Party to a Hedge Lender (expressed as a positive number), or by such Hedge Lender to such Loan Party (expressed as a negative number), estimated by making at mid-market the calculations required by the ISDA Master Agreement between such Hedge Lender, on the one hand, and such Loan Party, on the other hand, as if such ISDA Master Agreement were being terminated as a result of a Termination Event (as defined in the ISDA Master Agreement) with two Affected Parties (as defined in the ISDA Master Agreement) on that day of calculation.

“Material Project Contracts” means:

- (a) the agreements listed in Schedule 7;
- (b) each Additional Material Project Contract; and
- (c) any replacement of any of the foregoing.

“Material Subsidiary” means each direct or indirect wholly-owned Subsidiary of the Borrower (other than the Unrestricted Subsidiaries), which has a direct ownership interest in another Material Subsidiary, or which is required to be designated as a Material Subsidiary in order to ensure the Borrower's compliance with the provisions hereof (including without limitation, Section 8.11(a)), or which the Borrower elects to designate as a Material Subsidiary, and shall include the general partner of such Subsidiary if such Subsidiary is a limited partnership.

“Maximum Unrestricted Initial Advance Amount” means, on the date of the Initial Advance, the amount by which the Project Costs Satisfied exceeds 73% of the Project Budget, provided that if the Project Costs Satisfied does not exceed 73% of the Project Budget as of the date of the Initial Advance then the Maximum Unrestricted Initial Advance Amount shall be zero.

“Milner Power” means Milner Power Inc., a corporation under the laws of the Province of Alberta.

“Milner Power LP” means Milner Power Limited Partnership, a limited partnership formed under the laws of the Province of Alberta with Milner Power as its sole general partner.

“Milner Power II” means Milner Power II Inc., a corporation under the laws of the Province of Alberta.

“Milner Power II LP” means Milner Power II Limited Partnership, a limited partnership formed under the laws of the Province of Alberta with Milner Power II as its sole general partner.

“Minimum Required DSCR” means a projected Debt Service Coverage Ratio of not less than **Redacted** as of the last day of each Financial Year (based on the methodology as described in the “Debt Service Coverage Ratio” definition) for the period of the 10 year amortization schedule annexed as Schedule 3 hereto and assuming a fixed interest rate hedge will be entered into for 50% of the projected outstanding Debt (as referred to in subparagraph (a) of the definition of Debt) as of each such day reflecting the hedging strategy provided for in Section 10.1.21(a). **[Commercially sensitive ratio redacted]**

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns.

“Net Available Cash” from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by an acquiring person of Debt or other obligations relating to such properties or assets or received in any other non-cash form) therefrom, in each case net of:

- (a) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all federal, provincial and local Taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Disposition;
- (b) all payments made on any Debt which is secured by any property or other assets subject to such Asset Disposition, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such property, assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable Law be repaid out of the proceeds from such Asset Disposition; and
- (c) the deduction of appropriate amounts to be provided by the seller as a cash reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed of in such Asset Disposition and retained by the seller after such Asset Disposition.

“Net Income” means, for any fiscal period, the net income or net loss of the Borrower determined on a consolidated basis in accordance with GAAP, as set forth in the consolidated financial statements of the Borrower for such period.

“Non-Acceptance Discount Rate” means for any day, for ATB, the BA Discount Rate in paragraph (a) of the definition thereof, and for any other Non-Acceptance Lender, the CDOR Rate plus **Redacted (Redacted)** bps. **[Commercially sensitive amount redacted]**

“Non-Acceptance Lenders” means ATB and any other Lender which is not a Canadian chartered bank, or which does not accept Bankers’ Acceptances in the ordinary course of its business.

“Non-Approved Consents” means those Consents that do not provide the Administrative Agent with rights to remedy or cure breaches or defaults of the Borrower or any other Loan Party under the applicable Material Project Contract referred to therein, after the expiry of the Loan Party Cure Period.

“O&M Plan and Strategy” means a long term maintenance, service and operating plan and strategy for the Plant prepared by the Borrower in consultation with the Independent Engineer, in form and substance satisfactory to the Lenders and the Independent Engineer.

“Obligations” means the present and future indebtedness, liabilities and obligations of the Borrower and each other Loan Party under this Agreement in respect of all Advances and accrued interest thereon, all present and future indebtedness, liabilities and obligations in respect of the Lender Hedges entered into by the Borrower or any other Loan Party and a Hedge Lender and all other present and future indebtedness, liabilities and obligations of the Borrower or any other Loan Party to the Administrative Agent or any Lender Party under this Agreement or any other Credit Facility Documents (direct or indirect, joint or several, absolute or contingent, matured or unmatured), including, without limiting the generality of the foregoing, all fees, costs, expenses and indemnity obligations hereunder and thereunder.

“Official Body” means the government of Canada or any other nation, or of any political subdivision thereof, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

“Operate” where used in relation to the Project includes all aspects of operations and maintenance, including receipt of all materials, services and supplies; use of all equipment and facilities, including the control room, pipes, wires, wireless communication services, measurement and metering devices, interconnection services and devices; receipt and compliance with dispatch instructions associated with the delivery of electrical outputs of the Project; billing and collecting and all other activities associated with the delivery of electrical outputs of the Project. **“Operation”**, **“Operated”** and **“Operating”** have correlative meanings.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Facility Document or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Agreement or any other Credit Facility Document.

“Outside Date” means December 31, 2020.

“Outstanding Credit Obligations” means, at any time the aggregate of the following:

- (a) Obligations of the Borrower and other Loan Parties in respect of the aggregate Outstanding Principal under the Credit Facilities;
- (b) all accrued and unpaid interest and fees on all Outstanding Principal under the Credit Facilities and all interest on such accrued and unpaid interest and fees; and
- (c) all accrued and unpaid fees, expenses, costs, indemnities, Increased Costs and other amounts owing to the Lenders and the Administrative Agent or any of them by any Loan Party in respect of the Credit Facilities (other than the Interest Hedge Facility and the Commodity Hedge Facility) or otherwise arising under, out of or in connection with this Agreement or the other Credit Facility Documents (other than any Lender Hedges).

“Outstanding Obligations” means, at any time the aggregate of the following:

- (a) all Outstanding Credit Obligations;
- (b) all Hedge Liabilities due and owing by the Borrower or any other Loan Party to any Hedge Lender in respect of the Lender Hedges; and
- (c) all accrued and unpaid fees, expenses, costs, indemnities and other amounts owing to each Hedge Lender by the Borrower or any other Loan Party in respect of the Lender Hedges to which such Hedge Lender is a party or otherwise arising under, out of or in connection with the Lender Hedges.

“Outstanding Principal” means, at any time, the amount calculated and expressed in Canadian Dollars equal to:

- (a) when used in a context pertaining to Advances made by a single Lender under any one or more of the Credit Facilities, the sum of:
 - (i) the aggregate principal amount of all Canadian Prime Rate Advances and CDOR Advances then outstanding made by such Lender under such Credit Facility or Credit Facilities;
 - (ii) the aggregate principal amount equal to the Face Amount of outstanding Bankers’ Acceptances accepted by such Lender and the amount required to be repaid in respect of any BA Equivalent Advance made by such Lender on its maturity; and
 - (iii) the Face Amount of the Letters of Credit issued by such Lender under the Letter of Credit Facility and Revolver Facility #1; and
- (b) when used elsewhere in this Agreement with reference to any one or more of the Credit Facilities, the sum of:
 - (i) the aggregate principal amount of all Canadian Prime Rate Advances and CDOR Advances then outstanding made by the Lenders under such Credit Facility or Credit Facilities;

- (ii) the aggregate principal amount equal to the Face Amount of outstanding Bankers' Acceptances accepted by the Lenders and the amount required to be repaid in respect of any BA Equivalent Advance made by the Lenders on its maturity; and
- (iii) the Face Amount of all Letter of Credit Advances then outstanding made by the Lenders under such Credit Facility or Credit Facilities.

"Participant" has the meaning ascribed thereto in Section 14.12.4.

"Payment Account" means the Canadian Dollar account maintained by the Administrative Agent at its Calgary, Alberta main branch, or such other places or accounts as may be notified by the Administrative Agent to the Borrower and the Lenders from time to time.

"Pension Plan" means a **"pension plan"** or **"plan"** which is a **"registered pension plan"** as defined in the *Income Tax Act* (Canada) or is subject to the funding requirements of applicable pension benefits legislation in any Canadian jurisdiction and is applicable to employees resident in Canada of a Loan Party.

"Performance Liquidated Damages" means liquidated damages received or to be received (and as confirmed by the Independent Engineer) by a Loan Party under a Material Project Contract resulting from any failure by the Counterparty to achieve specified performance under such Material Project Contract, other than with respect to delay.

"Permit" means the Power Plant Approval and any other permit, licence, approval, consent, guideline, order, right, certificate, registration, judgment, writ, injunction, award, determination, direction, decree, authorization, screening, assessment, franchise, privilege, grant, waiver, exemption and other similar concession made by or under applicable Law of, by or from any Official Body or otherwise required pursuant to applicable Law in relation to the Project including, without limitation, Environmental Laws (and shall include any required amendment or amendments).

"Permitted Accounts" means accounts held by the Borrower or another Subsidiary with: (a) Bank of Montreal in connection with the cash or cash equivalents referred to in subparagraph (o) of the definition of Permitted Encumbrances; and (b) The Toronto-Dominion Bank in connection with the cash or cash equivalents referred to in subparagraph (p) of the definition of Permitted Encumbrances.

"Permitted Dispositions" means:

- (a) the sale of inventory in the ordinary course of business (including electricity, renewable energy certificates relating to the Project and other consumable materials acquired for use in the Operation of the Project);
- (b) the sale of any asset that is worn out or obsolete or no longer useful for the purpose of carrying on the Borrower's business provided that the same is replaced;
- (c) dealings in cash and securities permitted hereby;

- (d) either (i) a disposition of an asset or group of assets for an amount not in excess of \$250,000 (or the Equivalent Amount in other currencies), that are intended to be and are replaced within a reasonable period of time with assets of equal or greater utility; or (ii) a disposition of an asset or group of assets for an amount in excess of \$250,000 (or the Equivalent Amount in other currencies), that are intended to be and are replaced within a reasonable period of time with assets of equal or greater utility provided that the Borrower shall prior to the Construction Term-Out Date deposit the Net Available Cash into the applicable Construction Account pending the acquisition of the replacement asset, and any Net Available Cash not required to purchase such replacement asset, at the option of the Borrower:
 - (i) shall remain in such Construction Account pending the acquisition of additional Project Assets; or
 - (ii) be applied in such other manner as the Borrower may request and the Majority Lenders approve;
- (e) a disposition at fair market value of an asset or group of assets not required for the continued Operation of the Project, provided that in any Financial Year the Borrower and the other Loan Parties may rely on the exemption set forth in this paragraph (e) only in respect of dispositions of such assets having an aggregate fair market value (i) up to the Construction Term-Out Date, **\$Redacted**, and (ii) thereafter, **\$Redacted** (or, in each case, the Equivalent Amount in other currencies); [**Commercially sensitive amounts redacted**]
- (f) subject to subparagraph (i) below, a disposition at fair market value of the Shares in any Unrestricted Subsidiary provided that 100% of the Net Available Cash from such disposition is used to prepay the Credit Facilities;
- (g) a disposition by one Loan Party to another Loan Party;
- (h) a disposition of any assets related to the Forked River Land development and the Gold Creek generating facility, provided any Net Available Cash from such disposition is used first to fund any cash requirements of the Borrower other than the Project; and
- (i) a disposition of any Shares in **Redacted**, provided in each case that any Net Available Cash from such disposition is used first to fund any cash requirements of the Borrower other than the Project. [**Commercially sensitive terms redacted**]

“Permitted Distribution” means:

- (a) Distributions among Loan Parties;
- (b) on and following the Closing Date, payment by the Borrower of interest, principal payments or applicable commitment or other fees owing under the Permitted Subordinated Debt up to an amount equal to the Maximum Unrestricted Initial Advance Amount, provided that no Default or Event of Default has occurred and is continuing or would reasonably be expected to result from such payment;

- (c) following the Closing Date, non-cash payments of interest owing under the Subordinated Credit Agreement to be paid by adding the amount of such interest to the outstanding principal obligations under the Subordinated Credit Agreement in accordance with Section 3.3(a)(iii) of the Subordinated Credit Agreement;
- (d) on and following the Construction Term-Out Date, payment by the Borrower of interest, principal payments or applicable commitment or other fees owing under the Permitted Subordinated Debt up to an amount equal to the Leverage True-Up, if applicable, provided that no Default or Event of Default has occurred and is continuing or would reasonably be expected to result from such payment;
- (e) after the Construction Term-Out Date, cash payments by the Borrower of interest, fees and charges under the Permitted Subordinated Debt provided that no Default or Event of Default has occurred and is continuing or would reasonably be expected to result from such payment;
- (f) payment to repurchase Shares of the Borrower under a normal course issuer bid in an aggregate amount of up to **\$Redacted** in each Financial Year, provided that any such repurchase in excess of **\$Redacted** in any Financial Year shall be subject to the Lenders being provided with a budget for the repurchase of such Shares and the Lenders consenting to the repurchase of Shares, in their absolute discretion, provided further that no Default or Event of Default has occurred and is continuing or will result from such payment; [**Commercially sensitive amounts redacted**]
- (g) after the Construction Term-Out Date, payment to repurchase Shares of the Borrower under a normal course issuer bid in in each Financial Year in any amount in excess of that permitted under subparagraph (e) of this definition, provided that (i) payment of any such excess amount is funded with the proceeds of an advance from either or both of Alpine Capital Corp. and Prairie Merchant Corporation under the Subordinated Credit Agreement, and (ii) no Default or Event of Default has occurred and is continuing or will result from such payment; and
- (h) Distributions to Unrestricted Subsidiaries to a maximum of **\$Redacted** per year, provided that: [**Commercially sensitive amount redacted**]
 - (i) if such Distribution is being made to an Unrestricted Subsidiary on or before the Construction Term-Out Date, such Distribution shall only be used to **Redacted**; and [**Commercially sensitive terms redacted**]
 - (ii) at the time of such Distribution, no Default or Event of Default exists or will result from such Distribution.

“Permitted Encumbrances” means, in respect of any person at any time, any one or more of the following:

- (a) Liens for taxes, assessments or government charges or levies not at the time due and delinquent or the validity of which is at the time being Contested in Good Faith;

- (b) security given to a public utility or any other Official Body when required by such utility or other Official Body in connection with the operations of such person in the ordinary course of its business and for the purpose of carrying on the same;
- (c) Purchase Money Mortgages and capital leases (to the extent they constitute Debt permitted by Section 10.2.1) securing or evidencing unpaid obligations not in excess of (i) up to the Construction Term-Out Date, \$250,000, and (ii) thereafter, \$750,000 (or, in each case, the Equivalent Amount in other currencies) in the aggregate at any time;
- (d) agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including (without limitation) subdivision agreements, servicing agreements, development agreements, site plan control agreements, engineering, grading or landscaping agreements and similar agreements and which do not materially adversely affect the use or intended use of the property;
- (e) reservations, limitations, appropriations, provisos and conditions in the original grant from the Crown and statutory exceptions to title;
- (f) inchoate or statutory Liens of contractors, subcontractors, mechanics, workers, suppliers, material suppliers, carriers and others in respect of the construction, maintenance, repair or operation of the property, provided that:
 - (i) any such Lien is related to obligations not due or delinquent; such Lien is not registered against title to the Site Lands by any Lien claimant; or
 - (ii) if such Lien is registered, the applicable Loan Party has advised the Administrative Agent in writing that it is acting diligently and in good faith to discharge or vacate any registered Lien or to have withdrawn or cancelled any notice of Lien, and that it is maintaining adequate holdbacks as required by the BLA and other applicable Law in respect of such Lien (or such Lien is adequately covered by the BLA Holdback Letter of Credit) and further provided that in any event, such registered Lien is discharged or vacated or such notice is withdrawn or cancelled by the applicable Lien claimant in each case within 30 days of the initial registration or giving of notice, as applicable;
- (g) undetermined or inchoate liens, rights of distress and charges incidental to current operations that have not at such time been filed, registered or exercised and of which none of the Administrative Agent or any Lender has been given notice, or that relate to obligations not due or payable, or if due, the validity of which is being Contested in Good Faith;
- (h) zoning and building bylaws and ordinances, regulations and other restrictions affecting or controlling the use or development of the property made by public authorities provided that they have been complied with, or if not complied with, that any non-compliance does not materially adversely affect the use or intended use of the property;
- (i) restrictions, easements, rights of way, servitudes or other similar rights in land or immovable property granted to a utility, municipality or other utility service provider (including rights of way and servitudes for railways, sewers, drains, gas and oil pipelines,

gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other persons which in the aggregate do not materially impair the usefulness, in the operation of the business of such person, of the property subject to such restrictions, easements, rights of way, servitudes or other similar rights;

- (j) the Security;
- (k) Liens in respect of the Permitted Subordinated Debt subject to the Subordination and Postponement Agreement;
- (l) the Lien of any judgment rendered or claim filed against such person not in excess of (i) up to the Construction Term-Out Date, \$250,000, and (ii) thereafter, \$750,000 (or, in each case, the Equivalent Amount in other currencies) which such person shall be Contesting in Good Faith;
- (m) title defects or irregularities which are of a nature and in the aggregate do not materially impair the use or intended use of any real property;
- (n) any Lien arising in connection with worker's compensation, unemployment insurance, pension and employment laws, which are: (i) not due or delinquent and which have not at such time been filed pursuant to law and no other statutory proceedings have been taken to enforce the same; or (ii) being Contested in Good Faith;
- (o) Liens provided to Bank of Montreal over cash or cash equivalents in connection with (i) letters of credit issued to Official Bodies or public utilities in connection with the business of the Borrower and its Subsidiaries having cumulative face amounts not to exceed **\$Redacted**, and (iii) corporate MasterCard facilities to a maximum aggregate amount of **\$Redacted**, provided that such liens shall only be permitted hereunder for a period of 12 months after the Closing Date; [**Commercially sensitive amounts redacted**]
- (p) Liens provided to ICE NGX Canada Inc. over cash or cash equivalents in connection with natural gas and electricity supply and trading arrangements by the Borrower and its Subsidiaries in relation to the HR Milner Generating Station in amounts not to exceed **\$Redacted** in the aggregate; [**Commercially sensitive amount redacted**]
- (q) Liens provided to Nova Gas Transmission Ltd. over cash or cash equivalents in connection with Section 4.1 of the project and expenditure authorization dated February 26, 2019 between Milner LP and Nova Gas Transmission Ltd. in amounts not to exceed **\$Redacted** in the aggregate; [**Commercially sensitive amount redacted**]
- (r) [**Commercially sensitive terms redacted**]; and
- (s) any other Liens expressly consented to by the Lenders.

Inclusion of a Lien as a Permitted Encumbrance shall not constitute an acknowledgment by the Administrative Agent or the Lenders that such Lien ranks prior to the Liens constituted by the Security.

"Permitted Hedges" means the Lender Hedges.

“Permitted Subordinated Debt” means the financing by Alpine Capital Corp. as agent for and on behalf of itself, and Prairie Merchant Corporation, as lenders thereunder, in respect of a secured loan facility to the Borrower in the maximum principal amount of \$75,000,000 pursuant to the Subordinated Credit Agreement, which is subject to the Subordination and Postponement Agreement.

“person” includes any natural person, corporation, limited liability company, trust, association, company, partnership, Official Body or other entity.

“Plant” means the simple cycle natural gas fired electrical generation facility to be located on the Site Lands near Grande Cache, Alberta, with a rated nameplate 204 MW electric generating capacity (approximately) and known as “Milner 2”.

“Power Plant Approval” means the power plant approval 24632-D02-2019 issued by the AUC to Milner Power in order to permit the construction and operation of the Plant.

“Power Pool” has the meaning given to the term “power pool” in the *Electric Utilities Act* (Alberta).

“Private Letter Rating” means a letter from (i) DBRS, or (ii) another Rating Agency selected by the Borrower and acceptable to the Majority Lenders, acting reasonably.

“Project” means:

- (a) the Plant;
- (b) the gas laterals pursuant to which gas is transported to the Plant;
- (c) the electrical interconnection and synchronization with the AIES at the connection to the ATCO Electric switchyard;
- (d) any utilities owned by a Loan Party for the Plant;
- (e) all expansions, additions, improvements and modifications thereto made from time to time, whether or not of a capital nature;
- (f) all present and future tangible property, tangible assets, chattels, interests in lands (including the Real Property Interests), equipment, machinery, inventory, fixtures, buildings and other tangible goods of every description in each case owned, held, operated or maintained by a Loan Party and related to or used in connection with the Plant;
- (g) all present and future choses in action, contracts, agreements, books and records, computer tapes and disks, computer hardware and software, licences, receivables (including the Collateral Accounts), Permits, technology and know-how, all revenue of any kind or nature generated by the Project, and other rights and benefits related to or in connection with the Project in each case owned, held, operated or maintained by a Loan Party, including the Project Contracts; and

the proceeds (both immediate and derivative) from any of the foregoing, all as to be designed, developed, constructed, commissioned and Operated as contemplated by the Material Project Contracts.

“Project Assets” means the present and future real and personal property comprising the Project.

“Project Budget” means the final construction budget for the Project Costs set out in Schedule 21 as at the Closing Date, which budget shall be adequate to pay all Project Costs estimated to the Closing Date and shall include a contingency in an amount acceptable to the Lenders, acting reasonably, after consulting with the Independent Engineer.

“Project Contracts” means:

- (a) the Material Project Contracts; and
- (b) all other contracts (other than the Credit Facility Documents) entered into by any of the Loan Parties in connection with the Project.

“Project Costs” means all direct and indirect costs, without duplication, of the modification of the Existing Plant, the construction of the Plant and the development, acquisition, procurement, construction, commissioning and start-up of the Project all as described in the Project Budget, including without limitation:

- (a) the depreciated cost of components of the Existing Plant to be utilized for the Plant as certified by the Independent Engineer, the cost of modifying the Existing Plant, constructing the Plant and acquiring, developing, designing, engineering, procuring equipment, constructing, verification testing, technical direction (including training personnel), pre-operational testing, pre-production and start-up, including all necessary contingencies for modification and construction as recommended by the Independent Engineer;
- (b) all amounts incurred under Project Contracts prior to the Completion Date;
- (c) all interest costs (including any net payments under Interest Hedges) and fees in respect of the Outstanding Obligations up to the Construction Term-Out Date;
- (d) all interest and financing costs of the Borrower incurred in connection with Purchase Money Mortgages and capital leases (to the extent they constitute Debt permitted by Section 10.2.1) prior to the Completion Date;
- (e) all insurance costs and cash Taxes (but not including Taxes imposed on or measured by the Borrower’s net income or capital) accruing prior to the Completion Date;
- (f) feasibility and other study (including environmental impact assessment studies) costs actually incurred prior to the Completion Date; and
- (g) all financing costs, including financial, legal (including legal costs incurred in connection with the negotiation of Project Contracts, this Agreement, the other Credit Facility Documents and any and all other agreements or transactions pertaining to development,

acquisition, procurement, construction and start-up of the Project and the obtaining of necessary Permits) and consulting fees and expenses (including fees and expenses of the Independent Engineer, the Environmental Consultant, the Insurance Consultant and the Administrative Agent incurred before the Completion Date) and up front, arrangement and commitment fees, and any fees or expenses relating to Permitted Hedges entered into by the Borrower pursuant hereto, in each case, accruing prior to the Completion Date.

“Project Costs Satisfied” means as of any date, the Project Costs that have been paid for from sources other than the Credit Facilities and the depreciated costs of components of the Existing Plant to be utilized for the Plant plus (without duplication) any DLN2.6+ Payments that are scheduled to be paid following Substantial Completion, all as certified by the Independent Engineer.

“Project Performance Tests” means the commissioning, performance, reliability and acceptance tests required by the Independent Engineer and acceptable to the Lenders, acting reasonably, as described in Schedule 23 attached hereto.

“Project Revenues” means for any period, all amounts:

- (a) received by a Loan Party as revenue from the Project, whether received pursuant to a Material Project Contract or otherwise, including proceeds of the AESO Plant Accounts Receivable;
- (b) relating to business interruption insurance, delay penalties and Delay Liquidated Damages (excluding any Performance Liquidated Damages) received by a Loan Party from any person that compensate for lost income; and
- (c) investment income derived from Approved Securities held by a Loan Party.

“Project Schedule” means the “Project Schedule” attached hereto as Schedule 22.

“Proportionate Share” means:

- (a) when used with reference to a particular Credit Facility (other than the Hedge Facilities), at a particular time, in the context of any Lender’s obligation to make Advances under such Credit Facility, such Lender’s Commitment to make Advances under such Credit Facility at such time divided by the aggregate amount of all Lenders’ Commitments to make Advances under such Credit Facility at such time;
- (b) in the context of any Lender Party’s entitlement to receive payments in respect of Outstanding Obligations owing under one or more Credit Facilities, at a particular time, the Outstanding Obligations due to such Lender Party under such Credit Facility or Credit Facilities (as the case may be) divided by the aggregate amount of the Outstanding Obligations due to all Lender Parties under such Credit Facility or Credit Facilities (as the case may be) at such time;
- (c) in the context of any Lender’s obligation to pay any indemnification or expense reimbursement amounts not paid by the Borrower, at a particular time (i) before the Outstanding Credit Obligations are declared to be due and payable by the Administrative

Agent or automatically become due and payable in accordance with Section 12.2, that proportion equal to such Lender's Commitment to make Advances under all of the Credit Facilities (other than the Hedge Facilities) divided by the aggregate amount of all Lenders' Commitments to make Advances under all of the Credit Facilities (other than the Hedge Facilities) at such time, and (ii) after the Outstanding Credit Obligations are declared to be due and payable by the Administrative Agent or automatically become due and payable in accordance with Section 12.2, that proportion equal to the Outstanding Credit Obligations due to such Lender divided by the aggregate amount of the Outstanding Credit Obligations due to all the Lenders at such time.

"Purchase Money Mortgage" means any Lien given (whether or not to the transferor) or arising by operation of Law to provide or secure or to provide a Loan Party with funds to pay the whole or any part of the consideration for the acquisition of personal property where:

- (a) the principal amount of such Lien is not in excess of the cost to such Loan Party of the personal property encumbered thereby;
- (b) such Lien was created prior to, at the time of or within 30 days after the acquisition of such personal property;
- (c) such Lien is secured only by the personal property being acquired by such Loan Party;
- (d) such personal property does not become affixed to the real property on which such personal property is located; and
- (e) the absence of such personal property does not affect the performance or Operation of the Project in any material respect,

and includes the renewal, extension or refinancing of any such Lien and of the indebtedness represented thereby upon the same property provided that the principal indebtedness secured thereby and the security therefor are not increased thereby.

"Rating" means the final rating, if any, assigned to the senior unsecured debt of a person or to such person, as applicable, by one or more Rating Agencies by means of official publication or a Private Letter Rating.

"Rating Agencies" means Moody's, S&P and DBRS and **"Rating Agency"** means either of them.

"Real Property Interests" means collectively, the interests of any of the Loan Parties in the Site Lands, together with any other leases, Easements, rights of way, Crossing Agreements, road use agreements, entrance permits and other material property rights, required for the construction or Operation of the Project.

"receiver" includes a receiver, receiver/manager and receiver and manager.

"Recovery Plan" has the meaning ascribed thereto in Section 10.1.8(e).

"Register" has the meaning ascribed thereto in Section 14.12.3.

“Related Parties” means, with respect to any person, such person’s affiliates and the directors, officers, employees, agents and advisors of such person and of such person’s affiliates.

“Release” includes releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, depositing or dumping, or causing or permitting any of the foregoing to occur, into the natural environment whether inside or outside any structure, container or building.

“Remaining Commitment” means, at any time, the aggregate undrawn Commitments of the Lenders under the Construction Facility and Revolver Facility #1 at such time.

“Required Hedges” means collectively, any Interest Hedge provided by an Interest Hedge Lender, any Commodity Hedge provided by a Commodity Hedge Lender and any Currency Hedge provided by a Currency Hedge Lender, each of which as required pursuant to and in accordance with Section 10.1.21.

“Revolver Facility #1” means the revolving credit facility to be made available hereunder to the Borrower by way of the type of Advances described in Section 2.1.1 on a revolving basis for the purposes set forth in Section 2.1.2(b).

“Revolver Facility #1 Commitment” means an amount which is equal to \$10,000,000.

“Revolver Facility #2” means the revolving credit facility to be made available hereunder to the Borrower by way of the type of Advances described in Section 2.1.1 on a revolving basis for the purpose set forth in Section 2.1.2(b).

“Revolver Facility #2 Commitment” means \$4,000,000.

“Rollover” means:

- (a) in respect of CDOR Advances, the continuation thereof or any portion thereof for a succeeding Interest Period
- (b) in respect of Bankers’ Acceptances, the issuance of new Bankers’ Acceptances in respect of all or any portion of any Bankers’ Acceptances maturing at the end of the BA Period applicable thereto; and
- (c) in respect of a Letter of Credit Advance, the renewal thereof (through the extension of the expiry date) provided the Face Amount is not increased.

“Rollover Date” means a Business Day specified in an Advance Request as the date on which a Rollover shall occur.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.

“Scheduled Completion Date” means September 26, 2020, or such other date that may be agreed to by the Lenders, acting reasonably; provided however, such other date shall not in any event be later than the Outside Date.

“Security” means all of the documents listed on Schedule 8 and all other items of security given to the Administrative Agent or any of the Lenders at any time and from time to time to secure the present and future indebtedness, liabilities and obligations (direct or indirect, absolute or contingent, joint or several) of the Borrower and the other Loan Parties hereunder or under any other Credit Facility Document.

“Senior Officer” means:

- (a) in respect of a corporation, the chairman of the board, the president or chief executive officer, the chief financial officer, the chief legal officer, a vice president, the secretary, the treasurer or such other officer as to which the Administrative Agent may agree; and
- (b) in respect of a partnership, the chairman of the board, the president or chief executive officer, the chief financial officer, the chief legal officer, a vice president, the secretary, the treasurer of a general partner or managing partner thereof, or such other officer as to which the Administrative Agent may agree.

“Shares” means, with respect to any person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such person’s capital, whether now outstanding or issued after the Closing Date, including common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership, beneficial interests or units in a trust or any other equivalent of such ownership interest.

“Site Lands” means the lands on which the Project is situated, as further identified in Schedule 10 hereto.

“Sole Lead Arranger” means ATB.

“Standard Term” means the term to maturity of a Bankers’ Acceptance (subject to availability) of approximately one (1) month, two (2) months, three (3) months or six (6) months for which a quote is available pursuant to the definition of CDOR Rate, commencing on and including the Advance Date, Conversion Date or Rollover Date, as the case may be, applicable to such Bankers’ Acceptance.

“STS Amending Agreement” means an amending agreement to the System Access Service Agreement dated February 1, 2004 between Milner Power LP and the AESO which will allow the Project to export generated electricity on to the AIES, as such agreement may be further amended, restated, modified, supplemented or replaced from time to time.

“Subordinated Credit Agreement” means the convertible loan facility credit agreement dated September 10, 2019, as amended, among the Borrower, as borrower, Milner Power LP, Milner Power II LP, Milner Power and Milner Power II, as guarantors, Alpine Capital Corp., as administrative agent, and Alpine Capital Corp. and Prairie Merchant Corporation, as lenders.

“Subordination and Postponement Agreement” means the subordination and postponement agreement among Alpine Capital Corp., as agent under the Subordinated Credit Agreement, and the Administrative Agent, and the Loan Parties providing, *inter alia*, the Administrative Agent a first ranking security interest in the Collateral and in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole discretion.

"Subsidiary" means, in respect of any person:

- (a) a person of which such person alone or in conjunction with its other Subsidiaries owns an aggregate number of Voting Shares sufficient to enable the election of a majority of the directors (or other persons performing similar functions) regardless of the manner in which other Voting Shares are voted;
- (b) a person of which such person alone or in conjunction with its other Subsidiaries has, through the operation of any agreement or otherwise, the ability to elect or cause the election of a majority of the directors (or other persons performing similar functions) or otherwise exercise control over the management and policies of such person; and
- (c) any partnership or joint venture of which such person:
 - (i) is the general or managing partner; or
 - (ii) directly or indirectly, owns more than 50% of the equity or beneficial interest thereof,

and shall include any person in like relation to a Subsidiary, and references herein to a Subsidiary, unless otherwise specifically indicated herein, shall be references to a Subsidiary of the Borrower.

"Substantial Completion" means the occurrence of Substantial Completion under and as defined in the EPC Contract, all as verified by the Independent Engineer.

"Substantial Completion Date" means the date on which Substantial Completion is achieved.

"Summit Coal" means Summit Coal Inc.

"Summit Coal LP" means Summit Coal Limited Partnership.

[Commercially sensitive terms redacted]

"Taking" means the expropriation, condemnation or taking by eminent domain or similar authority, or by any proceeding or purchase in lieu or anticipation thereof, of any Project Assets (or any part thereof) or any right, title or interest therein by any Official Body.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Official Body, including any interest, additions to tax or penalties applicable thereto, and **"Tax"** and **"Taxation"** shall be construed accordingly.

"Term Facility" means the term credit facility to be made available as Canadian Prime Rate Advances, CDOR Advances, Bankers' Acceptances and BA Equivalent Advances hereunder to the Borrower by way of the conversion of the amounts outstanding pursuant to the Construction Facility, as contemplated by Section 2.1.1(d).

"Third Party Permits" means any Permit required by a Counterparty in connection with the performance by such Counterparty of its obligations to a Loan Party pursuant to the Material

Project Contract to which the Counterparty is a party, where the absence or breach of which could reasonably be expected to affect in a material and adverse way, the ability of such Counterparty to perform its obligations under the applicable Material Project Contract.

“this Agreement”, **“herein”**, **“hereof”**, **“hereto”** and **“hereunder”** and similar expressions mean and refer to this Agreement as supplemented or amended and not to any particular Section, paragraph, Schedule or other portion hereof; and the expressions **“Article”**, **“Section”**, **“paragraph”** and **“Schedule”** followed by a number or letter mean and refer to the specified Article, Section, paragraph or Schedule of this Agreement, unless otherwise indicated.

“Turbine Audit” means the borescope inspection audit dated August 14, 2018 prepared by Advanced Turbine Support.

“Uniform Customs” means in the case of standby Letters of Credit, the International Standby Practices ISP 98 (ICC Publication No. 590), as published by the International Chamber of Commerce and in effect from time to time, and in the case of commercial Letters of Credit, the Uniform Customs and Practices for Documentary Credits (ICC Publication No. 600).

“Unrestricted Subsidiaries” means Subsidiaries that are not Material Subsidiaries and as at closing include Summit Coal, Summit Coal LP, Forked River II, Inc., Forked River II, LLC, Deerland Power Inc. and Deerland Power Limited Partnership.

“Updated Financial Model” means such updated Financial Model as shall be run as at the Construction Term-Out Date, or at such other time in accordance with this Agreement, using the items listed in Schedule 19 (with confirmation from the Independent Engineer, acting reasonably) including for greater certainty cash flow and amounts to be received by the Borrower on a consolidated basis, and provides for a specified amount of Debt that will allow compliance with the Minimum Required DSCR on an annual basis, until the end of the 10 year amortization schedule annexed as Schedule 3 hereto.

“Voting Shares” means means Shares of any class of any corporation, limited liability company, partnership, trust or other person carrying voting rights in all circumstances or which carry the right to vote conditional on the happening of an event if such event shall have occurred and be continuing.

1.2 **Computation of Time Periods**

1.2.1 Inclusion Rules

In this Agreement, in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

1.2.2 Ibid

Where in this Agreement a notice must be given a number of days prior to a specified action, the day on which such notice is given shall be included and the day of the specified action shall be excluded.

1.3 **Accounting Terms**

1.3.1 GAAP

All accounting terms not specifically defined herein shall be construed, and resulting calculations and determinations made, in accordance with GAAP.

1.3.2 Changes in GAAP

All calculations for the purposes of determining compliance with the financial ratios, financial covenants and other financial calculations contained in this Agreement will be made on a consistent basis with GAAP as it exists on the date of this Agreement. In the event of a change in such GAAP, the Borrower and the Administrative Agent (in consultation with the Lenders) will negotiate in good faith to revise (if appropriate) such ratios and covenants to reflect GAAP as then in effect. For the purposes of this Agreement, including all financial calculations to be made hereunder, any lease which would be accounted for as an operating lease under IFRS as in effect on December 31, 2018 shall be, notwithstanding any subsequent change in IFRS, deemed to be accounted for as an operating lease and not as a capital lease or a financial lease (regardless of whether such lease is entered into or assumed before or after December 31, 2018).

1.4 **Incorporation of Schedules**

Schedules 1 to 26 hereto shall, for all purposes hereof, form an integral part of this Agreement.

1.5 **Gender; Singular, Plural, Etc.**

As used herein, each gender shall include all genders, and the singular shall include the plural and the plural the singular, as the context shall require.

1.6 **Terms Generally**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise:

- (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, varied, supplemented, restated, replaced or otherwise modified (subject to any restrictions on such amendments, supplements, restatements, replacements or modifications set forth herein);
- (b) any reference herein to any person shall be construed to include such person's successors and permitted assigns;
- (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

- (d) unless otherwise expressly stated, all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement;
- (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified, supplemented or replaced from time to time; and
- (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible real and personal assets, properties and undertakings, including cash, securities, accounts and contract rights.

1.7 Interpretation Not Affected by Headings, Etc.

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.8 General Provisions as to Certificates and Opinions, Etc.

Whenever the delivery of a certificate is a condition precedent to the taking of any action by the Administrative Agent or any Lender hereunder, the truth and accuracy of the facts and the diligent and good faith determination of the opinions stated in such certificate shall in each case be conditions precedent to the right of the Borrower to have such action taken, and any certificate executed by the Borrower shall be deemed to represent and warrant that the facts stated in such certificate are true and accurate.

1.9 Payment for Value

All payments required to be made hereunder shall be made for value on the required day.

1.10 Currency

All amounts referred to herein are in Canadian Dollars unless expressly noted otherwise.

1.11 Permitted Encumbrances and Permitted Debt

None of:

- (a) the fact that the Borrower is permitted to create or suffer to exist any Permitted Encumbrance or Debt permitted by Section 10.2.1;
- (b) the fact that any representation, warranty or covenant herein may make an exception for the existence of Permitted Encumbrances or Debt permitted by Section 10.2.1; or
- (c) the fact that the Liens created pursuant to the Security are stated to be subject to, or are not required to rank in priority to, Permitted Encumbrances,

shall in any manner, nor in any cause or proceeding, directly or indirectly, be taken to constitute a subordination of any Lien created pursuant to the Security to any Permitted Encumbrance or to any other Lien or other obligation whatsoever, or to mean that the Obligations are in any way subordinate or junior in right of payment to such Debt.

1.12 **Knowledge of the Borrower and each other Loan Party**

Where any representation, warranty or other provision of this Agreement is qualified by reference to the knowledge of the Borrower and each other Loan Party, it shall be deemed to refer to the actual knowledge of the Senior Officers and senior management of the Borrower and each other Loan Party after having made due inquiries, including inquiries of professional advisors.

1.13 **Authority of GPs**

The Agent and the Lenders shall be entitled to rely on any certificate, notice or other document, or other advice, statement, direction or instruction provided to them by a GP and shall be entitled to deal with each GP with respect to matters under this Agreement, the other Credit Facility Documents and the Consents without any obligation whatsoever to satisfy themselves as to the authority of such GP to act on behalf of the applicable LP and without any liability whatsoever to the other partners of such LP for so doing, notwithstanding any lack of authority by such GP to provide same.

ARTICLE 2 THE CREDIT FACILITIES

2.1 **Credit Facilities**

2.1.1 Credit Facilities

The Credit Facilities to be made available, subject to the terms and conditions of this Agreement, are as follows:

- (a) the Construction Facility, to be made available to the Borrower by the Lenders on a non-revolving basis in the principal amount of up to but not exceeding the Construction Loan Commitment;
- (b) the Revolver Facility #1, to be made available to the Borrower by the Lenders on a revolving basis in the principal amount of up to but not exceeding the Revolver Facility #1 Commitment;
- (c) the Revolver Facility #2, to be made available to the Borrower by the Lenders on a revolving basis in the principal amount of up to but not exceeding the Revolver Facility #2 Commitment;
- (d) the Letter of Credit Facility, in an aggregate amount up to but not exceeding the Letter of Credit Facility Limit, to be made available to the Borrower by the LC Lender on a revolving basis to be used to issue Letters of Credit to provide performance security as required for the existing business of the Borrower and its Subsidiaries;
- (e) the Term Facility, in an aggregate amount up to but not exceeding \$30,000,000 to be made available to the Borrower by the Lenders by way of the conversion without repayment of the amounts outstanding under the Construction Facility on the Construction Term-Out Date (after giving effect to the Leverage True-Up Payment (as applicable) as contemplated in Section 2.2.2);

- (f) a facility for Currency Hedges (the “**Currency Hedge Facility**”) which may be available to the Borrower on a committed basis by the Currency Hedge Lenders;
- (g) a facility for Interest Hedges (the “**Interest Hedge Facility**”) which may be made available to the Borrower on a committed basis by the Interest Hedge Lenders; and
- (h) a facility for Commodity Hedges (the “**Commodity Hedge Facility**”) which may be made available to the Borrower on a committed basis by the Commodity Hedge Lenders.

Subject to the terms and conditions herein set forth, each Lender (other than the Hedge Lenders under the Hedge Facilities) shall make Advances available under each Credit Facility *pro rata* on the basis of their respective Commitments under each such Credit Facility, as set forth in Schedule 1 hereto.

In no event shall a Lender be obligated to make Advances available under a Credit Facility if after making such Advances the Outstanding Principal of that Lender’s Advances under such Credit Facility would exceed that Lender’s Commitment in respect of such Credit Facility.

2.1.2 Purposes

The Credit Facilities shall be used only for the following purposes:

- (a) in the case of the Construction Facility and the Term Facility:
 - (i) in regard to the Initial Advance (A) for general corporate purposes up to the Maximum Unrestricted Initial Advance Amount, (B) to pay fees and expenses in accordance with Section 6.1.29, and (C) to finance the Project Costs;
 - (ii) to finance the Project Costs; and
 - (iii) for the payment of the Leverage True-Up Payment, if any;
- (b) in the case of the Revolver Facility #1, to finance the Project Costs and general Operating purposes prior to the Construction Term-Out Date, and thereafter for payment of the Leverage True-Up Payment, if applicable, and for general corporate purposes;
- (c) in the case of the Revolver Facility #2, to bridge the payment of AESO Plant Accounts Receivable;
- (d) in the case of the Letter of Credit Facility, to issue Letters of Credit as required for the current business of the Borrower and its Subsidiaries;
- (e) in the case of the Currency Hedge Facility, to protect the Borrower against fluctuations in foreign currencies;
- (f) in the case of the Interest Hedge Facility, to protect the Borrower against fluctuations in interest rates; and
- (g) in the case of the Commodity Hedge Facility, to protect the Borrower against fluctuations in commodity pricing.

2.1.3 Availability; Construction Facility

Subject to the terms and conditions herein set forth, Advances will be made available to the Borrower under the Construction Facility:

- (a) in regard to the Initial Advance on the Closing Date: (i) up to the Maximum Unrestricted Initial Advance Amount shall be paid as directed by the Borrower (and which, for greater certainty, is not required to be deposited into the Construction Account Cdn.), (ii) in regard to the payment of fees and expenses in accordance with Section 6.1.29 shall be paid as directed by the Borrower and as required to satisfy any such fees and expenses, and (iii) any portion of the Initial Advance in excess thereof shall be deposited into the Construction Account Cdn.;
- (b) after the Initial Advance, from time to time (but not more than once in each calendar month) up to and including the Construction Term-Out Date, to pay incurred and projected Project Costs from the Construction Accounts; and
- (c) on or immediately prior to the Construction Term-Out Date, a final Advance will be permitted under the Construction Facility (which final Advance will not be subject to the once per month limitation) to:
 - (i) fund the estimated Completion Project Costs, including:
 - (A) interest on the Credit Facilities incurred or to be incurred, up to the Construction Term-Out Date; and
 - (B) the Completion Reserve Amount,and all such amounts shall be placed in the Construction Account Cdn. and used only to fund such Project Costs; and
 - (ii) pay the Leverage True-Up Payment to the extent permitted by Section 2.2.2.

Subject to the provisions of this Agreement, Advances under the Construction Facility shall be made available by way of Canadian Prime Rate Advances, CDOR Advances and Bankers' Acceptances or BA Equivalent Advances.

2.1.4 Availability; Letter of Credit Facility

Subject to the terms and conditions herein set forth, the Letter of Credit Facility will be made available to the Borrower by the LC Lender from time to time from the Closing Date up to the Final Maturity Date.

Subject to the provisions of this Agreement, Advances under the Letter of Credit Facility shall be made available: (i) by way of Letter of Credit Advances, and (ii) if any drawings thereunder are not repaid on the day of such drawing, by way of a deemed Canadian Prime Rate Advance in accordance with Section 5.6.3, in respect of the amount of such draws thereunder not repaid to the extent that there are insufficient funds or deposits in the Borrower Cash Collateral Account. For greater certainty, Letters of Credit shall be denominated in Canadian Dollars only.

2.1.5 Availability; Term Facility

Subject to the terms and conditions herein set forth, the Term Facility will be made available to the Borrower by the Lenders in a single advance on the Construction Term-Out Date provided that such date is prior to the Final Maturity Date. Subject to the terms and conditions herein set forth, the Outstanding Credit Obligations under the Construction Facility will be converted and continued, without being repaid, terminated or replaced, into Obligations under the Term Facility at the end of the Construction Term-Out Date (which for greater certainty shall be after giving effect to the Leverage True-Up Payment (as applicable) as contemplated in Section 2.2.2). Such conversion shall not constitute a repayment of the Outstanding Credit Obligations.

Subject to the provisions of this Agreement, Advances under the Term Facility shall be made available by way of Canadian Prime Rate Advances, CDOR Advances, Bankers' Acceptances and BA Equivalent Advances.

2.1.6 Availability; Revolver Facility #1

Subject to the provisions of this Agreement, Advances under the Revolver Facility #1 will be made available to the Borrower by the Lenders under the Revolver Facility #1 from time to time from the Closing Date up to the Final Maturity Date and shall be made available by way of Canadian Prime Rate Advances, CDOR Advances, Letter of Credit Advances, Bankers' Acceptances and BA Equivalent Advances, and if any drawings in regard to Letter of Credit Advances are not repaid on the day of such drawing, by way of a deemed Canadian Prime Rate Advance in accordance with Section 5.6.3, in respect of the amount of such draws thereunder not repaid. For greater certainty, Letters of Credit shall be denominated in Canadian Dollars only.

2.1.7 Availability; Revolver Facility #2

Subject to the provisions of this Agreement, Advances under the Revolver Facility #2 will be made available to the Borrower by the Lenders under the Revolver Facility #2 from time to time up to the Final Maturity Date and shall be made available by way of Canadian Prime Rate Advances.

2.1.8 Availability; Hedge Facilities

Each of the Hedge Lenders shall, during the period from the Closing Date to the Final Maturity Date, make available Lender Hedges. The Borrower's obligations under any Lender Hedge shall be secured by the Security on a *pari passu* basis with the other Credit Facilities. For greater certainty, each Lender Hedge shall be administered by the relevant Hedge Lender that makes such Lender Hedge available and shall not be administered by the Administrative Agent under the terms of Article 13 hereof. ATB shall have a right of first offer to provide the Commodity Hedges and Currency Hedges and shall be the sole provider of Interest Hedges under the Interest Hedge Facility.

2.1.9 Minimum Amounts

Subject to the Lenders in any specific instance waiving such requirement, and subject to the proviso hereinafter in this Section 2.1.9, the following minimum amounts shall apply in respect of certain Advances requested under each Advance Request:

- (a) the aggregate of the Canadian Prime Rate Advances requested shall be at least \$1,000,000; and

- (b) the aggregate of the principal amount of CDOR Advances requested shall be at least \$1,000,000,

provided that the minimum amount requirements set forth under (a) above shall not apply to the final Advance Request under the Construction Facility. The Borrower may increase any Advance as necessary to meet the minimum amount and whole multiple requirements of this Section 2.1.9.

2.1.10 Non-Revolving Nature of Construction Facility and the Term Facility

Neither of the Construction Facility nor the Term Facility shall revolve, and amounts repaid or prepaid thereunder may not be the subject of any further Advances (other than by way of Conversions or Rollovers). For greater certainty, any repayment of the Outstanding Principal under the Construction Facility will result in a corresponding reduction of the limit of the Term Facility provided for in Section 2.1.1(d).

2.1.11 Revolving Nature of Letter of Credit Facility

The Letter of Credit Facility shall revolve, and amounts repaid or prepaid thereunder may, subject to the provisions of this Agreement, be reborrowed and repaid, within the limits herein provided. For greater certainty, any repayment of the Outstanding Credit Obligations under the Letter of Credit Facility will not result in a corresponding reduction of the Letter of Credit Facility Limit.

2.1.12 Revolving Nature of Revolver Facility #1 and Revolver Facility #2

Each of the Revolver Facility #1 and the Revolver Facility #2 shall revolve, and amounts repaid or prepaid thereunder may, subject to the provisions of this Agreement, be reborrowed and repaid, within the limits herein provided. For greater certainty, any repayment of the Outstanding Credit Obligations under each of the Revolver Facility #1 and the Revolver Facility #2 will not result in a corresponding reduction of the maximum amounts available under Revolver Facility #1 and the Revolver Facility #2.

2.2 **Conversion, Amortization and Repayment**

2.2.1 Conversion of Construction Facility

The Outstanding Credit Obligations under the Construction Facility that remain outstanding shall be converted into Outstanding Credit Obligations under the Term Facility at the end of the Construction Term-Out Date such that, as of such date, they are deemed to be Outstanding Credit Obligations under the Term Facility and, on such date, the aggregate Commitment of the Term Facility Lenders for the Term Facility shall be set at the amount of the aggregate Outstanding Principal under the Term Facility on the Construction Term-Out Date plus the amount of the Leverage True-Up Payment, if applicable.

2.2.2 Leverage True-Up

- (a) Prior to the Completion Date, the Independent Engineer will observe the tests conducted by the Borrower to confirm compliance with the protocols in, and results of, the Project Performance Tests.
- (b) Not less than 45 days prior to the anticipated Completion Date, the Borrower will prepare and provide to the Administrative Agent, the Lenders and the Independent Engineer a notice of the anticipated Completion Date, the proposed Updated Financial Model and a

draft of the Borrower's Completion Date Certificate which will include, among other things, a calculation of the amount of the estimated Project Costs as at the anticipated Completion Date, for review and approval by the Majority Lenders in consultation with the Independent Engineer.

- (c) Not less than 30 days prior to the anticipated Completion Date, the Independent Engineer will, after consultation with the Borrower and the Lenders, confirm and provide notice to the Borrower and the Lenders of the Project Costs as at the anticipated Completion Date.
- (d) Not less than 15 days prior to the anticipated Completion Date, based upon the Independent Engineer's confirmation of the Project Costs as at the anticipated Completion Date, the Lenders shall have reviewed the Updated Financial Model and draft Borrower's Completion Date Certificate in consultation with the Independent Engineer, and the Majority Lenders will seek to approve such Updated Financial Model and Borrower's Completion Date Certificate (such approval not to be unreasonably withheld).
- (e) If on the Completion Date the aggregate Outstanding Principal under the Construction Facility and the Revolver Facility #1 is less than 27% of the Project Costs as notified by the Independent Engineer under Section 2.2.2(c), subject to the other provisions of this Agreement, the Borrower may request an Advance under the Term Facility (to the extent that the Term Facility is in excess of the Construction Facility) and under the Revolver Facility #1 in the aggregate amount of the Leverage True-Up for the payment thereof to the Borrower to be used by the Borrower to make the Leverage True-Up Payment on the Construction Term-Out Date.
- (f) After the Advance referred to in paragraph (e) above, or in the case that there is no Leverage True-Up Payment to be made on the Construction Term-Out Date, any available undrawn Commitment under the Construction Facility and under the Term Facility shall be cancelled on the Construction Term-Out Date.

2.2.3 Term Facility Amortization

On the last Business Day of the first full Financial Quarter ending immediately after the Construction Term-Out Date, and on the last Business Day of each subsequent Financial Quarter, the aggregate of the Commitments under the Term Facility shall be reduced, on the basis of the amortization schedule annexed as Part 1 on Schedule 3 hereto, and, on each such Business Day, the Borrower shall make all payments in respect of the Outstanding Credit Obligations under the Term Facility to ensure that the Outstanding Principal under the Term Facility on each such Business Day does not exceed the aggregate of the Commitments under the Term Facility on each such Business Day after giving effect to the foregoing reductions thereto. Each of the principal repayments referred to in this Section 2.2.3 is herein defined as a "**Base Amortization Payment**" and each Business Day upon which a Base Amortization Payment is due under this Section 2.2.3 is herein defined as a "**Base Amortization Payment Date**".

2.2.4 Repayment of Credit Facilities

On the Final Maturity Date, the Outstanding Credit Obligations under the Credit Facilities will be repaid in full (including without limitation any deemed Canadian Prime Rate Advances outstanding on the Final Maturity Date), any Bankers' Acceptances which have not yet matured will be cash collateralized by

depositing the Face Amount of such Bankers' Acceptances into the Borrower Cash Collateral Account, and the Letters of Credit issued under any of the Letter of Credit Facility or the Revolver Facility #1 shall be returned by the Borrower to the LC Lender for cancellation; provided that any Letters of Credit (Cash Collateralized) may remain outstanding subject to and in accordance with the terms thereof after the Final Maturity Date if funds in an amount equal to at least 103% of the Face Amount of such Letters of Credit (Cash Collateralized) are deposited into the Borrower Cash Collateral Account. The parties acknowledge and agree that if any Letters of Credit (Cash Collateralized) remain outstanding after the Final Maturity Date, the obligations of the Borrower under this Agreement applicable to Letters of Credit, including under Sections 5.4.2, 5.4.4, 5.5, 5.6.2, 5.8.2, 5.9, 5.10, 5.11, 11.3.1 and 14.6.1 shall survive the Final Maturity Date and remain in full force and effect until all outstanding Letters of Credit (Cash Collateralized) have expired or otherwise been returned undrawn to the Administrative Agent.

2.2.5 Interest and Mark-to-Market Payments

At the same time as any mandatory or voluntary repayment or prepayment of principal is made hereunder, the Borrower shall also pay all accrued and unpaid interest and fees on the principal amount being repaid or prepaid and cancel or terminate any portion of the Interest Hedges that on a cumulative basis have notional principal amounts in excess of 105% of the Outstanding Principal that has not been repaid or prepaid and pay any applicable Mark-to-Market incurred in connection with such cancellation or termination.

2.2.6 Nature of Conversion

It is expressly acknowledged and agreed by the parties that for all purposes (including the continuation of the Liens of the Security), the conversion of the Construction Facility to the Term Facility shall not constitute repayment of the debt incurred under the Construction Facility but shall constitute a continuation of the debt comprised therein under the Term Facility, whereby the terms of payment, interest rate and certain other terms and conditions applicable thereto shall be changed.

2.3 **Mandatory Prepayments and Reductions**

2.3.1 Mandatory Prepayments

The Borrower shall pay the following amounts in reduction of the Outstanding Principal under the Term Facility (or, if the Term Facility has not been drawn, the Construction Facility) together with any applicable Mark-to-Market payments, the Letter of Credit Facility, Revolver Facility #1 or Revolver Facility #2, as applicable:

- (a) such amounts as are determined pursuant to Sections 9.7.3 and 9.7.6;
- (b) such amounts as are set forth in Section 10.1.11;
- (c) an amount so that the aggregate Outstanding Principal under the Term Facility and the Revolver Facility #1 on the Completion Date does not exceed 27% of the Project Costs as notified by the Independent Engineer under Section 2.2.2(c);
- (d) in regard to Revolver Facility #2, promptly upon receipt by any Loan Party of any AESO Plant Accounts Receivable, and in any event no later than two (2) Business Days after receipt thereof, an amount equal to the lesser of: (i) the proceeds of any such AESO Plant Accounts Receivable; and (ii) the then Outstanding Principal of Revolver Facility #2,

so that the Outstanding Principal under the Revolver Facility #2 is paid down in full on a monthly basis; and

- (e) such amounts so that the Outstanding Principal under the Letter of Credit Facility does not at any time exceed the Letter of Credit Facility Limit.

2.3.2 Reduction of Commitments

Any prepayment under Sections 2.2 and 2.3 above in respect of the Term Facility shall reduce the Commitments of the Lenders in respect of the Term Facility (or, if the Term Facility has not been drawn, the Construction Facility) on a permanent basis (in inverse order of maturity after payment of all accrued and unpaid interest and Outstanding Principal) and shall:

- (a) in the case of the Construction Facility, immediately reduce the Outstanding Principal thereunder by such amount;
- (b) in the case of the Revolver Facility #1, immediately reduce the Outstanding Principal thereunder by such amount;
- (c) in the case of the Revolver Facility #2, immediately reduce the Outstanding Principal thereunder by such amount; and
- (d) in the case of the Term Facility, reduce all remaining Base Amortization Payments and the Outstanding Principal to be repaid on the Final Maturity Date in the ratio that the principal amount prepaid is of the Outstanding Principal under the Term Facility at the time of the prepayment, after application of any applicable Mark-to-Market.

2.4 **Voluntary Reductions and Prepayments**

2.4.1 Cancellation and Prepayment of Credit Facilities

The Borrower shall have the right at any time and from time to time, without penalty or bonus but subject to Sections 11.3 and 14.6, upon at least three Business Days' prior notice to the Administrative Agent, to effect: (i) a voluntary cancellation of undrawn Commitments under the Construction Facility, Revolver Facility #1, Revolver Facility #2 or the Letter of Credit Facility, or (ii) a voluntary prepayment on account of the Outstanding Principal under the Construction Facility and the Term Facility, together with any applicable Mark-to-Market payments. Any such cancellation or prepayment shall be in an aggregate minimum amount of \$1,000,000 and multiples of \$1,000,000 or in the full amount of such undrawn Commitment or Outstanding Principal (prior to the Completion Date); provided however that in the case of any cancellation or prepayment of less than all of the Construction Facility, the Letter of Credit Facility (prior to the Construction Term-Out Date) and the cancellation of all of the Commitments thereunder, no such cancellation or prepayment under the Construction Facility, the Letter of Credit Facility, Revolver Facility #1 or Revolver Facility #2 (prior to the Construction Term-Out Date) shall be effective unless:

- (a) the Lenders are satisfied, acting reasonably and which will include confirmation from the Independent Engineer, and the Administrative Agent has given notice thereof to the Borrower, that Available Funds exceed the Cost to Complete;

- (b) the Borrower reimburses the Lenders for CDOR Advance breakage costs, if any paid, and all commitment fees; and
- (c) the Borrower pays to the Administrative Agent, for the account of the applicable Lenders, the Face Amount of all outstanding Bankers' Acceptances and Letters of Credit to be held in the Borrower Cash Collateral Account.

In addition to the foregoing, at any time prior to the Initial Advance and after the payment of all fees, costs and expenses incurred by the Administrative Agent and the Lenders in connection with the Credit Facilities, the Borrower shall have the right, without penalty or bonus, to cancel all but not less than all of the Construction Facility and the Letter of Credit Facility.

2.4.2 Application of Prepayment

Any prepayment under Section 2.4.1 above shall reduce the Commitments of the Lenders in respect of the relevant Credit Facility on a permanent basis (in inverse order of maturity after payment of all accrued and unpaid interest and Outstanding Principal) and shall:

- (a) in the case of the Construction Facility, immediately reduce the Outstanding Principal thereunder by such amount;
- (b) in the case of the Term Facility, reduce all remaining Base Amortization Payments and the Outstanding Principal to be repaid on the Final Maturity Date in the ratio that the principal amount prepaid is of the Outstanding Principal under the Term Facility at the time of the prepayment, after giving effect to any Mark-to-Market payments.

2.5 **Payments**

2.5.1 Payments to the Administrative Agent

The Borrower shall make each payment to be made hereunder not later than 1:00 p.m. (Calgary time) in the currency of the Advance or other obligation in respect of which such payment is made on the day (subject to Section 2.5.2) when due, in same day funds (free of wire transfer charges) (prior to the Completion Date by transfer from the Construction Account Cdn. of such funds to the Administrative Agent).

2.5.2 Business Day

Whenever any payment hereunder is due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be; provided that, in respect of CDOR Advances or another type of Advance converted to a CDOR Advance, if such extension would cause the last day of an Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the immediately preceding Business Day.

2.5.3 Application of Payments received by the Administrative Agent

Unless otherwise provided herein, all amounts received by the Administrative Agent (other than by reason of enforcement of the Security) on account of the Outstanding Credit Obligations shall be applied by the Administrative Agent as follows:

- (a) first, to pay unpaid costs and expenses payable to the Administrative Agent (including those fees set forth in Section 2.8) and the Lenders in connection with any of the Credit Facility Documents (other than in connection with Lender Hedges);
- (b) second, to fulfill the Borrower's obligation to pay accrued and unpaid interest and stamping fees due and owing (including interest on overdue interest and on other amounts) to the Lenders (other than the Hedge Lenders in respect of Hedge Liabilities);
- (c) third, to fulfill the Borrower's obligation to pay any amounts due and owing on account of the Outstanding Principal under the Credit Facilities (including in respect of the Face Amount of outstanding Letters of Credit and Bankers' Acceptances but excluding the Hedge Liabilities owed to the Hedge Lenders);
- (d) fourth, to fulfill the Borrower's obligation to pay any fees which are due and owing to the Lenders (other than the Hedge Lenders in respect of Hedge Liabilities) hereunder and any Increased Costs and other amounts payable to the Administrative Agent and the Lenders in connection with any of the Credit Facility Documents (other than the Lender Hedges); and
- (e) fifth, to the Borrower or as any court of competent jurisdiction may otherwise direct.

2.5.4 Application of Delay Liquidated Damages

All Delay Liquidated Damages received by a Loan Party prior to Completion shall be deposited into the applicable Construction Account and shall be applied as follows:

- (a) first, to pay any increase in the Project Costs resulting from the delay in achieving Completion (as approved by the Independent Engineer and the Administrative Agent such approval not to be unreasonably withheld);
- (b) second to pay interest and fees owing hereunder or accruing hereunder up to and including the Construction Term-Out Date;
- (c) any amounts remaining after the uses in (a) and (b) above shall remain in such Construction Account and be disbursed in accordance with Section 10.1.16(a).

2.5.5 Application of Performance Liquidated Damages

All Performance Liquidated Damages received by Milner Power II LP prior to Completion shall remain in the Construction Accounts and be disbursed in accordance with Section 10.1.16(a), subject to the right of the Borrower to apply all or a portion of the Performance Liquidated Damages towards rectification of the performance shortfall, in accordance with a rectification plan which has been approved in advance in writing by the Majority Lenders and the Independent Engineer.

All Performance Liquidated Damages received by Milner Power II LP on or after Completion shall be applied towards prepayment of the Outstanding Principal under the Term Facility in the inverse order of maturity, subject to the right of the Borrower to apply all or a portion of the Performance Liquidated Damages towards rectification of the performance shortfall, in accordance with a rectification plan which has been approved in advance in writing by the Majority Lenders and the Independent Engineer.

Any repayment of Outstanding Principal, in the case of the Term Facility, shall reduce all remaining Base Amortization Payments and the Outstanding Principal to be repaid on the Final Maturity Date in the ratio that the principal amount prepaid is of the Outstanding Principal under the Term Facility at the time of the prepayment, after application of any applicable Mark-to-Market payments.

2.5.6 Pro Rata Basis

All payments of principal, interest and fees herein set forth, other than amounts payable to the Administrative Agent for its own account, shall be made for the account of, and distributed by the Administrative Agent to, the relevant Lenders *pro rata* on the basis of their respective Commitments with respect to the relevant Credit Facility for which such payment was made.

2.6 **Computations**

2.6.1 Basis

All computations of:

- (a) interest based on the Canadian Prime Rate shall be made by the Administrative Agent on the basis of a year of 365 days or, in the case of a leap year, 366 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable; and
- (b) interest based on CDOR Rate shall be made by the Administrative Agent on the basis of a year of 365 days or, in the case of a leap year, 366 days and the actual number of days (including the first day but excluding the last day) occurring in the applicable Interest Period.

All computations of fees shall be made by the Administrative Agent on the basis of a year of 365 days or, in the case of a leap year, 366 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Administrative Agent of an amount of interest or fees payable by the Borrower hereunder shall be conclusive and binding for all purposes, absent demonstrated error.

2.6.2 Interest Act (Canada)

For purposes of disclosure pursuant to the *Interest Act (Canada)*, the yearly rate of interest to which any rate of interest which is not calculated on the actual number of days in the applicable year is equivalent may be determined by multiplying the applicable rate by a fraction, the numerator of which is the number of days to the same calendar date in the next calendar year and the denominator of which is the applicable number of days used in the calculation of such interest rate.

2.7 **Criminal Code (Canada)**

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) permitted under that section and, if any payment, collection or demand pursuant to this Agreement in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Borrower and the Lenders and the amount of such excess payment or collection will be first used to reduce the Outstanding Principal and the remaining amount of such excess (if any) will be refunded to the Borrower upon the request of 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 Administrative Agent will be prima facie evidence, for the purposes of such determination.

2.8 **Agency Fees**

In the event that a Lender other than ATB provides a Commitment under a Credit Facility at the request of the Borrower, the Borrower shall pay to the Administrative Agent the fees agreed with the Administrative Agent with respect to acting as agent for the Lenders hereunder in the Fee Letter.

2.9 **Interest on Overdue Amounts**

Except as otherwise provided in this Agreement, each amount owed by the Borrower to a Lender which is not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times to the Canadian Prime Rate plus, to the extent recoverable by Law, **Redacted**% per annum in excess of the Applicable Margin. **[Commercially sensitive amount redacted]**

The Borrower confirms that it fully understands, and is able to calculate, the rate of interest applicable to each of the Credit Facilities and irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to any of the Credit Facility Documents, that the interest payable under any of the Loan Documents and the calculation thereof has not been adequately disclosed to the Borrower, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other applicable law or legal principle.

2.10 **Account Debit Authorization**

Each of the Borrower and Milner Power II LP authorizes and directs the Administrative Agent, in its discretion, to debit automatically, by mechanical, electronic or manual means all Collateral Accounts (other than the BLA Holdback Account), including without limitation, the Construction Accounts and the Borrower Cash Collateral Account, for all amounts due and payable under this Agreement on account of those Outstanding Credit Obligations constituting principal, interest and fees provided that the Borrower Cash Collateral Account shall only be debited prior to an Event of Default which has occurred and is continuing for amounts due and payable on account of Outstanding Credit Obligations under the Letter of Credit Facility. For greater certainty, the Administrative Agent may not debit or enforce its security interest in (a) the BLA Holdback Account for amounts due hereunder, or (b) the Borrower Cash Collateral

Account for Outstanding Credit Obligations other than in relation to the Letter of Credit Facility, unless an Event of Default has occurred and is continuing.

2.11 **Administrative Agent's Discretion on Allocation**

In the event that it is not practicable to:

- (a) allocate an Advance *pro rata* in accordance with Section 3.2 or 5.4; or
- (b) allocate Bankers' Acceptances and BA Equivalent Advances to each Lender in accordance with Section 2.5.6 such that the aggregate amount of Bankers' Acceptances required to be accepted or purchased or BA Equivalent Advances required to be made by such Lender hereunder is in a whole multiple of Cdn. \$100,000;

the Administrative Agent is authorized by the Borrower and each Lender to make such allocation as the Administrative Agent determines in its sole and unfettered discretion may be equitable in the circumstances; provided that in each such case, the amount of such non-*pro rata* allocation is not material.

2.12 **Payments by the Borrower; Presumptions by the Administrative Agent**

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

2.13 **Rollover and Conversion**

2.13.1 General

Subject to the terms and conditions of this Agreement, the Borrower may from time to time request that any Advance or any portion thereof be rolled over or converted in accordance with the provisions hereof, provided that:

- (a) in respect of Conversions of Bankers' Acceptances and BA Equivalent Advances:
 - (i) a Bankers' Acceptance and a BA Equivalent Advance may only be converted on its maturity date; and
 - (ii) after an Event of Default which is continuing, the Borrower may not convert an Advance into a Bankers' Acceptance or BA Equivalent Advance; and
- (b) in respect of Rollovers of Bankers' Acceptances and BA Equivalent Advances:

- (i) if an Event of Default has occurred and is continuing immediately prior to the commencement of the term of any Bankers' Acceptance or BA Equivalent Advance which is being rolled over, the Borrower shall be deemed to have converted any Bankers' Acceptance or BA Equivalent Advance to a Canadian Prime Rate Advance pursuant to Section 2.13.1(a) and the Borrower shall not be entitled to continue such Bankers' Acceptance or BA Equivalent Advance subsequent to its maturity date.

2.13.2 Request

Each request by the Borrower for a Rollover or Conversion shall be made by the delivery of a duly completed and executed Advance Request to the Administrative Agent and the provisions of Article 3 shall apply to each request for a Rollover or Conversion.

2.13.3 Effective Date

Each Rollover or Conversion of a CDOR Advance shall be made effective as of the last day of the subsisting Interest Period and each Rollover or Conversion of a Bankers' Acceptance or BA Equivalent Advance shall be made effective as of the last day of its maturity date.

2.13.4 Failure to Elect

If the Borrower does not deliver an Advance Request in accordance with Section 2.13.2 and, in the case of a CDOR Advance, a Bankers' Acceptance or a BA Equivalent Advance, fails to give three Business Days prior notice that it will pay to the Administrative Agent for the account of the applicable Lender the principal amount thereof at the end of the applicable Interest Period or maturity date, or if the Borrower gives such notice but fails to act in accordance with it, the Borrower shall be deemed to have requested a Conversion of such CDOR Advance, Bankers' Acceptance or BA Equivalent Advance to a Canadian Prime Rate Advance and all of the provisions hereof relating to a Canadian Prime Rate Advance shall apply thereto.

2.13.5 Continuing Obligation

A Rollover or Conversion shall not constitute a repayment of the relevant Advance or a re-borrowing by the Borrower but shall result in a change in the basis of calculation of interest, discounts or fees (as the case may be) of such Advance and, where applicable, the currency of the Advance in accordance with the provisions hereof.

ARTICLE 3 ADVANCES

3.1 Advances

3.1.1 Commitment

Each Lender agrees (on a several basis with the other Lenders under each relevant Credit Facility, up to the amount of such Lender's Commitment thereunder), on the terms and conditions herein set forth, from time to time on any Business Day, to make Advances under each relevant Credit Facility

(which, for greater certainty excludes the Hedge Facilities) (up to the amount of the Lender's Commitment thereunder) prior to the cancellation or termination thereof.

3.1.2 Amounts

The aggregate principal amount of each Advance shall comply with Section 2.1.9.

3.2 **Making the Advances**

3.2.1 Notice

Each Advance shall be made on at least three Business Days' prior notice, given not later than 1:00 p.m. (Calgary time) by the Borrower to the Administrative Agent, and the Administrative Agent shall give to each Lender prompt notice thereof and of such Lender's Proportionate Share of each type of Advance to be made. Each such notice of an Advance shall be given by way of an Advance Request which may be delivered by e-mail or other electronic means of communication or by telephone (confirmed promptly in writing), with the same information as would be contained in an Advance Request, including the requested date of such Advance and the aggregate amount of each type of Advance and the applicable Interest Period. Provided however, notwithstanding the foregoing, the Initial Advance under this Agreement shall be requested by the Borrower issuing an Advance Request to the Administrative Agent not later than 1:00 p.m. (Calgary time) on the Closing Date, with such Initial Advance under the Construction Facility or Revolver Facility #1, or both, being funded (subject to the continued satisfaction of the conditions set out in Section 6.1) by the Lenders on the Closing Date as indicated in Section 2.1.3(a).

3.2.2 Lender Funding

Each Lender shall, before 12:00 p.m. (Calgary time) on the date of the requested Advance, deposit to the Payment Account in same day funds (free of wire transfer charges) such Lender's Proportionate Share (subject to Section 2.11) of each type of Advance. Promptly upon receipt by the Administrative Agent of such funds and upon fulfillment of the applicable conditions set forth in Article 6, the Administrative Agent will make such funds available to the Borrower by debiting such account (or causing such account to be debited), and (a) prior to the Construction Term-Out Date by crediting the Construction Account Cdn. (or causing such account to be credited) with such Advances, and (b) after the Construction Term-Out Date by crediting an account specified by the Borrower (or causing such account to be credited) with such Advances,.

3.2.3 Funding by Lenders; Presumption by Administrative Agent

Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's Proportionate Share of such advance, the Administrative Agent may assume that such Lender has made such Proportionate Share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Proportionate Share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays

such amount to the Administrative Agent, then such amount shall constitute such Lender's Advance. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the Advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

3.2.4 Failure to Advance

The Administrative Agent shall notify the Borrower of the failure of any Lender to make an Advance if:

- (a) such failure has not been remedied within one day; or
- (b) the Administrative Agent reasonably believes that such failure was caused by any reason other than a technical failure or as a result of a defect in the arrangements hereunder for funding Advances.

The Administrative Agent shall not be liable to the Borrower or any Lender in respect of notice given or not given pursuant to this Section 3.2.4. In the event of the continuing failure by any Lender (in this Section 3.2.4, the "**defaulting Lender**") to make an Advance, the Borrower and the Administrative Agent, subject to the Borrower complying with its payment obligations under Section 3.2.3, shall use their reasonable commercial efforts to arrange for one or more other persons (in this Section 3.2.4, the "**assuming Lender**") to assume all or a portion of the relevant Commitments and acquire the Outstanding Credit Obligations and other rights and interests of the defaulting Lender hereunder provided that:

- (c) such defaulting Lender receives from the assuming Lender an amount equal to the aggregate of such defaulting Lender's share of all Advances then outstanding, all interest and fees accrued thereon to the date of such receipt and all other amounts due to such defaulting Lender under the Credit Facility Documents (other than under the Lender Hedges to which such defaulting Lender or its Affiliate is a party) and not theretofore paid by the Borrower;
- (d) the Administrative Agent is paid the assignment fee specified in Section 14.12.2(i);
- (e) if such defaulting Lender is the LC Lender, such proposed assuming Lender is acceptable to the Administrative Agent, acting reasonably, and
- (f) prior to the Construction Term-Out Date, such proposed assuming Lender is acceptable to the Administrative Agent, acting reasonably.

The assuming Lender and defaulting Lender shall execute all such documents as may be reasonably required by the Administrative Agent and the Borrower to effect such assumption and acquisition. The assumption and acquisition by the assuming Lender of the Commitments, Outstanding Credit Obligations and other rights and interests of the defaulting Lender shall be without prejudice to any claims the Borrower may have against the defaulting Lender for any such failure of the defaulting Lender to make an Advance under this Agreement.

3.3 **Interest on Canadian Prime Rate Advances and CDOR Advances**

The Borrower shall pay interest on the outstanding principal amount of each Advance at the following rates per annum, provided that until the Construction Term-Out Date the Borrower may upon notice to the Administrative Agent determine to accrue any interest payable under this Agreement under the Construction Facility which amounts will be added to the principal amount of the Construction Facility, which amount will be repayable in accordance with the terms of this Agreement applicable to the Construction Facility or the Term Facility (if converted under Section 2.2 of this Agreement):

3.3.1 Canadian Prime Rate Advances

If and so long as an Advance is a Canadian Prime Rate Advance (including, without limitation, deemed Canadian Prime Rate Advances resulting from a draw under a Letter of Credit), at a rate per annum equal at all times to the sum of the Canadian Prime Rate in effect from time to time plus the Applicable Margin, calculated daily and payable in Cdn. Dollars in arrears:

- (a) monthly on the last Business Day of each month in respect of interest payable for that month; and
- (b) when such Canadian Prime Rate Advance becomes due and payable in full or is converted to another type of Advance.

3.3.2 CDOR Advances

If and so long as an Advance is a CDOR Advance, at a rate per annum equal at all times during each Interest Period for such CDOR Advance to the sum of CDOR Rate for such Interest Period plus the Applicable Margin, calculated daily and payable in Cdn. Dollars:

- (a) at the end of each Interest Period (except where such Interest Period exceeds three months in duration, in which case such interest shall be payable on the dates falling every three months following the commencement of the Interest Period and, finally, at the end of such Interest Period); and
- (b) when such CDOR Advance becomes due and payable in full or is converted to another type of Advance.

3.4 **Bankers' Acceptance Fees**

The Borrower shall pay acceptance fees in Canadian Dollars to the Administrative Agent on behalf of each Lender on each Bankers' Acceptance accepted and purchased or BA Equivalent Advance made by such Lender (each a "**Bankers' Acceptance Fee**"). Such Bankers' Acceptance Fees are payable forthwith upon the acceptance and purchase of each Bankers' Acceptance or the making of each BA Equivalent Advance at a rate per three hundred and sixty five (365) day period equal to the Applicable Margin for Bankers' Acceptance Fees in effect from time to time, calculated on the face amount of such Bankers' Acceptance(s) or BA Equivalent Advance and on the basis of the number of days in the term of such Bankers' Acceptance or BA Equivalent Advance divided by three hundred sixty five (365); provided that if during the term of any such Bankers' Acceptance a change in the Bankers' Acceptance Fee occurs, the fees paid by the Borrower in respect of such Bankers' Acceptance or BA Equivalent Advance shall be adjusted, effective upon the change in the Bankers' Acceptance Fee occurring, to reflect the Bankers' Acceptance Fee for the remaining term (if any) of the Bankers' Acceptance or BA Equivalent

Advance, and the Borrower, in the case of an increase in the Bankers' Acceptance Fee, shall no later than three (3) Business Days after receipt of a notice from the Administrative Agent, make such payments to the Administrative Agent for the account of each Lender as are necessary to reflect such change, and each Lender, in the case of a decrease in the Bankers' Acceptance Fee, shall credit any amount which would otherwise be refundable to the Borrower against amounts in respect of interest or fees accruing hereunder in relation to the Borrower.

Bankers' Acceptance Fees payable to the Lenders in respect of BA Equivalent Advances pursuant to this Section 3.4 shall be paid in the manner specified in Article 4. All fees payable pursuant to this Section 3.4 on any date in respect of any issuance of Bankers' Acceptances or BA Equivalent Advance shall be calculated by the Administrative Agent and payable by the Borrower based on the aforesaid rate.

3.5 Standby Fee

A standby fee (for the account of the Lenders *pro rata* on the basis of their respective Commitments under such Credit Facility) shall be payable by the Borrower at a rate equal to the Standby Fee Applicable Margin from time to time (based upon a year of 365 or 366 days, as applicable) on the undrawn portion of the aggregate Commitments under the Construction Facility and the Letter of Credit Facility. Such fee shall be calculated daily and payable in arrears on the last Business Day of each Financial Quarter in Cdn. Dollars from: (i) the Closing Date to the Construction Term-Out Date, in respect of the Construction Facility; and (ii) from the Closing Date to the Final Maturity Date in respect of the Letter of Credit Facility.

3.6 Substitute Basis of Advance

If:

- (a) The Administrative 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 Administrative Agent is advised by Lenders holding at least 25% of the Commitments under the Construction Facility or the Term Facility (as then applicable) or the Revolver Facility #1 by written notice (each, a "**Lender BA Suspension Notice**") that such Lenders have determined (acting reasonably) 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 Advances from any Lender shall be suspended until the Administrative Agent determines that the circumstances causing such suspension no longer exist, and so notifies the Borrower and the Lenders;
- (d) any outstanding Advance Request requesting an Advance by way of Bankers' Acceptances or BA Equivalent Advances shall be deemed to be an Advance Request

requesting a Canadian Prime Rate Advance in the amount specified in the original Advance Request;

- (e) any outstanding notice of Conversion requesting a Conversion of a Canadian Prime Rate Advance or CDOR Advance into a Bankers' Acceptance or BA Equivalent Advance shall be deemed to be a notice of Conversion requesting a Conversion of such Advance into a Canadian Prime Rate Advance or in the case of a request for Conversion of a Canadian Prime Rate Advance, the continuation of such Canadian Prime Rate Advance; and
- (f) any outstanding notice of Rollover requesting a Rollover of a Bankers' Acceptance or BA Equivalent Advance shall be deemed to be a notice of Conversion requesting a Conversion of such Bankers' Acceptances into a Canadian Prime Rate Advance.

The Administrative Agent shall promptly notify the Borrower and the Lenders of any suspension of the Borrower's right to request Bankers' Acceptances or BA Equivalent Advances and of any termination of any such suspension. A Lender BA Suspension Notice shall be effective upon receipt of the same by the Administrative Agent if received prior to 12:00 noon (Calgary time) on a Business Day and if not, then on the next following Business Day, except in connection with an Advance Request, notice of Conversion or notice of Rollover previously received by the Administrative Agent, in which case the applicable Lender BA Suspension Notice shall only be effective with respect to such previously received Advance Request, notice of Conversion or notice of Rollover if received by the Administrative Agent prior to 12:00 p.m. (Calgary time) two (2) Business Days prior to the proposed Advance Date, Conversion Date or Rollover Date (as applicable) applicable to such previously received Advance Request, notice of Conversion or notice of Rollover, as applicable.

ARTICLE 4 BANKERS' ACCEPTANCES AND BA EQUIVALENT ADVANCES

4.1 Acceptance of Bankers' Acceptances

Subject to the terms and conditions of this Agreement, each Lender hereby agrees to accept and to purchase its Proportionate Share of Bankers' Acceptances issued by the Borrower and provide to the Administrative Agent for the account of the Borrower the BA Discount Proceeds less the applicable Bankers' Acceptance Fees payable by the Borrower to such Lender pursuant to Section 3.4.

4.2 Delivery of Notice

The Borrower shall, subject to the period of notice required by Section 3.2.1, deliver to the Administrative Agent written notice with respect to the Advance, Conversion or Rollover of Bankers' Acceptances in the form of an Advance Request.

4.3 Payment to Borrower

- (a) On the Advance Date relating to any issue of Bankers' Acceptances, the Administrative Agent shall deliver a confirmation of Bankers' Acceptances funding details by telecopy or personal delivery, and the BA Discount Proceeds of Bankers' Acceptances (less any Bankers' Acceptance Fees payable to the Lenders in respect thereof pursuant to Section 3.4) for the account of the Borrower through the Administrative Agent.

- (b) In the case of a Rollover of Bankers' Acceptances, the Borrower shall be liable to the Lenders for the principal amount of maturing Bankers' Acceptances. In order to satisfy the continuing liability of the Borrower to the Lenders for the principal amount of the maturing Bankers' Acceptances, each Lender shall receive and retain for its own account the BA Discount Proceeds of such new Bankers' Acceptances and the Borrower shall on the maturity date of the maturing Bankers' Acceptances pay to the Administrative Agent for the benefit of such Lender an amount equal to the difference between the principal amount of the maturing Bankers' Acceptances and the BA Discount Proceeds (net of the Bankers' Acceptance Fees to which such Lender is entitled pursuant to Section 3.4) from the new Bankers' Acceptances.
- (c) On any Conversion Date relating to Bankers' Acceptances:
 - (i) in the case of a Conversion from a Canadian Prime Rate Advance into Bankers' Acceptances, in order to satisfy the continuing liability of the Borrower to each Lender for the amount of the converted Advance, each Lender shall receive for its own account the BA Discount Proceeds from the purchase by such Lender of such Bankers' Acceptances, as applicable, and the Borrower shall on the Conversion Date pay to each Lender, through the Administrative Agent, the difference between the principal amount of the converted Advance and the BA Discount Proceeds from such Bankers' Acceptances (net of the Bankers' Acceptance Fees to which each Lender is entitled pursuant to Section 3.4); and
 - (ii) in the case of a Conversion of Bankers' Acceptances, in order to satisfy the continuing liability of the Borrower to each Lender for an amount equal to the face amount of such Bankers' Acceptances, the Administrative Agent and each Lender shall record the obligation of the Borrower to each Lender as an Advance of the type into which the maturing Bankers' Acceptance has been converted.

4.4 **Waiver of Presentment and Other Conditions**

The Borrower waives presentment for payment and, except to the extent of the gross negligence or wilful misconduct of the Lenders or the failure of the Lenders to use the standard of care referred to in Section 4.6, any other defence to payment of any amounts due to a Lender in respect of a Bankers' Acceptance accepted and purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers' Acceptance being held, at the maturity thereof, by such Lender in its own right and the Borrower agrees not to claim any days of grace if such Lender as holder sues the Borrower on the Bankers' Acceptance for payment of the amount payable by the Borrower thereunder. On the specified maturity date of a Bankers' Acceptance, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrower shall pay the Administrative Agent on behalf of the Lender that has accepted such Bankers' Acceptance, the full face amount of such Bankers' Acceptance or effect a Conversion of such Bankers' Acceptance into a Prime Loan pursuant to Section 2.13.1(a) and make such additional payments, if any, as are required pursuant to Section 4.3.

4.5 **Term of each Bankers' Acceptance**

Each Bankers' Acceptance shall:

- (a) have a maturity date which shall be on a Business Day;

- (b) subject to availability, have a BA Period which is a Standard Term (excluding days of grace) or, with the consent of all Lenders and subject to availability, have a BA Period which is not a Standard Term but not in excess of 180 days;
- (c) be in the standard form of each Lender accepting same, provided however, the Administrative Agent may require a Lender to use a generic form of Bankers' Acceptance, in a form satisfactory to the Borrower and each Lender, each acting reasonably, provided by the Administrative Agent for such purpose in place of the Lender's own forms; and
- (d) have a maturity date in respect of the Lender accepting same which ends on or prior to the applicable Maturity Date.

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 shall be issued in the form of a "**Depository Bill**" (as defined in the DBNA), deposited with, and made payable to, a "**clearing house**" (as defined in the DBNA) including, without limitation, The Canadian Depository for Securities Limited or its nominee, CDS & Co. The Administrative Agent and the Lenders shall, inter alia, effect the following and, subject to the approval of the Borrower and the Majority Lenders, establish and notify the Borrower and the Lenders of any additional procedures, consistent with the terms of this Agreement and the quarterly requirements of the DBNA, as are reasonably necessary to accomplish such intention including, without limitation:

- (i) the instruments or drafts held by the Administrative Agent for the purposes of effecting Bankers' Acceptances will include a notation to the effect that they are issued pursuant to the DBNA;
- (ii) any reference to authentication of the Bankers' Acceptance will be removed; and
- (iii) any reference to "**bearer**" will be removed.

4.6 **Power of Attorney**

As a condition precedent to each Lender's obligation to accept and, if applicable, purchase Bankers' Acceptances hereunder or make BA Equivalent Advances, as applicable, from time to time, the Borrower hereby agrees to the Power of Attorney Terms - Bankers' Acceptances and BA Equivalent Advances set out in Schedule 25 hereto. Such power of attorney may be terminated by the Borrower and, in such event, the provisions of Section 4.8 shall apply.

No Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any Bankers' Acceptances endorsed in blank except any loss arising by reason of the gross negligence or wilful misconduct of such Lender or its officers, employees, agents or representatives or any loss arising by reason of such Lender or its officers, employees, agents or representatives failing to use the same standard of care in the custody of such Bankers' Acceptances endorsed in blank as such Lender uses in the custody of its own property of a similar nature. The Administrative Agent shall maintain a record with respect to such Bankers' Acceptances endorsed in blank that are received from the Borrower and that are delivered to a Lender hereunder. Each Lender shall maintain a record with respect to such Bankers' Acceptances executed in blank that are:

- (a) received by such Lender from the Administrative Agent hereunder;
- (b) voided by such Lender for any reason;
- (c) accepted by such Lender hereunder; and
- (d) cancelled by such Lender at the maturity thereof.

Each Lender agrees to provide such record to the Administrative Agent upon request therefor by the Administrative Agent as well as concurrently with any request by such Lender to the Administrative Agent for any additional such bankers' acceptances endorsed in blank which are required from the Borrower. The Administrative Agent shall provide a report of such records received by the Administrative Agent to the Borrower upon request from the Borrower.

4.7 Failure to Give Notice of Repayment

If the Borrower fails to give notice to the Administrative Agent of a Rollover or the method of repayment of a Bankers' Acceptance prior to the date of maturity of such Bankers' Acceptance in accordance with the same period of notice required for the original acceptance of such Bankers' Acceptance as set forth in Section 3.2.1, the face amount of such Bankers' Acceptance shall be converted on its maturity to a Prime Loan from the applicable Lender pursuant to Section 2.13.1.

4.8 Execution of Bankers' Acceptances

If the Borrower has rescinded the powers of attorney referred to herein, Bankers' Acceptances of the Borrower which are endorsed shall be signed by a duly authorized signatory or duly authorized signatories of the Borrower, and may, at the option of the Borrower, be signed by way of affixing a reproduction of the signature or signatures of such duly authorized signatory or signatories. Notwithstanding that any person whose signature appears on any Bankers' Acceptance as a signatory may no longer be an authorized signatory of the Borrower at the date of issuance of a Bankers' Acceptance, and notwithstanding that the signature affixed may be a reproduction only, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and as if such signature had been manually applied, and any such Bankers' Acceptance so signed shall be binding on the Borrower.

4.9 Lenders to Purchase

Each Lender shall purchase its Proportionate Share of any Bankers' Acceptances issued by the Borrower and accepted by each such Lender and forming a part of the same issue of Bankers' Acceptances, in each case on any Advance Date, Conversion Date or Rollover Date pursuant to a notice in the form of Schedule 2.

4.10 Prepayment

A Bankers' Acceptance may only be repaid on its maturity date.

4.11 BA Equivalent Advances

Notwithstanding the foregoing provisions of this Article 4, any Non-Acceptance Lender shall, in lieu of accepting Bankers' Acceptances, make a BA Equivalent Advance. The amount of each BA

Equivalent Advance shall be equal to the BA Discount Proceeds which would be realized from a hypothetical sale of those Bankers' Acceptances which, but for this Article 4, such Lender would otherwise be required to accept as part of such an Advance by way of Bankers' Acceptances. To determine the amount of such BA Discount Proceeds, the hypothetical sale shall be deemed to take place at the Non-Acceptance Discount Rate. Any BA Equivalent Advance shall be made on the relevant Advance Date, Conversion Date or Rollover Date, as the case may be, and shall remain outstanding for the BA Period of the Bankers' Acceptances issued concurrently therewith. Concurrent with the making of a BA Equivalent Advance, a Non-Acceptance Lender shall be entitled to deduct therefrom an amount equal to the Bankers' Acceptance Fees under Section 3.4 which, but for this Article 4, such Lender would otherwise be entitled to receive as part of such issue of Bankers' Acceptances. The BA Equivalent Advance shall accrue interest at a rate per annum equal to the Non-Acceptance Discount Rate for the term of such BA Equivalent Advance. Upon the maturity date for the corresponding Bankers' Acceptances, the Borrower shall pay to each Non-Acceptance Lender, in satisfaction of the BA Equivalent Advance and interest accrued thereon, an amount equal to the face amount of the Bankers' Acceptance which, but for this Article 4, such Lender would otherwise have been required to accept as part of such Accommodation by way of Bankers' Acceptance, failing which such amount shall be converted to a Canadian Prime Rate Advance.

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

4.12 **Administrative Agent's Duties re Bankers' Acceptances and BA Equivalent Advances**

- (a) **Advice to the Lenders:** The Administrative Agent, promptly following receipt of an Advance Request or notice of Conversion, Rollover or Repayment, by way of Bankers' Acceptances in the form of Schedule 2, shall advise the Lenders of the face amount of each Bankers' Acceptance to be purchased by it and the BA Period thereof, which BA Period shall be identical for all applicable Lenders. On each Advance Date, Conversion Date or Rollover Date on which the applicable Lenders are required to purchase Bankers' Acceptances hereunder, the Administrative Agent, in consultation with the Lenders which are not Non-Acceptance Lenders, shall determine the applicable BA Discount Rate in respect of the issuance of such Bankers' Acceptances.
- (b) **Administrative Agent's Confirmation of Bankers' Acceptance Issuance:** On the Advance Date, Conversion Date or Rollover Date relating to all Bankers' Acceptances to be purchased by the applicable Lenders on such date, the Administrative Agent shall provide written advice (which may be delivered by fax or other electronic transmission), to the Borrower and each Lender confirming the particulars with respect to such Bankers' Acceptances.
- (c) **Completion of Bankers' Acceptances:** Upon receipt of advice pursuant to Section 4.12(b), each Lender is thereupon authorized to complete Bankers' Acceptances held by it in blank in accordance with the particulars so advised by the Administrative Agent.

ARTICLE 5 LETTERS OF CREDIT

5.1 Letter of Credit Commitment

The LC Lender agrees (up to the amount of the Letter of Credit Facility Limit) to issue Letters of Credit from time to time on any Business Day under the Letter of Credit Facility on the terms and conditions set out herein, on its own behalf based on the Letter of Credit Commitment.

5.2 Letter of Credit Advance Request

Each Letter of Credit Advance shall be made on at least three Business Days' prior notice, given not later than 1:00 p.m. (Calgary time) by the Borrower to the Administrative Agent with a copy of each such Advance Request to the LC Lender. In addition, the Borrower shall execute and deliver the LC Lender's customary form of letter of credit application agreement and letter of credit indemnity agreement. In no event shall any Letter of Credit Advance be made prior to the date of the Initial Advance.

5.3 Form of Letter of Credit

Each Letter of Credit to be issued by the LC Lender shall:

- (a) be dated the Letter of Credit Advance Date;
- (b) have an expiration date on a Business Day which occurs no later than the earlier of:
 - (i) one year after the date of issuance (subject to standard extension provisions); or
 - (ii) the Final Maturity Date;
- (c) comply with the definition of Letter of Credit; and
- (d) otherwise be satisfactory in form and substance to the LC Lender, acting reasonably.

Except to the extent otherwise expressly provided herein or in another Credit Facility Document (other than a Lender Hedge) or where the beneficiary of the applicable Letter of Credit is an Official Body located in Canada, the Uniform Customs shall apply to and govern each Letter of Credit.

5.4 Procedure for Letter of Credit Advances

5.4.1 Letter of Credit Advances

On the Letter of Credit Advance Date, the LC Lender will complete and issue a Letter of Credit in favour of the Beneficiary as specified by the Borrower in its Advance Request.

5.4.2 Time for Honour

No Letter of Credit shall require payment against a conforming draft to be made thereunder on the same Business Day upon which such draft is presented, if such presentation is made after 1:00 p.m. (Calgary time) on such Business Day.

5.4.3 Text

Prior to the Letter of Credit Advance 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 LC Lender, acting reasonably, may require changes in any such documents or certificate.

5.4.4 Conformity

In determining whether to pay under a Letter of Credit, the LC 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.

5.5 **LC Lender – Authorization to Review**

The Borrower hereby authorizes the LC Lender to review each draft and other document presented under each Letter of Credit issued by it. The determination of the LC Lender as to the conformity of any documents presented under a Letter of Credit to the requirements of such Letter of Credit shall, in the absence of the gross negligence or willful misconduct of the LC Lender, be conclusive and binding on the Borrower. The LC Lender shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under any Letter of Credit issued by it. The LC Lender shall promptly after such examination:

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

5.6 **Payment of Amounts Drawn Under Letters of Credit**

5.6.1 Notice of Draw

In the event of any request for a drawing under any Letter of Credit, the LC Lender shall use reasonable efforts to notify the Borrower (with a copy of the notice to the Administrative Agent) on or before the date on which they intend to honour such drawing and in any event, the LC Lender shall advise the Administrative Agent and the Borrower of such drawings as soon as practicable thereafter.

5.6.2 The Borrower's Reimbursement Obligation

Subject to Section 5.6.3, the Borrower (whether or not such notice is given) shall reimburse the LC Lender by payment to the LC Lender on demand by the LC Lender, in Canadian Dollars, of an amount, in same day funds, equal to the amount of such drawing together with interest on such amount from and including the date of honouring such drawing until payment is made as if it were a Canadian Prime Rate Advance.

5.6.3 Deemed Canadian Prime Rate Advance

Unless the Borrower notifies the Administrative Agent prior to 1:00 p.m. (Calgary time) on the Business Day immediately prior to the date of such drawing that the Borrower intends to reimburse the LC Lender for the amount of such drawing by payment to the LC Lender with funds other than the proceeds of Advances, the LC Lender shall be deemed to have made a Canadian Prime Rate Advance to the Borrower on the date on which such drawing is honoured. For greater certainty, the LC Lender will receive from the Borrower the applicable interest on such Canadian Prime Rate Advance.

5.7 **Records**

5.7.1 Maintenance of Records

The Administrative Agent and the LC Lender shall maintain records showing the undrawn and unexpired amount of each Letter of Credit outstanding hereunder:

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

5.7.2 Copies of Records

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

5.8 **Fees**

5.8.1 Letter of Credit Fee

The Borrower shall pay to the Administrative Agent, for the account of the LC Lender, a Letter of Credit Fee with respect to each outstanding Letter of Credit. The Letter of Credit Fee shall be payable by the Borrower on the last Business Day of each Financial Quarter, commencing on the last Business Day of the Financial Quarter occurring after such Letter of Credit Advance and thereafter on the last Business Day of each subsequent Financial Quarter and shall be calculated on the Face Amount of each Letter of Credit on the basis of the number of days in each such period (including the first day and the last day) at a rate per annum equal to the Applicable Margin (applicable to such Letter of Credit or Letter of Credit (Cash Collateralized)).

5.8.2 Administration Fee

The Borrower shall pay to the Administrative Agent, for and on behalf of the LC Lender, the reasonable set up fees, cable charges and other customary miscellaneous charges of the LC Lender in respect of the issue of Letters of Credit, the amendment of each Letter of Credit and each drawing made thereunder, and reasonable and customary documentary and administrative charges for issuing, amending or drawing under, as the case may be, Letters of Credit of a similar amount, term and risk.

5.9 **Obligations Absolute**

The obligation of the Borrower to reimburse the LC Lender for drawings made under any Letter of Credit and, failing which, the Conversion of any draw under a Letter of Credit to Canadian Prime Rate

Advances, 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), any Lender or any other person, whether in connection with this Agreement, the other Credit Facility Documents, the transactions contemplated herein and therein or any unrelated transaction (including any underlying transaction between the Borrower or an Affiliate and the Beneficiary of such Letter of Credit);
- (c) any draft, demand, certificate or any other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
- (d) payment by the LC 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 constitute gross negligence or willful misconduct); or
- (e) the fact that a Default or an Event of Default shall have occurred and be continuing.

5.10 Indemnification; Nature of Lenders' Duties

5.10.1 Indemnity

In addition to amounts payable as elsewhere provided in this Article 5, the Borrower hereby agrees to protect, indemnify, pay and save the LC Lender and its 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) which such indemnitee may incur or be subject to as a consequence, direct or indirect, of:

- (a) the issuance of any Letter of Credit, other than as a result of the gross negligence or willful misconduct of such indemnitee; or
- (b) the failure of such 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* government or governmental authority (all such acts or omissions called in this Section 5.10, "**Government Acts**").

5.10.2 Risk

As between the Borrower and the LC Lender, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the LC Lender by the respective Beneficiaries of such Letters of Credit and, without limitation of the foregoing, the LC Lender shall not be responsible for:

- (a) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit,

even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged;

- (b) 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;
- (c) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they are in cipher;
- (d) errors in interpretation of technical terms;
- (e) 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;
- (f) the misapplication by the Beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; and
- (g) any consequences arising from causes beyond the control of the LC Lender, including any Government Acts.

None of the above shall affect, impair or prevent the vesting of any of the rights or powers of the LC Lender or any other Lender hereunder. No action taken or omitted by the LC 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 LC Lender under any resulting liability to the Borrower (provided that the LC Lender acts without gross negligence or willful misconduct).

5.11 **Maturity and Default**

5.11.1 Payment of Face Amount

Upon the occurrence of an Event of Default and the Administrative Agent declaring the Outstanding Credit Obligations to be due and payable pursuant to Section 12.2 or if the Final Maturity Date occurs and Letters of Credit are outstanding under the Letter of Credit Facility, 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 Letters of Credit pursuant to Section 5.8, if any, shall thereupon forthwith become due and payable by the Borrower to the Administrative Agent and, except for any amount payable in respect of unpaid fees as aforesaid, such amount shall be held in a segregated account by the Administrative Agent for the benefit of the LC Lender and invested in Approved Securities as collateral security firstly to provide for or to secure payment of the amounts payable under such Letters of Credit in respect of any drawing thereunder and secondly for the payment of the other Obligations.

5.11.2 Payment of Face Amount – Judicial Order

The Borrower shall pay to the Administrative Agent the aforesaid amount in respect of both any Letter of Credit outstanding hereunder and any Letter of Credit which is the subject matter of any order, judgment, injunction or other such determination (in this Section 5.11, a “**Judicial Order**”) restricting payment by the LC Lender under and in accordance with such Letter of Credit or extending the liability of the LC Lender under such Letter of Credit beyond the expiration date stated therein.

5.11.3 Payment of Face Amount - Termination of Judicial Order

The Administrative Agent shall with respect to each such Letter of Credit, upon the later of:

- (a) the date on which any final and non-appealable order, judgment or other such determination has been rendered or issued either terminating the applicable Judicial Order or permanently enjoining the LC Lender from paying under such Letter of Credit; and
- (b) the earlier of:
 - (i) the date on which either the original counterpart of the Letter of Credit is delivered to the Administrative Agent for cancellation or the LC Lender is released by the Beneficiary from any further obligations in respect thereof; and
 - (ii) the expiry (to the extent permitted by any applicable Law) of such Letter of Credit,

and provided no Default or Event of Default has occurred and is continuing, pay to the Borrower an amount equal to the difference between the amount paid to the Administrative Agent by the Borrower pursuant to this Section 5.11 (together with interest accrued on such amount) and the aggregate amount paid by the LC Lender (as applicable) under such Letter of Credit.

5.12 **Letter of Credit (Cash Collateralized)**

The Borrower will establish the Borrower Cash Collateral Account prior to requesting the advance of any Letter of Credit (Cash Collateralized). Each Letter of Credit issued under the Letter of Credit Facility will be a Letter of Credit (Cash Collateralized) and the Borrower shall have the option to designate in writing to the Administrative Agent and the LC Lender if a Letter of Credit to be issued under Revolver Facility #1 will be a Letter of Credit (Cash Collateralized). A Letter of Credit (Cash Collateralized) may be issued by the LC Lender provided that the Borrower has paid to the Agent, for the benefit of the LC Lender, for deposit into the Borrower Cash Collateral Account funds in an amount equal to the Face Amount of such Letter of Credit. Upon such deposit being made the Letter of Credit Fees for such Letter of Credit issued under Revolver Facility #1 shall be adjusted while such corresponding amount remains on deposit in the Borrower Cash Collateral Account. Such funds may be applied by the Administrative Agent and the LC Lender to the Outstanding Credit Obligations in regard to any such Letter of Credit (Cash Collateralized) if it is drawn by the Beneficiary thereof. If the Letter of Credit (Cash Collateralized) expires and corresponding funds in the Borrower Cash Collateral Account remain without having been applied against such Outstanding Credit Obligations then the Borrower shall be entitled to withdraw such funds from the Borrower Cash Collateral Account.

**ARTICLE 6
CONDITIONS PRECEDENT**

6.1 **Conditions to Closing**

The Closing will not occur and the Credit Facilities and the Initial Advance will not be available unless the conditions precedent set forth in this Section 6.1 have been satisfied, fulfilled, waived or otherwise met to the satisfaction of the Lenders on the Closing Date.

6.1.1 Credit Facility Documents

The Credit Facility Documents (other than the LC Lender's form of application agreement and indemnity and agreement in respect of Letters of Credit yet to be issued or entered into and such Credit Facility Documents not yet required to be executed and delivered in accordance with the terms hereof) including all Consents relating to the Material Project Contracts listed in Part I of Schedule 7 shall have been executed and delivered to the Administrative Agent.

6.1.2 Compliance Certificate

The Administrative Agent shall have received a compliance certificate from each Loan Party party to a Material Project Contract and the Borrower confirming:

- (a) that each Material Project Contract listed in Part I of Schedule 7 is in full force and effect, unamended, enforceable in accordance with its terms;
- (b) no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default of any Loan Party under any of the Material Project Contracts listed in Part I of Schedule 7 has occurred; and
- (c) to the knowledge of the certifying Senior Officer, no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default by a Counterparty under any of the Material Project Contracts listed in Part I of Schedule 7 has occurred.

6.1.3 Constitutional Documents

The Administrative Agent shall have received certified copies of the constitutional and partnership documents, as applicable, of the Borrower and each other Loan Party.

6.1.4 Resolutions

The Administrative Agent shall have received copies of resolutions of the board of directors or the board of directors of its general partner (as applicable) of the Borrower and each other Loan Party authorizing the execution, delivery and performance of all Credit Facility Documents to which they are a party on the Closing Date, certified by a Senior Officer of the Borrower and each other Loan Party, as applicable.

6.1.5 Incumbency

The Administrative Agent shall have received a certificate of a Senior Officer of the Borrower and each other Loan Party certifying the names and the true signatures of its officers authorized to sign all Credit Facility Documents to which they are a party on the Closing Date.

6.1.6 Good Standing

The Administrative Agent shall have received a certificate of good standing or like certificate in respect of the Borrower and each other Loan Party issued by the appropriate Official Body in its jurisdiction of formation including a Certificate of Status or partnership search, if and as applicable, from the Registrar of Corporations of the Province of Alberta.

6.1.7 Representations and Warranties

All of the representations and warranties contained herein shall be true and correct in all respects and all of the representations and warranties in the other Credit Facility Documents shall be true and correct in all material respects, in each case, on and as of the Closing Date as though made on and as of such date, unless stated to be made as of a specified date, and the Administrative Agent shall have received a certificate to that effect from the Borrower.

6.1.8 Material Project Contracts

The Administrative Agent shall have received a certificate of the Borrower that the Material Project Contracts listed in Part 1 of Schedule 7 (certified true copies of which shall be provided to the Lenders on the Closing Date and which shall be in form and substance and with Counterparties satisfactory to the Lenders) are in full force and effect.

6.1.9 Permits and Compliance

The Administrative Agent shall have received a certificate of the Borrower in form and substance acceptable to the Lenders and the Independent Engineer confirming:

- (a) that all Permits listed in Part I of Schedule 9 (certified true copies of which shall be provided to the Lenders on the Closing Date) have been obtained in the name of a Loan Party or where specified, in respect of the Project, are valid and in full force and effect and there are no rights of objection or appeal in respect thereof;
- (b) that all Permits referred to in Part II of Schedule 9 are expected to be obtained in the normal course by a Loan Party or the EPC Contractor so as not to delay the Substantial Completion Date or the Completion beyond the Scheduled Completion Date; and
- (c) that to the extent there are any Third Party Permits referred to in Part III of Schedule 9, they are expected to be obtained in the normal course by the Counterparties to the applicable Material Project Contracts so as not to delay the Substantial Completion Date or the Completion beyond the Scheduled Completion Date

6.1.10 Financial Model and Project Budget

The Financial Model and Project Budget (including the accuracy of the financial inputs and assumptions), confirmed and audited by the Independent Engineer shall be acceptable to the Lenders, acting reasonably. For purposes hereof, the Financial Model shall demonstrate a Minimum Required DSCR (on an annual pro forma basis) for 10 years assuming full drawdown of the Construction Facility and full amortization until the end of the 10 year amortization schedule annexed as Schedule 3 hereto, using an estimated long-term fixed interest rate consistent with the Borrower's hedging strategy. The technical assumptions used therein shall be subject to satisfactory review by the Independent Engineer and the Lenders.

6.1.11 Title

Milner Power shall have a good and valid title in fee simple to the Site Lands free and clear of all Liens except Permitted Liens, Milner Power II LP shall have leasehold title under the Lease and Milner Power II LP shall have obtained all other material Real Property Interests required for the construction

and Operation of the Project (or plans, reasonably satisfactory to the Lenders, shall be in place for the acquisition of such Real Property Interests, except for the Crossing Agreements, which shall only be required if and at the time the collection lines, telecommunication lines, gas supply lines and other parts of the Project cross over existing easements, rights of way or other property rights granted in favour of third parties over the Site Lands) and the Lenders shall have received title insurance reasonably acceptable to the Lenders and Lenders' Counsel with respect thereto. The Administrative Agent shall be provided with a copy of each duly executed Consent with respect to each Real Property Interest that is not owned legally and beneficially, by a Loan Party, together with a non-disturbance agreement from each mortgagee of any of the Site Lands (if any).

6.1.12 Security

All registrations, filings or recordings necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Encumbrances) shall have been completed, except in respect of the registration of the Security for which "gap" title insurance has been obtained, all in form and substance satisfactory to the Lenders and Lenders' counsel, acting reasonably, and all such Security shall be acknowledged and consented to (with appropriate covenants) by Counterparties (if consent of the Counterparty is required under the applicable Material Project Contract) and third parties as determined to be necessary by the Lenders and Lenders' Counsel, acting reasonably, provided that where the form of such Consent has been approved by the Lenders in advance, such form shall not require additional Lender approval.

6.1.13 PPSA Search Reports

The Administrative Agent shall have received PPSA search reports prior to the Closing Date showing the due filing or recordation of or that upon due filing or recordation (assuming such filing or recordation occurred on the date of such respective reports), the security interests and Lien created under the Security will rank prior to all other financing statements in respect of the Collateral (subject only to Permitted Encumbrances).

6.1.14 Pledged Shares

The Shares of the Loan Parties pledged pursuant to the securities pledge agreements set forth on Schedule 8 hereto will be certificated and delivered to the Administrative Agent pursuant to the applicable securities pledge agreements, together with transfer powers of attorney duly executed in blank.

6.1.15 No Default

No Default or Event of Default shall have occurred and be continuing nor shall any Default or Event of Default arise as a result of the Closing, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.1.16 Financial Statements

The Lenders shall have received the audited consolidated financial statements for the Borrower for the Financial Year ended December 31, 2018 and the unaudited consolidated financial statements for the Borrower for the Financial Quarter most recently ended.

6.1.17 Opinions

The Administrative Agent shall have received opinions in form and substance satisfactory to the Administrative Agent and the Lenders, acting reasonably, of:

- (a) Burnet, Duckworth & Palmer LLP, Alberta counsel for the Borrower and the other Loan Parties with respect to the existence of the Loan Parties and the due authorization, execution, delivery and enforceability of the Credit Facility Documents, the Consents, the EPC Contract and the DLN2.6+ Purchase Order to which such persons are a party and the making of security registrations;
- (b) internal legal counsel to the Overland Contracting Canada Inc. and BVH Inc. with respect to the existence of Overland Contracting Canada Inc. and BVH Inc. and the due authorization, execution, delivery and enforceability of (i) the EPC Contract, (ii) the Consent entered into in connection with the EPC Contract, (iii) the parental guarantee granted by BVH Inc. in connection with the EPC Contract, and (iv) the Consent entered into in connection with such guarantee; and
- (c) internal legal counsel to PCL Construction Group Inc. and PCL Industrial Management Inc. with respect to the existence of PCL Construction Group Inc. and PCL Industrial Management Inc. and the due authorization, execution, delivery and enforceability of (i) the EPC Contract, (ii) the Consent entered into in connection with the EPC Contract, (iii) the parental guarantee granted by PCL Construction Group Inc. in connection with the EPC Contract, and (iv) the Consent entered into in connection with such guarantee,

and the Administrative Agent shall have received an officer's certificate from General Electric Canada with respect to the existence of General Electric Canada and the due authorization, execution and delivery of the DLN2.6+ Purchase Order and the Consent entered into in connection with the DLN2.6+ Purchase Order

6.1.18 Litigation

No Loan Party shall have received notice of any action, suit, litigation, investigation or proceeding (whether or not purportedly on its behalf), nor have knowledge of any pending or threatened actions, suits, litigation, investigations or proceedings (whether or not purportedly on its behalf) in each case against or affecting the Project, the Borrower, any other Loan Party or the EPC Contractor before any Official Body in excess of \$**Redacted** and the Administrative Agent shall have received a certificate of the Borrower and each other Loan Party so certifying to the Lenders. [**Commercially sensitive amounts redacted**]

6.1.19 Legality

The making, maintenance and funding of the Credit Facilities shall not have been made unlawful for any Lender by any Law, or any change therein, or in the published or unpublished interpretation or application thereof by any Official Body.

6.1.20 Change in Law

There shall not have been any changes to applicable Laws, including but not limited to the ISO Rules, which could reasonably be expected to result in a MAE.

6.1.21 IE Report

The Lenders shall have received the Independent Engineer's Certificate (the "**Independent Engineer's Certificate**") with the final report, satisfactory to the Lenders, of the Independent Engineer (the "**Independent Engineer's Closing Report**"), with respect to technical and environmental matters (including an energy forecast for the Project and the review by Independent Engineer of the Permits and the environmental assessments completed with respect to the Project and the Site Lands in connection with such Permits) and confirming the Borrower's compliance with Good Engineering and Operating Practices, the Material Project Contracts, the Credit Facility Documents and all Permits. The Independent Engineer's Certificate shall, among other things, include confirmation of the amount of (i) the Maximum Unrestricted Initial Advance Amount (if any) to be paid as directed by the Borrower pursuant to Section 2.1.3(a)(i); and (ii) the portion of the Initial Advance to be deposited into the Construction Account Cdn. pursuant to Section 2.1.3(a)(iii). The Independent Engineer's Closing Report shall, among other things, include:

- (a) confirmation that based on the review by the Independent Engineer of the Material Project Contracts set out in Part I of Schedule 7, the Financial Model, the Project Budget, the design specifications of the Project and the technology to be included in the Project, that: (i) it is reasonable to expect that the Project will be serviced with all utilities necessary to permit the Project to Operate in the manner contemplated by the Permits, Financial Model and EPC Contract, and (ii) the construction and Operation of the Project will meet the requirements specified in the Permits and the Financial Model;
- (b) confirmation from the Independent Engineer that (i) most environmental permits and approvals with respect to the Project are in place, and that none that are outstanding poses a significant risk to the Project, and (ii) its review of the Environmental Consultant's Phase I environmental report with respect to the Site Lands and reported previous usages and activities at the Site Lands leads it to consider the site characterization work at the Site Lands completed to date to be sufficient for the Project;
- (c) confirmation from the Independent Engineer of the Cost to Complete for purposes of the Lenders determining if the Initial Equity condition set forth in Section 6.1.22 has been satisfied;
- (d) confirmation of the adequacy of the Project Budget including the adequacy of the contingency set out in the Project Budget, none of which contingency has been used prior to the Closing Date;
- (e) confirmation that the Project Schedule is reasonable;
- (f) confirmation that the Independent Engineer is not aware of any reason that the Counterparties to the Material Project Contracts would not be acceptable;
- (g) confirmation that the operating costs and major maintenance costs provided for in the Financial Model are reasonable; and
- (h) confirmation that the projected energy production of the Project as provided for in the Financial Model is reasonable.

6.1.22 Initial Equity

The Lenders shall have received confirmation, or otherwise be satisfied, that the Project Costs Satisfied is at least equal to 73% of the Project Budget and that the aggregate amount of the Construction Loan Commitment and the Revolving Facility #1 Commitment is equal to or exceeds the aggregate of Costs to Complete, all as determined as of the Closing Date and certified by the Independent Engineer.

6.1.23 Project Budget

The Project Budget and the Project Schedule have been reviewed and approved by the Independent Engineer and are in form and substance acceptable to the Lenders. None of the contingency set out in the Project Budget shall be expected to be used or be allocated for use prior to the Closing Date.

6.1.24 No MAE

No event or circumstance has occurred which has, or could reasonably be expected to have, a MAE and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.1.25 Lender Due Diligence

The Lenders shall have completed and be satisfied with their due diligence on all aspects of the Project and the Loan Parties, and the Lenders in their sole determination, have determined that the Project is technically and economically feasible.

6.1.26 Collateral Accounts

Milner Power II LP shall have established the Construction Accounts and the BLA Holdback Account with the Administrative Agent and the Borrower shall have established the Borrower Cash Collateral Account with the Administrative Agent.

6.1.27 Know Your Customer Information

Each Lender shall have completed and found to be satisfactory in its sole determination its usual and customary "Know Your Customer" due diligence with respect to the Borrower, each other Loan Party and their respective Affiliates.

6.1.28 EPC Contract – Full Notice to Proceed

Under the terms of the EPC Contract, the EPC Contractor shall have been obligated to proceed with the Work (as that term is defined in the EPC Contract) from and after the date of the EPC Contract without the need for Milner Power II LP to deliver a notice to proceed or any similar notice under the EPC Contract.

6.1.29 Fees

All fees and reimbursable expenses payable to the Lenders, Lenders Counsel, the Independent Engineer, the Insurance Consultant and each other consultant shall be fully paid by the Borrower from the proceeds of the Initial Advance.

6.1.30 Material Project Contract Consents

All Consents listed in Part I of Schedule 20 relating to the Material Project Contracts referred to therein shall have been executed and delivered to the Administrative Agent, in form and substance satisfactory to the Lenders, together with opinions of counsel to the Counterparties, in form and substance satisfactory to the Lenders.

6.1.31 Insurance Consultant Report

The Lenders shall have received the Insurance Consultant's Certificate substantially in the form of Schedule 6.1.31 attached hereto together with the Insurance Consultant's report, satisfactory to the Lenders, confirming that the insurance policies maintained by the Borrower comply with the insurance requirements under the Material Project Contracts and Article 9 of this Agreement, together with certificates of insurance from the Borrower's insurance broker.

6.1.32 Environmental Consultant Report

The Lenders shall have received the final report, together with a reliance letter, satisfactory to the Lenders and the Independent Engineer, of the Environmental Consultant, with respect to the completed Phase I environmental site assessment with respect to the Site Lands and the Independent Engineer shall have confirmed in the Independent Engineer's Report that no material Environmental Liabilities that exist or require further investigation pursuant to a Phase II environmental report for the Site Lands.

6.1.33 Blockades and other Civil Disobedience

The Borrower shall not be aware of any blockades, demonstrations or other civil disobedience that have or may reasonably be expected to have the effect of delaying, impeding or suspending the development, construction or Operation of the Project and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.1.34 First Nations

The Lenders shall have completed and found to be satisfactory all of their First Nations due diligence, including consultation and, if applicable, accommodation.

6.1.35 Turbine Audit

The Lenders shall have received the Turbine Audit, satisfactory to the Lenders and the Independent Engineer, together with a reliance letter.

6.1.36 Alberta Power Market Report

The Lenders shall have received the Alberta Power Market Report.

6.1.37 Adverse Information

Neither the Administrative Agent or any Lender shall have become aware of any information or other matter affecting the Borrower, each other Loan Party or any Counterparty which is inconsistent in a material and adverse manner with any information disclosed to the Lenders by the Borrower or each

other Loan Party prior to the date hereof which has not been corrected by a later disclosure delivered to the Lenders by the Borrower or each other Loan Party prior to the Closing Date.

6.1.38 Releases

Delivery to the Administrative Agent of any releases, discharges and postponements that are required in the discretion of the Administrative Agent acting reasonably (in registerable form where necessary) with respect to all Liens affecting the Collateral that are not Permitted Encumbrances.

6.1.39 Closing Date Certificate

The Borrower shall have delivered to the Administrative Agent and the Lenders a Closing Date Certificate for each Loan Party, in form and substance satisfactory to the Lenders.

6.1.40 Fees

The terms of the Fee Letter and the fee letters with the Lenders shall have been complied with to the satisfaction of the Administrative Agent and all fees and reimbursable expenses thereunder, to the extent due and owing on or prior to the Closing Date, shall have been fully paid on the Closing Date (including reasonable fees to the Lenders' consultants).

6.1.41 Other

The Lenders shall have received such supporting and other certificates and documentation as the Lenders may reasonably request.

6.2 Conditions to Each Drawdown under the Construction Facility and the Revolver Facility #1 prior to the Completion Date and under the Term Facility on the Completion Date

The Borrower shall not be entitled to any Advance (other than by Conversion or Rollover) under:

- (a) the Construction Facility or the Revolver Facility #1 during the period beginning on the Closing Date and ending on the Completion Date; or
- (b) the Term Facility on the Completion Date,

unless the Administrative Agent has received an Advance Request and the conditions precedent set forth in this Section 6.2 have been satisfied, fulfilled or otherwise met to the satisfaction of the Majority Lenders.

6.2.2 Drawdown Certificate

At the time of and as a condition to each drawdown prior to the Construction Term-Out Date, the Borrower will provide the Administrative Agent, in the case of an Advance under the Construction Facility, with a drawdown certificate substantially in the form of Schedule 4A setting out, among other things:

- (a) a summary of the Project Costs incurred or to be incurred up to the proposed Advance Date and the forecasted Project Costs for a period not to exceed 30 days, including

details of any variances from the Project Budget or the Project Schedule and a reconciliation of amounts advanced under the Construction Facility pursuant to any previous Advance Request to invoices paid from the proceeds of such previous Advance, which shall include calculations evidencing:

- (i) any excess amount from the previous Advance that was not required to fund Project Costs and the corresponding decrease of the current Advance requested by such excess amount; or
 - (ii) any shortfall in the amount that was required to fund Project Costs from the previous Advance and the corresponding increase of the current Advance requested by such shortfall amount, all of which shall be supported by invoices, statements, receipts or other supporting documentation reflecting Project Costs incurred which are certified by the Borrower including a certification that such invoices, statements, receipts or other supporting documents conform with the requirements of the EPC Contract and the other Material Project Contracts, if applicable;
- (b) the BLA Holdback Amount (if required) for such Project Costs;
 - (c) a description, in such detail as is requested by the Administrative Agent, of the Change Orders agreed to by the Borrower as of such date and since the previous drawdown certificate was provided by the Borrower;
 - (d) a detailed list of the Available Funds;
 - (e) the Borrower's reasonable estimate of the Cost to Complete;
 - (f) the estimated date by which the Substantial Completion and Completion is expected to be achieved;
 - (g) a statement that the Borrower is in compliance with its obligations under the Material Project Contracts; and
 - (h) a statement that, based on the most recent available information to the Borrower, the STS Amending Agreement will be completed in a timely manner so as not to delay the Substantial Completion Date or Completion beyond the Outside Date.

6.2.3 Independent Engineer

The Independent Engineer will review each draw request and drawdown certificate and as a condition to such drawdown, confirm, among other things, the following in a certificate substantially in the form of Schedule 5 hereto, based on its periodic review of the progress of construction of the Project (including site visits and documentation furnished to the Independent Engineer by the Borrower and the EPC Contractor to support payments of Project Costs):

- (a) the Project Costs and BLA Holdback Amount (if required) included in the draw request are materially correct;

- (b) payments included in the draw request are supported by invoices (or with respect to the payment of Project Costs that will be due and payable before the next expected drawdown and where invoices are not available, reasonable estimates by the Borrower of the Project Cost to be incurred in connection therewith) and construction performed during the period covered by the draw request appears to be in general conformance with the EPC Contract and other Material Project Contracts;
- (c) the estimated Cost to Complete contained in the drawdown certificate referred to in Section 6.2.2 above is a reasonable estimate and such estimated Cost to Complete does not exceed the Available Funds;
- (d) that the electrical interconnection and synchronization with the AIES at the connection to the ATCO Electric switchyard will be completed in a timely manner so as not to delay the Substantial Completion Date and Completion beyond the Outside Date;
- (e) the full amount of the immediately preceding drawdown (if any) under the Construction Facility received by the Borrower has been applied in respect of payment of Project Costs or if not, such amount remains in the Construction Accounts and available to be used to pay Project Costs;
- (f) the Change Orders made pursuant to the EPC Contract or any other Material Project Contract and set forth in the Borrower's Drawdown Certificate, are reasonable; and
- (g) it is reasonable to expect: (i) the Substantial Completion Date to be achieved by the Scheduled Completion Date, and (ii) Completion to be achieved by the Outside Date.

6.2.4 Delivery of Drawdown Certificate

- (a) The drawdown certificate referred to in Section 6.2.2 shall be provided to the Administrative Agent, in the case of an Advance under the Construction Facility, and the Independent Engineer at least nine Business Days prior to the applicable Advance Request.
- (b) On or before 1:00 p.m. (Calgary time) on the Business Day after the drawdown certificate has been provided, the Independent Engineer will confirm that it has received the certificate; in the absence of such confirmation, the Borrower will notify the Administrative Agent in the case of an Advance under the Construction Facility, and they will both use reasonable efforts to contact the Independent Engineer to attempt to obtain confirmation of receipt of the certificate by the Independent Engineer.
- (c) The Independent Engineer will advise the Borrower and the Administrative Agent, in the case of an Advance under the Construction Facility, on or before 1:00 p.m. (Calgary time) on the fifth Business Day following receipt of the drawdown certificate, if such certificate, including all supporting documentation reasonably requested by the Independent Engineer, is complete, and, if not, what is missing from such certificate.
- (d) On or before 1:00 p.m. (Calgary time) on the sixth Business Day following receipt of the drawdown certificate, the Independent Engineer will, if it has provided the confirmation in (c) above, advise the Administrative Agent, in the case of an Advance under the Construction Facility, and the Borrower of its opinion as to whether the requirements of

Section 6.2.3 have been met; and if such conditions have not been met it will provide reasonable details of such deficiencies and of the basis for its determination.

6.2.5 Cost to Complete

The estimated Cost to Complete contained in the drawdown certificate referenced in Section 6.2.2 does not exceed the Available Funds (provided that the estimates will include reasonable particulars for any calculations).

6.2.6 Construction Liens

No Liens have been registered in accordance with the BLA against any of the Project Assets under the BLA (other than Liens under the BLA which will be discharged with the proceeds of the Advance or bonded off title by the establishment of an appropriate reserve or letter of credit and arrangements to such effect (in form and substance satisfactory to the Administrative Agent) shall be in place) by any person who is a contractor or supplier of equipment, property or services in connection with the construction of the Project, which have not been released, discharged or vacated.

6.2.7 Registrations

All registrations, filings or recordings necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Encumbrances) shall have been completed and remain in effect.

6.2.8 Representations and Warranties

All of the representations and warranties contained herein shall be true and correct in all respects and all of the representations and warranties contained in each other Credit Facility Document shall be true and correct in all material respects in each case on and as of the date of the drawdown certificate and the date of drawdown as though made on and as of each such date (unless expressly stated to be made as of a specified date) and the Administrative Agent shall have received certificates so certifying to the Lenders from the Borrower.

6.2.9 No Default

No Default or Event of Default shall have occurred and be continuing or shall result from any Advance requested, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.2.10 Subordinated Credit Agreement

No default or event of default has occurred under the Subordinated Credit Agreement or will occur as a result of the Advance contemplated by Section 6.2, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.2.11 Subsearch Reports

With respect to any drawdown on or prior to the Construction Term-Out Date, the Administrative Agent shall have received a subsearch report of counsel to the Borrower as of a time and date satisfactory to the Administrative Agent (including updated searches) confirming continued registration of

the Security and that no encumbrances, other than Permitted Encumbrances, are registered against or charge the Real Property Interests.

6.2.12 No MAE

No event or circumstance has occurred which has, or could reasonably be expected to have a MAE and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.3 **Conditions to Each Drawdown under Revolver Facility #1 after the Completion Date**

The Borrower shall not be entitled to any Advance under Revolver Facility #1 on or after the Completion Date (other than by Conversion or Rollover) unless the Administrative Agent has received an Advance Request and the conditions precedent set forth in this Section 6.3 have been satisfied, fulfilled or otherwise met to the satisfaction of the Majority Lenders.

6.3.1 Advance Request

At the time of and as a condition to each Advance under Revolver Facility #1, the Borrower will provide the Administrative Agent with an Advance Request at least three (3) Business Days prior to the Advance.

6.3.2 Representations and Warranties

All of the representations and warranties contained herein shall be true and correct in all respects and all of the representations and warranties contained in each other Credit Facility Document shall be true and correct in all material respects in each case on and as of the date of the drawdown certificate and the date of drawdown as though made on and as of each such date (unless expressly stated to be made as of a specified date), and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.3.3 No Default

No Default or Event of Default shall have occurred and be continuing or shall result from any Advance requested, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.4 **Conditions to Each Drawdown under Revolver Facility #2**

The Borrower shall not be entitled to any Advance under Revolver Facility #2 on or after the Closing Date unless the Administrative Agent has received an Advance Request and the conditions precedent set forth in this Section 6.4 have been satisfied, fulfilled or otherwise met to the satisfaction of the Majority Lenders.

6.4.1 Advance Request

At the time of and as a condition to each drawdown under Revolver Facility #2, the Borrower will provide the Administrative Agent with an Advance Request at least three (3) Business Days prior to the requested Advance in accordance with Section 3.2.1.

6.4.2 Cost and Revenue Certificate

As a condition to each drawdown under Revolver Facility #2, the Borrower must have provided the Administrative Agent a notice (the "**Monthly Cost and Revenue Notice**") dated the date of the Advance setting out: (a) the amount paid, or to be paid by one or more Loan Parties for the supply of natural gas to the Plant during the prior calendar month (for such month, the "**Monthly Natural Gas Cost**"); and (b) the amount to be received by one or more Loan Parties from the AESO for the export of generated electricity from the Plant on to the AIES during such prior calendar month (for such month, the "**Monthly Electricity Revenue**"). The amount of the Advance under Revolver Facility #2 shall be no more than the lesser of: (a) the Monthly Natural Gas Cost as disclosed in such notice; (b) the Monthly Electricity Revenue as disclosed in such notice; and (c) the availability under Revolver Facility #2.

6.4.3 Representations and Warranties

All of the representations and warranties contained herein shall be true and correct in all respects and all of the representations and warranties contained in each other Credit Facility Document shall be true and correct in all material respects in each case on and as of the date of the Monthly Cost and Revenue Notice and the date of the Advance as though made on and as of each such date (unless expressly stated to be made as of a specified date), and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.4.4 No Default

No Default or Event of Default shall have occurred and be continuing or shall result from any Advance requested, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.5 **Conditions to Each Drawdown under the Letter of Credit Facility**

The Borrower shall not be entitled to any Advance under the Letter of Credit Facility on or after the Closing Date (other than by Conversion or Rollover) unless the Administrative Agent has received an Advance Request and the conditions precedent set forth in this Section 6.3 have been satisfied, fulfilled or otherwise met to the satisfaction of the LC Lender.

6.5.1 Drawdown Certificate

At the time of and as a condition to each drawdown under the Letter of Credit Facility, the Borrower will provide the Administrative Agent with a drawdown certificate substantially in the form of Schedule 4B at least three (3) Business Days prior to the drawdown request.

6.5.2 Representations and Warranties

All of the representations and warranties contained herein shall be true and correct in all respects and all of the representations and warranties contained in each other Credit Facility Document

shall be true and correct in all material respects in each case on and as of the date of the drawdown certificate and the date of drawdown as though made on and as of each such date (unless expressly stated to be made as of a specified date), and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.5.3 No Default

No Default or Event of Default shall have occurred and be continuing or shall result from any Advance requested, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.5.4 No MAE

No event or circumstance has occurred which has, or could reasonably be expected to have, a MAE and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.6 **Conditions Precedent to Completion**

Completion will not occur and the Term Facility will not be available unless the conditions precedent set forth in this Section 6.6 have been satisfied, fulfilled, waived or otherwise met to the satisfaction of the Lenders.

6.6.1 The occurrence of the Substantial Completion Date.

6.6.2 The occurrence of Substantial Completion without the waiver in any material respect by Milner Power II LP of the requirements for Substantial Completion under the EPC Contract, which shall be certified by the Independent Engineer.

6.6.3 The Borrower has established to the reasonable satisfaction of the Independent Engineer that (i) it is reasonable to expect that the Project will be capable of operating at the forecasted capacity (as set out in the Updated Financial Model) in all seasons, and (ii) the Project is reasonably expected to operate within the restrictions of any Permits necessary for the operation of the Project.

6.6.4 Successful completion of the Project Performance Tests to the satisfaction of the Independent Engineer and as required under and in compliance with all Material Project Contracts, Permits and all applicable Laws.

6.6.5 The Outstanding Principal under the Construction Facility and the Revolver Facility #1 shall be equal to or less than 27% of the Project Costs confirmed by the Independent Engineer.

6.6.6 Repayment of any Construction Loans required to be repaid on the Completion Date together with all accrued and unpaid interest.

6.6.7 The Borrower has entered into and maintains all of the Required Hedges.

6.6.8 All of the representations and warranties contained herein shall be true and correct and all representations and warranties in the other Credit Facility Documents shall be true and correct in all material respects in each case on and as of the Completion Date as though made on and as of such date (unless expressly stated to be made as of a specified date).

- 6.6.9 No Default or Event of Default shall have occurred and be continuing.
- 6.6.10 All Project Costs have been paid or, if not paid, the Completion Reserve Amount has been set aside in the Construction Accounts and is or will be to satisfy payment of the Completion Project Costs.
- 6.6.11 The Independent Engineer shall have delivered to the Administrative Agent and the Lenders the Independent Engineer's Completion Date Certificate, in form and substance satisfactory to the Lenders.
- 6.6.12 The Borrower shall have delivered to the Administrative Agent and the Lenders the Borrower's Completion Date Certificate, in form and substance satisfactory to the Lenders.
- 6.6.13 The Project is serviced with all utilities that are in each case necessary to permit the Project to operate in the manner contemplated by the Material Project Contracts.
- 6.6.14 The Project has been connected to the AIES and if applicable, synchronized with the AIES, and all other matters have been completed to permit the delivery of electricity in accordance with the ISO Rules and the STS Amending Agreement (which shall be certified by the Independent Engineer).
- 6.6.15 The Borrower has entered into all required Crossing Agreements and provided certified copies of such Crossing Agreements to the Administrative Agent.
- 6.6.16 The Material Project Contracts (or any permitted replacement thereof) required to be in effect as of Completion continue to be in full force and effect (except where fully performed in accordance with the terms thereof) and no default which, in the discretion of the Lenders acting reasonably, could reasonably be expected to have a MAE has occurred and is continuing under any other Material Project Contract (or any permitted replacement thereof).
- 6.6.17 Receipt by the Borrower of all Permits then necessary to allow the Project to commence and continue to Operate in accordance with the Material Project Contracts required to be in effect as of Completion, Good Engineering and Operating Practices and in accordance with applicable Law are in full force and effect and the Borrower has no reasonable belief that any such applicable Permit will be suspended, revoked or materially modified and the Borrower is in compliance with all such Permits.
- 6.6.18 The Third Party Permits then necessary to allow the Project to commence and continue to Operate in accordance with Good Engineering and Operating Practices and in accordance with applicable Laws have been received and are held by each applicable Counterparty.
- 6.6.19 The Insurance Consultant has reviewed all Project operating insurance and confirmed in writing, to the satisfaction of the Majority Lenders, each acting reasonably, the conformity of such insurance with the provisions of this Agreement and all such Project operating insurance is in full force and effect.
- 6.6.20 The property and assets of the Loan Parties are free and clear of Liens, other than the Liens created by the Security and other Permitted Encumbrances and all Liens under the BLA have been satisfied, discharged, vacated or withdrawn as provided in the BLA unless being Contested in Good Faith and for which appropriate cash reserves have been established to the satisfaction of the Administrative Agent, acting reasonably.
- 6.6.21 The amortization schedule annexed as Schedule 3 hereto shall be updated to reflect actual payment dates and amounts.

6.6.22 No dispute shall have occurred and be continuing under any Material Project Contract or any Permit. The Borrower shall not have received notice of any actions, suits, litigation, investigations or proceedings nor shall the Borrower be aware of any pending or threatened actions, suits, litigation, investigations or proceedings against or affecting the Borrower or the Project before any Official Body which, in the discretion of the Lenders acting reasonably, could reasonably be expected to have a MAE, and the Administrative Agent shall have received a certificate of the Borrower so certifying to the Lenders.

6.6.23 The O&M Plan and Strategy shall have been delivered to the Administrative Agent and the Administrative Agent and the Lenders shall have received evidence satisfactory to them, in their reasonable discretion (in consultation with the Independent Engineer), that all operational, servicing and maintenance strategies and procedures set out in the O&M Plan and Strategy, have been and will be satisfied, implemented or complied with.

6.7 **Conversions and Rollovers**

The obligation of the Lenders to make any Conversion or Rollover under any of the Credit Facilities shall be subject to the condition precedent that no Default or Event of Default shall have occurred and be continuing, and a Senior Officer of the Borrower shall so certify to the Lenders in the applicable Advance Request.

6.8 **Conditions Solely for the Benefit of the Lenders**

All conditions precedent to the entitlement of the Borrower to any Advances hereunder are solely for the benefit of the Lenders, and no other person shall have standing to require satisfaction or fulfillment of any condition precedent or that it be otherwise met and no other person shall be deemed to be a beneficiary of any such condition, any and all of which may be freely waived in whole or in part by the Lenders at any time the Lenders deem it advisable to do so in their sole discretion.

6.9 **No Waiver**

The making of any Advances without one or more of the conditions precedent set forth in this Article 6 having been satisfied, fulfilled or otherwise met shall not constitute a waiver by the Lenders of any such condition on any subsequent Advances, and the Lenders reserve the right to require that each such condition be satisfied, fulfilled or otherwise met prior to the making of any subsequent Advances.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders as set forth in this Article 7, acknowledges that the Lenders are relying thereon in entering into this Agreement and providing Advances from time to time, agrees that no investigation at any time made by or on behalf of the Lenders shall diminish in any respect whatsoever their right to rely thereon and agrees that all representations and warranties shall be valid and effective as of the date when given or deemed to have been given and to such extent shall survive the execution and delivery of this Agreement and the provision of Advances from time to time.

7.1 Status

- (a) The Borrower (i) has been incorporated and is a validly existing corporation under the *Business Corporations Act* (Alberta); and (ii) is duly qualified and authorized to do business in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. The Borrower has all requisite corporate power and authority under the laws of such jurisdictions: (i) to enter into and perform its obligations under each Credit Facility Document to which it is a party, each other document thereby contemplated and each Project Contract to which the Borrower is or will be a party and to consummate the transactions contemplated thereby; (ii) to carry on its business as now being conducted and as proposed to be conducted under the Project Contracts to which it is a party, including to develop, construct, own and Operate the Project and the Project Assets; and (iii) to grant the Liens provided for in the Security to which it is a party.
- (b) Each LP (i) is a limited partnership duly formed and validly existing and in good standing under the *Partnership Act* (Alberta); (ii) is a Canadian partnership as defined under the *Income Tax Act* (Canada); and (iii) is duly qualified and authorized to do business in the Province of Alberta and in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. Each LP has all requisite partnership power and authority: (i) to enter into and perform its obligations under each Credit Facility Document to which it is a party, each other document thereby contemplated and each Project Contract to which it is or will be a party and to consummate the transactions contemplated thereby; (ii) to grant the Liens provided for in the Security to which it is a party; (iii) to own or hold under lease and to operate the property it purports to own or hold under lease; and (iv) to carry on its business as now being conducted and as proposed to be conducted under the Project Contracts to which it is a party, including, with respect to Milner Power LP and Milner Power II LP, to develop, construct, own and Operate the Project and the Project Assets.
- (c) Each GP (i) has been incorporated and is a validly existing corporation under the *Business Corporations Act* (Alberta); and (ii) is duly qualified and authorized to do business in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. The General Partner has all requisite corporate power and authority under the laws of such jurisdictions: (i) to enter into and perform its obligations under each Credit Facility Document to which it is a party, each other document thereby contemplated and each Project Contract to which it is or will be a party and to consummate the transactions contemplated thereby (in its own capacity and in its capacity as general partner of each applicable LP); (ii) to grant the Liens provided for in the Security to which it is a party (in its own capacity and in its capacity as general partner of each applicable LP); (iii) to own or hold under lease and to operate the property it purports to own or hold under lease; and (iv) to carry on its business as now being conducted and as proposed to be conducted under the Project Contracts to which it is a party, including, with respect to Milner Power and Milner Power II, to develop, construct, own and Operate the Project and the Project Assets.
- (d) Each Loan Party (other than the Borrower, the LPs and the GPs): (i) has been organized and is validly existing under the laws of its jurisdiction of organization; and (ii) is duly qualified and authorized to do business in each jurisdiction where the character of its

properties or the nature of its activities makes such qualification necessary. Each such Loan Party has all requisite power and authority under the laws of such jurisdictions: (i) to enter into and perform its obligations under each Credit Facility Document to which it is a party, each other document thereby contemplated and each Project Contract to which it is or will be a party and to consummate the transactions contemplated thereby; (ii) to carry on its business as now being conducted and as proposed to be conducted; and (iii) to grant the Liens provided for in the Security to which it is a party.

- (e) The only partners of the Milner Power LP are Milner Power and the Borrower. The only shareholder of Milner Power is the Borrower.
- (f) The only partners of Milner Power II LP are Milner Power II and the Borrower. The only shareholder of Milner Power II is the Borrower.
- (g) Each Loan Party is a resident in Canada for the purposes of the *Income Tax Act* (Canada).

7.2 Authorizations

The execution and delivery of this Agreement, each other Credit Facility Document and each Project Contract to which each Loan Party is or will be a party and the performance by it of its obligations hereunder and thereunder have been duly authorized by all necessary corporate or partnership action on the part of each Loan Party, as applicable.

7.3 Enforceability

Each Credit Facility Document has been duly executed and delivered by each Loan Party thereto, as applicable, and constitutes, and each other Credit Facility Document and each Project Contract to which each Loan Party is or will be party when executed by it will constitute, its legal, valid and binding obligation, enforceable against it, in accordance with its terms, subject only to the discretion that a court may exercise in granting equitable remedies and any limitation under Laws relating to bankruptcy, insolvency, moratorium, fraudulent preference, reorganization or other Laws affecting creditors' rights generally from time to time in effect.

7.4 Security

The Security constitutes a valid first priority Lien on such of the assets of each Loan Party as are expressed to be subject thereto, including the Project Assets, in favour of the Administrative Agent for the benefit of the Lenders (except for Permits which by their nature are not assignable), subject only to Permitted Encumbrances. The Borrower has delivered or caused to be delivered to the Administrative Agent all collateral that requires perfection by possession. No Loan Party has granted control (as described in the PPSA) over any investment property forming part of such Collateral to any Person other than the Agent.

7.5 **No Breach**

The execution and delivery by each Loan Party of each of the Credit Facility Documents to which it is a party and each Project Contract to which it is or will be a party and the performance by it of its obligations hereunder and thereunder do not and will not:

- (a) conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) its respective constating documents;
 - (ii) any Law;
 - (iii) any contractual restriction binding on or affecting it or its properties (including the Material Project Contracts); or
 - (iv) any writ, judgment, injunction, determination or award which is binding on it; or
- (b) result in, or require or permit:
 - (i) the imposition of any Lien (other than Permitted Encumbrances) on or with respect to any properties now owned or hereafter acquired by it; or
 - (ii) the acceleration of the maturity of any of its Debt under any contractual provision binding on or affecting it, including the terms of the Subordinated Credit Agreement.

7.6 **Litigation**

No Loan Party has received notice of any action, litigation, subpoena, suit or proceeding, arbitration or other labour or employment proceeding (whether or not purportedly on its behalf) and is not aware of any pending or threatened action, litigation, subpoena, suit or proceeding, arbitration or other labour employment proceeding (whether or not purportedly on its behalf) against or affecting the Plant, the Project, the Site Lands, any Loan Party which has a material likelihood of being determined adversely against it and which could reasonably be expected to have a MAE.

7.7 **Ownership Structure and Equity Holdings**

7.7.1 Ownership Structure

As of the date hereof, the ownership structure and equity holdings, including the correct legal name and the address of the place of business (or the chief executive office if such Loan Party has more than one place of business) for each Loan Party is set out in Schedule 11.

7.7.2 No Share Purchase Options

As of the date hereof, no person has any agreement, option, right or privilege, whether by Law, pre-emptive or contractual for the purchase of Shares of any Loan Party other than in regard to Shares of the Borrower.

7.7.3 Material Subsidiaries

As of the date hereof, the only Material Subsidiaries of the Borrower are Milner Power, Milner Power LP, Milner Power II and Milner Power II LP.

7.8 **Pension Plans**

With respect to Pension Plans, except as disclosed on Schedule 27, (a) no steps have been taken to terminate any Pension Plan (wholly or in part) that could result in any of the Loan Parties being required to make an additional contribution to the Pension Plan in excess of \$250,000, and (b) no condition exists and no event or transaction has occurred with respect to any Pension Plan that is reasonably likely to result in any Loan Party incurring any material liability, fine or penalty, (c) each Pension Plan of each Loan Party is in compliance in all material respects with all applicable Laws, (d) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Laws and the terms of each such Pension Plan have been made in accordance with all applicable Laws and the terms of each such Pension Plan, (e) all liabilities under each such Pension Plan are funded, on a going concern and (to the extent required by applicable pension benefits law) solvency basis, in accordance with the terms of the respective Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities and, to the extent required by applicable law, the most recent actuarial report filed with respect to the Pension Plan, and (f) no event has occurred and no conditions exist with respect to any Pension Plan that have resulted or could reasonably be expected to result in any Pension Plan having its registration revoked or refused by any applicable Official Body or being required to pay any Taxes under any applicable Laws, except for any exceptions to clauses (b) through (f) above that, individually or in the aggregate, could not reasonably be expected to cause a Material Adverse Effect.

7.9 **No Other Business**

No Loan Party carries on any material business or owns any assets other than that related directly or indirectly to the acquisition, ownership, construction, development, financing, start-up and Operation of the Project or the business of generating and selling electricity and thermal energy.

7.10 **Compliance**

No Loan Party is aware of any basis that it or the Project, the Plant or the Site Lands may be, and has not received notice that it or the Project, the Plant or the Site Lands are alleged to be, in breach of:

- (a) any Permit; or
- (b) any Law applicable to it or the Project,

where such breach or alleged breach, if the allegation were proven to be correct, has or could reasonably be expected to have a MAE.

7.11 **No Default**

No Default or Event of Default has occurred and is continuing.

7.12 **Material Project Contracts**

7.12.1 Complete List

The Material Project Contracts listed in Schedule 7 are all of the material contracts required by the Project pursuant to applicable Law, that have a value of **\$Redacted** individually, and are the only material contracts required to own, develop, construct and Operate the Project, except as disclosed in writing to the Administrative Agent after the Closing Date in respect of matters which come to the attention of the Borrower or any other Loan Party after the Closing Date. [**Commercially sensitive amount redacted**]

7.12.2 Executed Material Project Contracts

The Material Project Contracts listed in Part I of Schedule 7 are the only Material Project Contracts that are in existence as of the Closing Date, are in full force and effect (except to the extent fully performed in accordance with their terms) and all conditions precedent thereunder (including all conditions precedent to any warranty obligations thereunder) have been satisfied or waived except as disclosed in writing to the Administrative Agent after Closing in respect of matters which come to its attention after Closing.

7.12.3 STS Amending Agreement – Post Closing

The STS Amending Agreement has been or is expected to be obtained in the normal course so as to allow the Completion Date to occur on or before the Outside Date.

7.12.4 No Breach

Neither the Borrower nor any other Loan Party is in breach of any Material Project Contract to which it is party and does not anticipate that it will breach any Material Project Contract in any material respect. Neither the Borrower nor other Loan Party is aware of any material breach or anticipated breach of any Material Project Contract by any Counterparty except as disclosed in writing to the Administrative Agent after Closing for matters which come to its attention after the Closing Date.

7.12.5 Change Orders

No Change Orders:

- (a) that could reasonably be expected to have a MAE; or
- (b) in excess of **\$Redacted** individually and **\$Redacted** in the aggregate, in regards to any Material Project Contract, except the EPC Contract, or in excess of **\$Redacted** in the aggregate in regard to the EPC Contract, [**Commercially sensitive amounts redacted**]

have been issued under the applicable Material Project Contracts, except as disclosed in writing to the Administrative Agent after Closing for Change Orders issued after the Closing Date in accordance with the provisions of this Agreement.

7.12.6 Material Project Contracts – True Copies

The Administrative Agent has been provided with true, correct and complete copies of all of the Material Project Contracts.

7.13 **Permits**

7.13.1 Complete List

The Permits listed in Schedule 9 are all of the material Permits required by the Borrower, each other Loan Party and the Project pursuant to applicable Law, and are the only material Permits required to own, develop, construct and Operate the Project, except as disclosed in writing to the Administrative Agent after the Closing Date in respect of matters which come to the attention of the Borrower or any other Loan Party after the Closing Date.

7.13.2 Permits on Initial Advance

The Permits listed in Part I of Schedule 9 are in full force and effect as of the Closing Date and all conditions precedent thereunder have been satisfied or waived except as disclosed in writing to the Administrative Agent after Closing in respect of matters which come to its attention after the Closing Date.

7.13.3 No Breach

Neither the Borrower, any other Loan Party nor any Counterparty is in breach in any material respect of any Permit and the Borrower and each other Loan Party does not anticipate that it will breach any such Permit, except as disclosed in writing to the Administrative Agent after Closing for matters which come to its attention after the Closing Date or any reasonable belief that any Permit will be suspended, cancelled, reworked or materially adversely modified.

7.13.4 Permits – Post Closing

All Permits listed in Part II of Schedule 9 have been or are expected to be obtained in the normal course so as to allow the Completion Date to occur on or before the Outside Date.

7.13.5 Permits – True Copies

As of the Closing Date, the Administrative Agent has been provided with true, correct and complete copies of all of the material Permits; except for the Permits in Part II of Schedule 9 and Additional Permits which shall be provided to the Administrative Agent as soon as reasonably practicable after the Borrower and each other Loan Party obtains such other Permits.

7.13.6 Permits – Compliance with Plans

The Project complies in all material respects with the specifications, plans and drawings submitted to obtain the Permits, save where failure to obtain same has not had and could not reasonably be expected to have a MAE.

7.13.7 Third Party Permits

There is no Third Party Permit that is required that: (i) has not been obtained, or (ii) is not expected to be obtained in a timely manner and, if not so obtained by such Third Party, could reasonably be expected to have a MAE.

7.14 **Real Property Interests**

7.14.1 Complete List

The Real Property Interests listed in Schedule 10 are all of the real property rights and interests required to own, develop, construct and Operate the Project, except as disclosed in writing to the Administrative Agent after the Closing in respect of matters which come to the attention of the Borrower or any other Loan Party after the Closing Date.

7.14.2 Real Property Interests at Closing

The Real Property Interests listed in Schedule 10 are the only Real Property Interests that are in existence as of the Closing Date, are in full force and effect and all conditions precedent thereunder have been satisfied or waived except as disclosed in writing to the Administrative Agent after Closing in respect of matters which come to the attention of the Borrower or any other Loan Party after Closing.

7.14.3 No Breach

Neither the Borrower nor any other Loan Party is in breach in any material respect of any document or agreement to which it is a party relating to the Real Property Interests and does not anticipate that it will breach such document or agreement to which it is a party. Neither the Borrower nor any other Loan Party is aware of any material breach or anticipated breach of any document or agreement relating to the Real Property Interests except as disclosed in writing to the Administrative Agent after Closing for matters which come to its attention after the Closing Date.

7.14.4 Real Property Interests – True Copies

The Administrative Agent has been provided with true, correct and complete copies of all of the agreements and documents relating to the Real Property Interests.

7.15 **Environmental**

7.15.1 Environmental – Closing Date

Except as disclosed in the environmental reports delivered to the Lenders prior to the Closing Date:

- (a) to the knowledge of the Borrower and each other Loan Party, the Site Lands, the Plant and the Project, and any Real Property Interests of the Borrower and each other Loan Party, are free of contamination from, or the presence or existence of, any Hazardous Material except for such contamination or Hazardous Materials that could not reasonably be expected to result in a MAE;

- (b) neither the Borrower nor any other Loan Party, has caused or permitted to occur, and the Plant, the Project and any Operations thereon have not caused, any Release of Hazardous Materials on, at, in, under, above, to, from or about any of the Site Lands, the Plant, the Project, any other Real Property Interests owned or leased or at any time previously owned or leased by the Borrower or any other Loan Party, except where such Release of Hazardous Materials could not reasonably be expected to result in a MAE;
- (c) the Borrower and each other Loan Party is and has been in compliance with all Environmental Laws, except for such non-compliance that would not result in Environmental Liabilities which could reasonably be expected to result in a MAE;
- (d) to the best of the knowledge of the Borrower and each other Loan Party there are no facts, violations, breaches, non-compliance, circumstances or conditions, including any actual or potential Releases of Hazardous Materials, that are or may be likely to result in any Environmental Liabilities of the Borrower or any other Loan Party that could reasonably be expected to result in a MAE;
- (e) there are no actual, pending or to the best of the knowledge of the Borrower or any other Loan Party, threatened investigations, claims, orders, suits, actions or proceedings arising under or related to any Environmental Laws, Permits or Hazardous Material that seek damages, penalties, fines, costs or expenses or injunctive relief, that, if adversely determined, could reasonably be expected to result in a MAE or that allege criminal misconduct by the Borrower or any other Loan Party; and
- (f) the Borrower has provided to the Administrative Agent copies of all material environmental reports, reviews and audits and all material written information of which it is aware pertaining to actual or potential Environmental Liabilities, in each case relating to the Borrower or any other Loan Party or the Project, as the case may be.

7.16 **Other Approvals**

All consents and approvals required to be obtained, or filings required to be made, in connection with this Agreement and each of the other Credit Facility Documents and each other document hereby or thereby contemplated and the performance by the Borrower, each other Loan Party of their obligations thereunder have been obtained or made, save where failure to obtain or make same has not had and could not reasonably be expected to have a MAE.

7.17 **Ownership of Assets**

Milner Power has good and marketable legal and beneficial title in fee simple to the Site Lands. The Loan Parties own or have the rights to acquire pursuant to the Material Project Contracts all other assets and property (real or personal, tangible or intangible, including a good and valid leasehold interest under and pursuant to the Lease) necessary to complete, operate and maintain the Project as contemplated by the Material Project Contracts and the Financial Model or the Updated Financial Model, as applicable, or the right to acquire such and has good legal and beneficial title to all other Project Assets acquired to the date this representation is given subject only to Permitted Encumbrances.

7.18 **Sufficiency of Rights**

7.18.1 Comprehensive Rights

The services to be performed, the materials to be supplied and the property interests and contractual rights (including rights of way and licences of occupation) and other rights granted to or held by the Borrower or any other Loan Party pursuant to the Project Contracts, Real Property Interests and the Permits:

- (a) comprise all of the property interests and contractual rights necessary to continue the construction, installation, ownership and Operation of the Project by or for the Borrower or any other Loan Party as contemplated by the Material Project Contracts and the Financial Model or the Updated Financial Model, as applicable; and
- (b) provide adequate ingress and egress from and to the Project for any reasonable purpose in connection with the construction, installation, ownership and Operation of the Project by or for the Borrower or any other Loan Party, as contemplated by the Material Project Contracts and the Financial Model or the Updated Financial Model, as applicable,

except to the extent that the failure to obtain such services, materials, property interests, contractual rights and other rights does not have and could not reasonably be expected to have a MAE.

7.18.2 No Missing Rights

There are no services, materials or rights which may reasonably be expected to be required for the construction, installation, ownership and Operation of the Project by or for the Borrower or any other Loan Party, as contemplated by the Material Project Contracts and the Financial Model or the Updated Financial Model, as applicable, other than those granted by, or to be provided through, the Material Project Contracts, except in all cases in Sections 7.18.1(a) and (b) above where failure to so obtain, provide, comprise or have could not reasonably be expected to have a MAE.

7.19 **Location of Tangible Assets**

All tangible Project Assets have been constructed and are being constructed within the Site Lands or, in the case of pipes, lines, wires and related equipment only, within the boundaries of municipal rights of way or Easements benefiting the Site Lands.

7.20 **Intellectual Property**

No licences, trademarks, patents, copyrights or agreements with respect to the use of technology or other permits (other than such licences, trademarks, permits, copyrights or agreements which form a part of the Project Assets) are necessary for the ownership or Operation of the Project by the Borrower or any other Loan Party in accordance with the Material Project Contracts, except to the extent that failure to have any of the same does not have, and could not reasonably be expected to have, a MAE.

7.21 **Tax Returns**

The Borrower and each other Loan Party has filed all Tax returns which are required to be filed and has paid all Taxes which have become due pursuant to such returns or pursuant to any assessment

received by it, except any such Taxes which are being Contested in Good Faith (and no Liens, except Permitted Encumbrances, have attached) and except to the extent that failure to file such returns or pay any such Taxes, as the case may be, does not have, and could not reasonably be expected to have a MAE.

7.22 **Financial Statements**

The audited and unaudited consolidated financial statements of the Borrower, provided on Closing pursuant to Section 6.1.16 or after Closing, to the extent applicable, have been and will be delivered to the Administrative Agent and prepared in accordance with GAAP and present, or will present, fairly, as at the date thereof, the financial position of the Borrower on a consolidated basis.

7.23 **Expropriation**

None of the Project Assets has been the subject of a Taking by any competent Official Body that has resulted in a MAE or that could reasonably be expected to have a MAE, nor has any notice or proceeding in respect of any such Taking been given or commenced, nor to the best of the knowledge of the Borrower or any other Loan Party has any intent or proposal to give any such notice or to commence any such proceeding been given.

7.24 **Information and the Financial Model**

As at Closing:

- (a) the Borrower has provided to the Independent Engineer all of the material information in its possession or to which it has access relating to the Project and the construction and Operation thereof and the Borrower has reviewed the report of the Independent Engineer delivered pursuant to Section 6.1.21 and such report, based on the Borrower's review (excluding any information with respect to any opinions contained therein), is not incorrect in any material respect; and
- (b) the Financial Model and Project Budget were prepared by the Borrower in good faith using reasonable assumptions that are consistent with the terms of the Material Project Contracts and there is no fact or circumstances with respect to the Financial Model (or the projections contained therein) or any of the assumptions made in connection therewith that could reasonably be expected to have a MAE.

7.25 **Disclosure**

The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it pertaining to the Borrower, each other Loan party, and the Project, in each case, that, individually or in the aggregate, could reasonably be expected to be material to a Lender. None of this Agreement, any other Credit Facility Document or any reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower contains any untrue statement of a material fact pertaining to the Borrower, each other Loan Party or the Project or omits to state a material fact pertaining to the Borrower, each other Loan Party, or the Project, which make the statements contained herein or therein, in light of the circumstances under which they were made, misleading in any material respect.

7.26 **First Nations Matters**

No First Nation nor any First Nation's members has commenced any blockades, demonstrations or other acts of civil disobedience which have resulted in, or could reasonably be expected to have a MAE. None of the Loan Parties has received notice that the Site Lands or the Project are subject to any, and, to the Loan Parties' knowledge, there are no current or pending First Nations Claims affecting the Site Lands which would reasonably be expected to have a MAE. Neither the Borrower nor any other Loan Party has entered into any written or oral agreements with First Nations to provide benefits, pecuniary or otherwise, with respect to the Project at any stage of development and neither the Borrower nor any other Loan Party has offered First Nations any benefits with respect to the Project at any stage of development; other than annual funding associated with memorandum of understanding that are in effect with certain First Nations that do not as of the date of this Agreement exceed \$**Redacted** per year. [**Commercially sensitive amount redacted**]

7.27 **Insolvency**

Neither the Borrower nor any other Loan Party has committed an act of bankruptcy, is insolvent, has proposed a compromise or arrangement to its creditors generally, has had any petition for a receiving order in bankruptcy filed against it, has made a voluntary assignment in bankruptcy, has taken any proceeding with respect to any compromise or arrangement, has taken any proceeding to have itself declared bankrupt or wound up, has taken any proceeding to have a receiver appointed for it or any part of its assets, has had any encumbrancer take possession of any of its property or has had an execution or distress become enforceable.

**ARTICLE 8
SECURITY**

8.1 **Administrative Agent and Security**

8.1.1 Appointment of Administrative Agent.

Each Lender (and ATB on behalf of its Affiliate if such Affiliate is a Hedge Lender) hereby designates and appoints the Administrative Agent to hold the Security on behalf of the Administrative Agent, all Lenders and Hedge Lenders.

8.1.2 Security Granted for all Obligations

As continuing security for the payment and performance of the Obligations, there shall be executed and delivered to the Administrative Agent, the documents listed on Schedule 8, each of which documents shall be in form and substance satisfactory to the Lenders.

8.1.3 Security to be held by Administrative Agent

The Lenders (including the Hedge Lenders) and the other parties acknowledge and agree that, notwithstanding anything set forth in the Security, the Security and all related documents, agreements and instruments entered into or granted by each Loan Party are granted to and are held by the Administrative Agent on behalf of the Administrative Agent, the Lenders and the Hedge Lenders.

8.2 Continued Perfection of Security

Each Loan Party shall take such action and execute and deliver to the Administrative Agent such agreements, conveyances, deeds and other documents and instruments as the Administrative Agent shall reasonably request for the purpose of establishing, perfecting, preserving and protecting the Security and the Liens of the Security, in each case promptly upon request therefor by the Administrative Agent and in form and substance satisfactory to the Lenders acting reasonably.

8.3 Security for Hedge Liabilities

8.3.1 All Hedge Liabilities under the Lender Hedges shall form part of the Obligations of each Loan Party secured by the Liens granted pursuant to the Security and shall be entitled to be secured by and receive the benefits of the Security in the manner set forth in this Agreement.

8.3.2 No Hedge Lender shall be entitled to take any action enforce its rights under a Hedge Agreement to vote on, consent to, or provide instructions to the Administrative Agent on any matter under or in connection with this Agreement or the Security unless: (i) an Event of Default has occurred and is continuing, which relates to the failure of the Borrower or any other Loan Party to pay amounts or obligations owing thereunder to such Hedge Lender, (ii) an Insolvency Event of Default has occurred, (iii) the only Outstanding Obligations are Hedge Liabilities, (iv) the consent of the Lenders is provided for same, or (v) the consent of the Hedge Lenders is required pursuant to Sections 14.2.2(e), 14.2.2(h) or 14.2.2(i) of this Agreement. Notwithstanding the foregoing, nothing in this Section 8.3.2 shall limit any other rights or remedies any Hedge Lender may have under the Interest Hedges to which it is a party or applicable Law.

8.3.3 Each Hedge Lender shall provide to the Administrative Agent, upon reasonable request therefor, a summary of all then outstanding Hedge Liabilities owed to it by the Borrower or any other Loan Party together with such particulars as may be so requested.

8.3.4 If a Lender transfers or assigns all of its Commitment and ceases to be a Lender under this Agreement and such Lender (or any of its affiliates, as applicable) is not able to transfer its Lender Hedge as contemplated by Section 11.3.3 and Section 14.12.2(h), as applicable, such Lender (or its affiliates, as applicable) and the successors and assigns of such Lender (or such affiliate, if applicable) shall continue to be a Hedge Lender under this Agreement and the Hedge Liabilities under such Lender Hedge shall continue to be secured by the Security on a pari passu basis with the other Obligations of the Borrower and any other Loan Party.

8.4 Action Under the Security

Where an action that the Borrower intends to take is either permitted or not otherwise restricted by the terms of any Credit Facility Document (other than any Lender Hedge) and the Borrower requires that an instrument to that effect be delivered to the Administrative Agent or that some similar action be required on the part of the Administrative Agent to confirm the entitlement of the Borrower to take such action, the Administrative Agent will, on the request and at the cost of the Borrower, execute and deliver such instrument or take such similar action. For greater certainty, if the Administrative Agent is not certain that an action the Borrower intends to take is either permitted or not otherwise restricted by the terms of any such Credit Facility Document, the Administrative Agent may, after consultation with the Borrower, decline to act until it receives an opinion of counsel in form and substance satisfactory to it that such action is permitted or not otherwise restricted.

8.5 **Registrations and Renewals**

The Borrower shall and hereby covenants to do all such acts, execute all such instruments and provide such further assurances as counsel to the Administrative Agent may reasonably request to ensure that the first priority of the Liens created by the Security (subject only to applicable Permitted Encumbrances) executed and delivered to the Administrative Agent (and the Administrative Agent if not the same entity as the Administrative Agent hereunder) as contemplated hereby is duly protected and perfected by registration, filing or recordation of such Security or a financing statement, caveat, security notice or other appropriate instrument at all offices and public registries where reasonably necessary to the protection or perfection thereof and to so cooperate with the Administrative Agent and the Lenders' Counsel in renewing or re-filing any registration, filing or recordation required hereby or by the Security in order to preserve, protect and maintain the priority of such Liens from time to time.

8.6 **Extensions, Etc.**

The Lenders may grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower, each other Loan Party or any other persons, sureties or securities as the Lenders, in their sole discretion, may see fit, all without prejudice to the liability of the Borrower, each other Loan Party or any other person under the Credit Facility Documents to which they are a party or the rights of the Administrative Agent or the Lenders under the Credit Facility Documents.

8.7 **Security Effective Notwithstanding Date of Advance**

The Liens constituted by any of the Security or required to be created hereby or thereby shall be effective, and the undertakings as to Liens herein or in any Credit Facility Document shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Liens or before or after or upon the date of execution of this Agreement, and shall not be affected by the Outstanding Principal fluctuating from time to time or the accounts established by the Administrative Agent ceasing to be in debit balance.

8.8 **No Merger**

The taking of any Liens as provided under this Agreement or any other Credit Facility Document shall not operate by way of merger of any of the obligations of the Borrower, each other Loan Party or any of their successors under this Agreement or any other Credit Facility Document, or of any Lien, guarantee, indemnity, contract, promissory note, bill of exchange or security in any other form, whether or not similar to the foregoing, and no judgment recovered by the Administrative Agent or the Lenders shall operate by way of merger or in any way affect the Liens provided for in this Agreement and the other Credit Facility Documents, which shall be in addition to and not in substitution for any other security now or hereafter held by the Administrative Agent or the Lenders whether for Obligations hereunder or under any other Credit Facility Document. For greater certainty, no judgment recovered by the Administrative Agent or the Lenders shall operate by way of merger or in any way affect the obligation of the Borrower to pay interest, fees and other amounts at the rates, times and manner as provided in this Agreement.

8.9 **After-Acquired Property**

All Project Assets acquired by or on behalf of the Borrower after the date of execution of the Security (collectively, "**After-Acquired Property**") will be subject to the Liens of the debentures issued

pursuant to Section 8.1.2, without any further conveyance, mortgage, pledge, charge, assignment or other act on the part of such parties. Without limiting the effect of the preceding sentence, the Borrower will from time to time execute and deliver, or cause to be executed and delivered, and the Administrative Agent will register, all at the Borrower's expense, such instruments, including mortgages, trust deeds, assignments and security agreements supplemental to the Security, in form and substance satisfactory to the Administrative Agent, acting reasonably, as may be necessary or desirable to ensure that the Security as amended and supplemented constitutes in favour of the Lender an effective first priority Lien over such After-Acquired Property as required hereunder, subject only to Permitted Encumbrances which under applicable law rank in priority thereto.

8.10 Guarantee and Security from Additional Material Subsidiaries

Upon a Subsidiary of the Borrower (and, in the case of a Subsidiary which is a limited partnership, the general partner of such Subsidiary) becoming a Material Subsidiary, and to secure the payment and performance of the Obligations, the Borrower shall cause such Subsidiary (including the general partner of such Subsidiary if such Subsidiary is a limited partnership) to, within the time required by Section 8.11(b), execute and deliver to the Administrative Agent (to the extent not already provided) the following documents:

- (a) a Loan Party Guarantee;
- (b) an Alberta law governed general security agreement (or security agreements, if applicable) from each Subsidiary which will be a Loan Party granting a first priority security interest over all of its present and after-acquired personal property and a first floating charge over all of its other present and after-acquired property including real property;
- (c) if and to the extent required by Section 10.1.30 any mortgages or other security to be provided by such Subsidiary,

together with certified copies of constating documents and resolutions, a certificate of incumbency, a legal opinion of outside counsel with respect to such subsidiary and the Security provided by it and such other documents as the Administrative Agent may reasonably require, all in a form substantially similar to those provided by the Borrower and the other Loan Parties on the Closing Date with such changes as may be approved by the Administrative Agent, acting reasonably.

8.11 Material Subsidiary Designation

- (a) Designation: The Borrower may from time to time by notice in writing to the Administrative Agent designate a wholly-owned Subsidiary of the Borrower or another Loan Party to be a Material Subsidiary if it meets the requirements set forth in the definition of Material Subsidiary, provided that the Borrower shall not be entitled to make any such designation if the effect of any such designation would be to cause a Default or Event of Default hereunder.
- (b) Provision of Security: Any person which is required to be, or which the Borrower designates to be, a Material Subsidiary shall promptly, and in any event within 30 days or such longer period as may be agreed to by the Administrative Agent acting reasonably, provide the Security and supporting documents required to be provided pursuant to Section 8.10.

- (c) Non-Designation: The Borrower may from time to time by notice in writing to the Administrative Agent designate that a Material Subsidiary will no longer be a Material Subsidiary; provided that the Borrower shall not be entitled to make any such designation if at the time of any designation such Material Subsidiary owns any shares or other equity in another Material Subsidiary or if a Default or Event of Default is then in existence or if immediately after giving effect to any such designation a Default or Event of Default would occur or be continuing, including without limitation under Section 9.1.33. If the Borrower requests that a Material Subsidiary no longer be designated as a Material Subsidiary and the conditions in this Section 8.11(c) have been or will be satisfied, the Administrative Agent shall confirm in writing the redesignation of such Material Subsidiary as an unrestricted subsidiary and shall release such Subsidiary from its Loan Party Guarantee and cancel and release the other Security of such Subsidiary.

8.12 **BLA Lien Matters**

8.12.1 Lien Holdbacks

Amounts that might otherwise have been held back by the Lenders under the BLA in regard to a BLA Holdback Amount (taking into account the amount of any BLA Holdback Letter of Credit held by Milner Power II LP from time to time in respect of the EPC Contract) shall, be advanced to the Borrower by direct deposit into the BLA Holdback Account, and the Borrower hereby provides to the Lenders an irrevocable and unconditional direction that such amounts are to be funded directly into the BLA Holdback Account upon receipt by the Administrative Agent of a certificate of the Borrower setting out such amounts. For greater certainty, amounts so funded shall form part of the Outstanding Credit Obligations.

8.12.2 Removal of Liens

If a Lien arising under the BLA, other than pursuant to the Security, is registered against any of the Project Assets or if notice of same has been given to the Administrative Agent and is not discharged or vacated or such notice is not withdrawn or cancelled by the applicable Lien claimant in each case within 30 days of the initial registration or giving of notice, as applicable, the Lenders (directly or through the Administrative Agent) shall be entitled, in their sole discretion, to pay into court the amount required to effect removal of such Lien out of the BLA Holdback Account or, if such account has not been funded, or there are insufficient funds in the BLA Holdback Account, to pay into court the amount required to effect removal of such Lien, which monies shall thereafter be accounted for as an Advance under the Credit Facilities and the amount so paid shall be treated in like manner as amounts paid by the Administrative Agent under Section 10.3. The Administrative Agent will use reasonable commercial efforts to provide notice to the Borrower of any such Lien arising under the BLA of which it becomes aware in order to permit the Borrower to take steps to remedy any such Lien including drawing upon the BLA Holdback Letter of Credit and utilizing funds obtained thereby to pay into court to effect removal of such Lien.

8.13 **Collateral Accounts**

The parties acknowledge that the present and after-acquired personal property of the Borrower includes the Borrower Cash Collateral Account, the Construction Accounts and the BLA Holdback Account, and that the Administrative Agent on behalf of the Lenders and the Hedge Lenders has a first priority security interest in and to the Collateral Accounts and all proceeds thereof, and that the Administrative Agent on behalf of the Lenders and the Hedge Lenders may exercise control over the proceeds of such accounts upon an Event of Default. The Borrower shall be permitted to withdraw

amounts from (i) the Borrower Cash Collateral Account in accordance with Section 5.12, (ii) the Construction Accounts in accordance with Section 10.1.16(a), and (iii) the BLA Holdback Account in accordance with Section 10.1.19.

8.14 **Environmental – Administrative Agent and Administrative Agent Disclaimer**

The Borrower hereby acknowledges and agrees that the Administrative Agent:

- (a) is not now, nor has ever been, in control of any of the Site Lands or the affairs of the Borrower; and
- (b) does not have the capacity through the provisions of the Credit Facility Documents or otherwise to influence the conduct of the Borrower with respect to the ownership, operation, management or control of Site Lands, any other Real Property Interests of the Borrower or compliance with Environmental Laws or Permits.

ARTICLE 9 INSURANCE

9.1 **Insurance**

9.1.1 General

The Borrower shall or the Borrower shall cause another Loan Party to, without cost to the Administrative Agent, the Lenders, or their respective successors or assigns, maintain or cause to be maintained on its behalf in effect at all times on and after the Closing Date the types of insurance required by the following provisions together with any other types of insurance required hereunder with respect to the Project, in such form and on terms and conditions acceptable to the Majority Lenders in consultation with the Insurance Consultant, acting reasonably, with insurance companies rated “A-” or better, with a minimum size rating of “VIII” by A.M. Best or rated “A” or better by S&P (or an equivalent rating by another nationally recognized insurance rating agency of similar standing of A.M. Best or S&P, as applicable, if such ratings shall no longer be published) or other insurance companies reasonably satisfactory to the Majority Lenders, until all obligations of the Borrower pursuant to the Credit Facility Documents have been fully discharged.

9.1.2 Specific

Without limiting the generality of Section 9.1.1 above, such insurance shall include the insurance described in Article 11 of the EPC Contract (to the extent such insurance requirements in the EPC Contract is to be maintained by the Borrower or any other Loan Party) and as otherwise required by the other Material Project Contracts, together with the following:

- (a) Builders “All-Risk” / Installation Floater. Builders “All-Risk” or equivalent all-risk installation insurance, as such term is used in the insurance industry, for all construction, erection or installation work including without limitation coverage for mechanical and electrical breakdown and all forms of testing and commissioning required to complete the Project plus resulting or ensuing damage arising out of design error or faulty workmanship or materials, the perils of flood, earthquake, windstorm (named or unnamed), hail, lightning, strike, riot and civil commotion, collapse, sewer backup,

vandalism and malicious mischief, subject to terms and conditions that are consistent with current industry practice insuring all real and personal property of the Borrower and each other Loan Party forming part of or incidental to the Project whether on or off the Site Lands (including any off-site storage or warehouse location) and while in the course of inland transit (unless covered under insurance maintained in Section 9.1.2(c)), for an amount of not less than the full replacement cost value of the properties and equipment at each location, or such other amount as agreed by the Majority Lenders and that is sufficient to comply with the requirements of all Material Project Contracts. All responsibility for verification of compliance with the Material Project Contracts shall rest solely with the Borrower.

Sublimits are permitted with respect to the following perils:

- (i) off-site property, in an amount that is sufficient to cover the full replacement cost value of such Project property in offsite storage (if any);
- (ii) inland transit, in an amount that is sufficient to cover the full replacement cost value of Project property during inland transit (unless covered under insurance maintained in Section 9.1.2(c));
- (iii) earthquake, full policy limits per occurrence and in the aggregate for the policy term with respect to the Project or such other amounts agreed to by the Administrative Agent in consultation with the Insurance Consultant;
- (iv) flood, full policy limits per occurrence and in the aggregate for the policy term with respect to the Project or such other amounts agreed to by the Administrative Agent in consultation with the Insurance Consultant;
- (v) windstorm (named or unnamed), full policy limits per occurrence (and which may be subject to an aggregate for the policy term) with respect to the Project, or such other amount required or agreed by the Administrative Agent in consultation with the Insurance Consultant; and
- (vi) such other coverages customarily maintained on projects similar to and located in the same province as the Project consistent with current industry practice with respect to similar risks and which are acceptable to the Majority Lenders in consultation with the Insurance Consultant, including without limitation, extra expense, expediting expense, ordinance or law coverage including the increased cost of construction to comply with the enforcement of any law that regulates the construction or repair of damaged property including the cost to demolish undamaged portions of the Project, debris removal, pollutant cleanup, professional fees and costs to lease equipment.

Such policy shall include but not be limited to: (A) an automatic reinstatement of limits following each loss (except for the perils of earthquake, pollution cleanup, flood and other aggregated limits that typically apply and are agreed to by the Majority Lenders); (B) replacement cost valuation with no deduction for depreciation and no coinsurance clauses (or a waiver thereof); and (C) coverage for physical damage that is not covered by warranty or guaranty to the extent normally insured.

All such policies may have per occurrence deductibles of not greater than **\$Redacted**, unless otherwise approved by the Administrative Agent in consultation with the Insurance Consultant. [**Commercially sensitive amount redacted**]

- (b) Delay in Startup. The Borrower shall also maintain or cause to be maintained, with respect to the Project, delay in startup insurance following all perils required to be insured above under Section 9.1.2(a), including without limitation coverage for inland transit and off-site storage risks, mechanical and electrical breakdown including all forms of testing and commissioning required to complete the Project plus any delay caused by resulting or ensuing damage arising out of design error or faulty workmanship or materials, with limits of not less than **\$Redacted** per month. If coverage is subject to an indemnification period, such period shall not be less than 12 months. The deductible or waiting period shall not exceed 45 days. [**Commercially sensitive amount redacted**]

- (c) Marine Cargo and Marine Business Interruption/Delay in Startup. Prior to the shipment of any Project property or equipment by marine vessel, the Borrower shall maintain or cause to be maintained, marine cargo insurance on an all-risk basis, to the extent an exposure exists including any inland transit shipment if not already insured under Sections 9.1.2(a) and (b) or Sections 9.1.2(d) and (e) below, in an amount not less than the replacement cost value of each shipment including coverage for marine business interruption or delay in startup (if the loss of such property being shipped is expected to cause a material delay in the anticipated completion date of the Project or to cause a material interruption of normal business operations of the Project) with a limit and associated indemnity period equivalent to the loss of gross revenues less non-continuing expenses for the longest period of interruption or delay reasonably expected to occur, to the extent available on commercially reasonable terms and required by the Majority Lenders. All such policies may have per occurrence deductibles of not greater than:
 - (i) **\$Redacted** for physical damage; and
 - (ii) 30 days for business interruption and delay in startup. [**Commercially sensitive amount redacted**]

- (d) All-Risk Property / Machinery Breakdown. From and after the Substantial Completion Date in regard to the Project, "All-Risk" property, as such term is used in the insurance industry, including coverage for mechanical and electrical breakdown plus resulting or ensuing damage arising out of design error or faulty workmanship or materials, the perils of sewer backup, collapse, flood, earthquake, windstorm (named or unnamed), hail, lightning, strike, riot and civil commotion, vandalism and malicious mischief, subject to terms that are consistent with current industry practice insuring all real and personal property of the Borrower whether at a fixed location (including any non-owned location for off-site repair or refurbishment), off-site storage or a warehouse location all while in the course of inland transit, for an amount of not less than the full replacement cost value of the property and equipment at each location, or such other amount as agreed by the Majority Lenders and that is sufficient to comply with the requirements of all Material Project Contracts. All responsibility for verification of compliance with the Material Project Contracts shall rest solely with the Borrower.

Sublimits are permitted with respect to the following perils:

- (i) off-site property, in an amount that is sufficient to cover the full replacement cost value of such Project property in offsite storage (if any);

- (ii) inland transit, in an amount that is sufficient to cover the full replacement cost values of any such Project property while in inland transit;
- (iii) earthquake, full policy limits per occurrence and in the aggregate for the Project or such other amounts agreed to by the Majority Lenders in consultation with the Insurance Consultant;
- (iv) flood, full policy limits per occurrence and in the aggregate for the Project, or such other amounts agreed to by the Majority Lenders in consultation with the Insurance Consultant;
- (v) windstorm (named or unnamed), full policy limits per occurrence (and which may be subject to an aggregate) for the Project, or such other amount agreed to by Majority Lenders in consultation with the Insurance Consultant; and
- (vi) such other coverages customarily maintained on projects similar to and located in the same province as the Project in reasonable amounts consistent with current industry practice with respect to similar risks and which are acceptable to the Majority Lenders in consultation with the Insurance Consultant, including without limitation, extra expense, expediting expense, ordinance or law coverage including the increased cost of construction to comply with the enforcement of any law that regulates the construction or repair of damaged property including the cost to demolish undamaged portions of the Project, debris removal, pollutant cleanup, professional fees and costs to lease equipment.

Such policy shall include but not be limited to: (A) an automatic reinstatement of limits following each loss (except for the perils of earthquake, pollution cleanup, flood and other aggregated limits that typically apply and are agreed to by the Majority Lenders); (B) replacement cost valuation with no deduction for depreciation and no coinsurance clauses (or a waiver thereof); and (C) coverage for physical damage that is not covered by warranty or guaranty to the extent normally insured.

All such policies may have per occurrence deductibles of not greater than **\$Redacted**, unless otherwise approved by the Majority Lenders in consultation with the Insurance Consultant. [**Commercially sensitive amount redacted**]

- (e) Business Interruption. From and after the Substantial Completion Date, the Borrower shall also maintain or cause to be maintained, with respect to the Project, business interruption insurance following all perils required and insured above under Section 9.1.2(d) above, including mechanical or electrical breakdown and inland transit perils, with limits of not less than the projected equivalent of 12 months gross revenues, less non-continuing expenses. If coverage is subject to an indemnification period, such period shall not be less than 12 months. This coverage shall not include any annual or term aggregate limits of liability or clause requiring the payment of additional premium to reinstate the limits after loss except with regards to insurance applicable to the perils of flood, earthquake, named windstorm and such other coverages that may typically apply and are agreed to by the Majority Lenders. The deductible or waiting period shall not exceed 60 days.

- (f) General Liability. General liability insurance for Project operations, written on “occurrence” policy forms, including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, and personal injury, with no exclusions for explosion, collapse and underground perils, with primary coverage limits of no less than **\$Redacted** for injuries or death to one or more persons or damage to property resulting from any one occurrence, and a general and products and completed operations liability aggregate limit of not less than **\$Redacted**. The general liability policy shall also include a severability of interest / cross liability clause. Deductibles in excess of **\$Redacted** shall be subject to review and approval by the Majority Lenders. During construction, general liability insurance may be obtained under a wrap-up liability policy (with not less than 24 months coverage for products and completed operations liability); provided that deductibles in excess of **\$Redacted** under such wrap-up liability policy shall be subject to review and approval by the Majority Lenders. [**Commercially sensitive amounts redacted**]
- (g) Automobile Liability. Automobile liability insurance, including coverage for owned (if any), non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than **\$Redacted** per accident with respect to bodily injury, property damage or death. Non-owned automobile liability may be obtained through endorsement to the general liability policy required above. Deductibles in excess of **\$Redacted** shall be subject to review and approval by the Majority Lenders. During construction, non-owned liability insurance may be obtained under a wrap-up liability policy; provided that deductibles in excess of **\$Redacted** under such wrap-up liability policy shall be subject to review and approval by the Majority Lenders. [**Commercially sensitive amounts redacted**]
- (h) Workers Compensation/Employers Liability. Workers compensation insurance in accordance with statutory and /or provincial requirements at any time in which the Borrower or any other Loan Party has employees and such other forms of insurance which the Borrower or any other Loan Party is required by law to provide for loss resulting from injury, sickness, disability or death of the employees of the Borrower or any other Loan Party. Contingent employers' liability may be obtained through endorsement to the general liability policy required in Section 9.1.2(f) above or, during construction, through a wrap-up liability policy.
- (i) Pollution Liability. Pollution liability insurance with a limit commensurate with industry practice for similar operations but not less than **\$Redacted** per occurrence in the annual aggregate for property damage and bodily injury to third parties arising out of “sudden and accidental” pollution conditions as a result of Project operations. All such coverages can be included in the general liability or provided under a separate pollution liability policy. Claims made coverage forms and deductibles of up to **\$Redacted** per claim are acceptable. During construction, pollution liability insurance may be obtained under a wrap-up liability policy provided that deductibles in excess of **\$Redacted** under such wrap-up liability policy shall be subject to review and approval by Majority Lenders. [**Commercially sensitive amounts redacted**]
- (j) Sharing of Aggregate Limits. The Borrower shall be permitted to provide an operational all-risk property insurance for the benefit of the Project through an insurance policy or policies which also insure other assets owned or insured by the Borrower or any other

Loan Party that contains aggregate limits or sublimits, subject to the following conditions: (i) if the aggregate limits or sub-limits are eroded below the limits required herein, or exhausted due to a loss at the Project or another location, the Borrower shall provide prompt written notice of such reduction in limits to the Administrative Agent and shall cause the required limits to be reinstated or obtained for the benefit of the Project as soon as reasonably possible but not later than 30 days following erosion of the aggregate limits below the required threshold unless otherwise waived by the Majority Lenders; and (ii) the Majority Lenders shall have the right, but not the obligation, to review information regarding the aggregation of risks and insurable exposures that are shared amongst the Project and other insured assets under such combined aggregate limits not less than once per year; and (iii) such subsequent approvals of shared aggregate limits may be conditioned upon increases in policy limits or changes to terms and conditions.

- (k) Contractors and Subcontractors. The Borrower shall require all contractors and subcontractors (including the EPC Contractor) performing construction or operations and maintenance or other on-site or off-site work on their behalf, to obtain and maintain insurance in accordance with standard industry practice for similar work and operations. During construction, the Borrower has the option of procuring liability insurance in the form of a “wrap-up” that includes coverage for operations of contractors and subcontractors that perform work at the Project.

9.1.3 Special Insurance Provisions

- (a) Lender Loss Payable Endorsement. All Project property related policies of insurance required to be maintained pursuant to this Article 9, shall name the Administrative Agent, in its capacity as the Administrative Agent on behalf of the Lenders as the first mortgagee and loss payee for all losses, and be subject to a IBC approved mortgage clause or their equivalent as approved by the Administrative Agent in consultation with the Insurance Consultant.
- (b) Non-Vitiation. All Project property related policies of insurance required to be maintained pursuant to this Article 9 shall insure the interests of the Administrative Agent and the other Lenders regardless of any breach or violation by the Borrower, any other Loan Party, their Affiliates or others acting on their behalf of any warranties, declarations or conditions contained in such policies, any action or inaction, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project (the foregoing may be accomplished by the use of an approved IBC Mortgagee Clause, multiple insureds clause, or non-vitiation clause).
- (c) Additional Insured and Waiver of Subrogation. All policies of Project property insurance required in Section 9.1.2 above that are maintained by the Borrower, any other Loan Party, or on their behalf shall provide a waiver of subrogation in favour of the Administrative Agent and the Lenders (to the extent permitted by Law). All policies of liability insurance required in Section 9.1.2 (with the exception of workers compensation, employers liability, and automobile liability insurance) which are maintained by the Borrower, any other Loan Party, or maintained on the behalf of the Borrower or any other Loan Party shall name the Administrative Agent for the Lenders as an additional insured and provide a waiver of subrogation in favor of the Administrative Agent and the Lenders (to the extent permitted by Law).

- (d) Severability of Interest, Primary and Non-Contributory. All liability policies required in Sections 9.1.2(f) above that are maintained by the Borrower, any other Loan Party, or on their behalf shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) shall operate in the same manner as if there were a separate policy covering each such insured. All policies required in this Article 9 shall be considered primary without contribution from any other policies the Administrative Agent or the other Lenders may hold.
- (e) Notice of Cancellation. All policies of insurance required in 9.1.2 of this Article 9 shall provide not less than 60 days written notice of cancellation to the Administrative Agent on behalf of the Lenders, with the exception of cancellation for the non-payment of premium for which statutory notice of cancellation may apply, to the extent commercially available. To the extent an endorsement of the required policies to provide such written notice of cancellation to the Administrative Agent is not commercially available (to the satisfaction of the Majority Lenders), the Borrower shall be obligated to provide written notice of cancellation to the Administrative Agent. The Borrower shall provide prompt notice of material change in policy conditions to the Administrative Agent, acting on behalf of the Lenders, their successors and assigns. For purposes of this section, a material change is considered to be any modification or reduction in coverage that would cause the Borrower's insurance policies to be out of compliance with this Article 9.
- (f) Claims-Made Forms. If any insurance required under the provisions of this Article 9 is allowed to be written on an a "claims made" basis, then such insurance shall include (i) a retroactive date (as such term is specified in each of such policies) that is no later than the Closing Date; and (ii) each time any policy written on a "claims made" basis is not renewed or the retroactive date of such policy is to be changed, the Borrower shall obtain or cause to be obtained for each such policy or policies the broadest extended reporting period coverage, or "tail", reasonably available in the commercial insurance market for each such policy or policies.
- (g) Loss Notification. Borrower shall promptly notify the Administrative Agent of any single loss or event likely to give rise to a claim against an insurer for an amount in excess of **\$Redacted** covered by any Project related policies of insurance required to be maintained pursuant to Sections 9.1.2(a), (b), (c), (d), (e), (f) and (i) of this Article 9. **[Commercially sensitive amount redacted]**
- (h) Loss Adjustment and Settlement. Any loss insured by Project related policies of insurance required to be maintained pursuant to Sections 9.1.2(a), (b), (c), (d), (e), (f) and (i) of this Article 9 or other first party insurance policies or coverages shall be adjusted with the respective insurance companies, including the filing in a timely manner of appropriate proceedings, by the Borrower, in consultation with the Administrative Agent if such loss is in excess of **\$Redacted** in the aggregate. In addition, the Borrower may, in its reasonable judgment, consent to the settlement of any loss, provided that in the event that the amount of the loss exceeds **\$Redacted** in the aggregate the terms of such settlement is agreed in writing by the Administrative Agent on the instructions of the Majority Lenders. **[Commercially sensitive amounts redacted]**
- (i) Insurance Policy Review. To the extent that complete copies of the actual insurance policies required to be obtained and maintained in accordance with the terms of this

Article 9 are not furnished to the Insurance Consultant and/or the Administrative Agent on behalf of the Lenders, the Borrower warrants that the insurance information provided (in whatever form) to the Insurance Consultant and/or the Administrative Agent on behalf of the Lenders is complete and accurate in all material respects and warrants that such insurance is in compliance with the insurance requirements of this Article 9, and shall note any such insurance requirements that are not being met by the policies of insurance currently in place.

- (j) Reports. The Borrower shall advise the Administrative Agent in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Borrower or any other Loan Party which may invalidate or render unenforceable, in whole or in part, any insurance being maintained by the Borrower or any other Loan Party pursuant to this Article 9.
- (k) Failure to Maintain Insurance. In the event the Borrower fails to take out or maintain the full insurance coverage required by this Article 9, the Administrative Agent may (but shall not be obligated to), upon 10 days' prior notice (unless the aforementioned insurance would lapse or terminate within such period, in which event no prior notice is required) to Borrower of any such failure, take out the required policies of insurance and pay the premiums on the same. All amounts so advanced by the Administrative Agent shall become an additional Obligation of Borrower to the Lenders, and the Borrower shall forthwith pay such amounts to the Administrative Agent together with interest thereon at the rate specified in Section 2.9 from the date so advanced. All amounts paid by or at the request or instruction of the Administrative Agent under this Section 9.1.3(k) shall be subject to Section 10.3.
- (l) Failure to Collect. In the event that the Borrower fails to respond in a timely and appropriate manner (as reasonably determined by the Administrative Agent) or to take any steps necessary or reasonably requested by the Administrative Agent to collect from any insurers for any loss covered by any insurance required to be maintained by this Article 9, the Administrative Agent shall have the right to make all proofs of loss, negotiate all claims and/or receive all or any part of the proceeds of the foregoing insurance policies, either in its own name or the name of the Borrower; provided, however, that the Borrower shall, upon the Administrative Agent's request and at the Borrower's own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Administrative Agent to collect from insurers for any loss covered by any insurance required to be obtained by this Article 9.

9.2 **Other Insurance Requirements**

The Borrower shall maintain or cause to be maintained such insurance in addition to or in lieu of that required by the foregoing provisions of this Article 9 as the Majority Lenders may from time to time require, at the direction of the Lenders, acting reasonably, due to (i) new information coming to the attention of the Lenders after the Closing Date or (ii) changed circumstances after the Closing Date, which, in the case of either of the foregoing clauses (i) and (ii), is reasonably determined by the Lenders to render the insurance coverage set forth in this Article 9 inadequate in a material respect. In addition to the other requirements of this Article 9, the Borrower shall: (A) obtain and maintain such other or additional insurance (as to risks covered, policy amounts, policy provisions or otherwise) as the Administrative Agent in consultation with the Insurance Consultant may reasonably request from time to

time provided that such other insurance and amounts are then commonly insured against with respect to similar properties in similar regions with similar exposures and which are available on commercially reasonable terms; and (B) cause an insurance review to be performed from time to time, as requested by the Administrative Agent and the Lenders acting reasonably.

9.3 **Certification of Compliance**

The Borrower shall deliver to the Administrative Agent on or before the Closing Date, on or before the effective date of any new or replacement insurance policies and on the renewal date of each insurance policy required to be maintained by it pursuant to this Article 9, detailed certificates of insurance (or such other evidence of insurance reasonably requested by the Administrative Agent in consultation with the Insurance Consultant in the form of binders and/or policies) executed by the insurer or its duly authorized representative indicating the types, amounts, deductibles and terms and conditions required herein. Complete copies of any policies required pursuant to this Article 9 shall be furnished to the Administrative Agent upon request (to the extent available at that time).

9.4 **No Duty to Verify Insurance Compliance**

The Administrative Agent shall be entitled, upon reasonable advance notice, to review or to have the Insurance Consultant to review the Borrower's (or other appropriate party's) books and records regarding all insurance policies maintained with respect to the Project and the Borrower's obligations under this Article 9. Notwithstanding the foregoing, no provision of this Article 9 or any other provision of this Agreement or any other Credit Facility Document shall impose on the Administrative Agent or any other Lender any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Borrower, nor shall the Administrative Agent or any Lender be responsible for any representations or warranties made by or on behalf of the Borrower or any other party to any insurance company or underwriter.

9.5 **Waivers of Insurance Requirements**

If at any time the Majority Lenders determine in their reasonable judgment (after consultation with the Insurance Consultant) that any insurance (including but not limited to the limits or deductibles thereof) required to be maintained by this Article 9 is not available on commercially reasonable terms due to prevailing conditions in the commercial insurance market at such time, then upon the written request of the Borrower together with a written report of the Borrower's authorized insurance representative or another independent insurance agent or broker of nationally recognized standing in the insurance industry (i) certifying that such insurance is not available on commercially reasonable terms (and, in any case where the required maximum coverage is not reasonably available, certifying as to the maximum amount which is so available); (ii) explaining in detail the basis for such agent's or broker's conclusions; and (iii) containing such other information as the Majority Lenders or the Insurance Consultant may reasonably request, the Majority Lenders may (after consultation with the Insurance Consultant) waive the requirement of the Borrower to maintain such insurance. At any time after the granting of any waiver pursuant to this Section 9.5, but not more than once in any year, the Administrative Agent may request, and the Borrower shall furnish to the Administrative Agent within 30 days after such request, an updated insurance report reasonably acceptable to the Administrative Agent and the Insurance Consultant from the Borrower's independent insurance broker. Any waiver granted pursuant to this Article 9 shall expire, without further action by any party, immediately upon (A) such waived insurance requirement becoming available on commercially reasonable terms, as reasonably determined by the Majority Lenders (in

consultation with the Insurance Consultant); or (B) failure of the Borrower to deliver an updated insurance report pursuant to clause (ii) above.

9.6 **Payment of Premiums**

The Borrower will pay punctually, or cause to be paid, all premiums payable for the insurance required of it by this Article 9 and furnish to the Administrative Agent upon request by the Administrative Agent evidence of every such payment.

9.7 **Use of Proceeds**

9.7.1 General

Provided that no Default or Event of Default has occurred and is continuing, insurance proceeds shall be made available and applied as set forth in this Section 9.7.

9.7.2 Lower Proceeds Amount

Insurance proceeds in respect of property damage related to the Project, the repair costs of which are less than (i) up to the Construction Term-Out Date, **\$Redacted**, and (ii) thereafter, **\$Redacted** (or, in each case, the Equivalent Amount in other currencies) shall be made available to the Borrower to repair, rebuild or replace Project Assets or to compensate the Borrower for such repair, rebuild or replacement completed at its own expense, as applicable, provided that no Default or Event of Default has occurred or is continuing, and the Borrower hereby agrees that it shall apply any such proceeds for such purpose. [**Commercially sensitive amounts redacted**]

9.7.3 Higher Proceeds Amount

Insurance proceeds of (i) up to the Construction Term-Out Date, **\$Redacted** or more, and (ii) thereafter, **\$Redacted** or more (or, in each case, the Equivalent Amount in other currencies), or more shall be paid or payable to the Administrative Agent and (subject to Section 9.7.6 below) made available by the Administrative Agent to the Borrower to repair, rebuild or replace the Project upon satisfaction of the following conditions: [**Commercially sensitive amounts redacted**]

- (a) the Project can be restored to a condition substantially equivalent to its condition immediately preceding the occurrence of the damage in question in accordance with a budget constituting a good faith estimate of the cost of the proposed repairs, and the Administrative Agent shall have received a certificate of the Borrower, confirmed by the Independent Engineer, to the effect that such budget is a reasonable estimate of such costs and that the restoration of the Project can, subject to force majeure, be substantially completed within the period estimated by the Borrower;
- (b) receipt by the Administrative Agent of:
 - (i) certificate of the Borrower stating that such insurance proceeds, together with such other funds as shall be committed and available to the Borrower (as confirmed by the Independent Engineer and the Administrative Agent) on terms and conditions satisfactory to the Majority Lenders, acting reasonably, are sufficient to repair, rebuild or replace fully the damage or destruction in respect of which the insurance proceeds are payable (together with the particulars thereof)

and (if prior to the Completion Date) confirming that it is reasonable to expect that the Completion Date will be achieved by the Outside Date;

- (ii) a covenant by the Borrower to repair, rebuild and replace fully the damage or destruction in respect of which the insurance proceeds are payable; and
 - (iii) a certificate of the Independent Engineer that the funds requested, from time to time, will be sufficient to repair, replace and rebuild the damage or destruction in respect of which the insurance proceeds are payable and (if prior to the Completion Date) confirming that it is reasonable to expect that the Completion Date will be achieved by the Outside Date;
- (c) the Lenders, in their discretion, are satisfied that there is either sufficient business interruption insurance or other financial support available to the Borrower to allow the Borrower to pay operating costs and service debt during the repair, rebuild or replacement period such that no payment default occurs during such period;
- (d) the Borrower or another Loan Party shall have received (and furnished evidence satisfactory to the Administrative Agent of such receipt) all Permits necessary or desirable to effect the proposed repairs, other than those to be obtained in the ordinary course of business and which are not at the relevant time required to be outstanding given the stage of the Project but which the Borrower or another Loan Party is reasonably assured of obtaining at the necessary and appropriate time; and
- (e) the Borrower shall, pending completion of any repairs or rebuilding of the Project, maintain or cause to be maintained the Material Project Contracts in full force and effect (except where fully performed in accordance with the terms thereof), unless with respect to any Material Project Contract, the Borrower indicates in a written notice to the Administrative Agent its intention to seek an alternate counterparty acceptable to the Lenders to provide the services under the affected Material Project Contract and, within 15 days after such notice, shall enter into a contract, in form and substance satisfactory to the Lenders, with such alternate counterparty.

If the Borrower is unable to withdraw insurance proceeds as contemplated by Section 9.7.3 for a period of 90 days after receipt by the Administrative Agent of such insurance proceeds, the Borrower shall notify the Administrative Agent of the same and within 30 days after receipt by the Administrative Agent of written notice to such effect, the Borrower shall prepay the Credit Facilities in full in accordance with Section 2.3.

9.7.4 Excess

If prior to the Completion Date, after Insurance proceeds have been applied pursuant to Section 9.7.3, and the Agent (in consultation with the IE) determines that the Project will be able to meet the Minimum Required DSCR, Insurance proceeds paid or payable to the Borrower:

- (a) not required to repair, rebuild or replace the Project; or
- (b) after the Borrower has restored or caused to be restored the Project to a condition substantially equivalent to its condition immediately preceding the occurrence of the damage in question and the Borrower has paid or caused to be paid the cost thereof,

shall be available to be utilized by the Borrower after provision to the Administrative Agent of evidence of completion any such required restoration of the Project satisfactory to the Lenders (as confirmed by the Independent Engineer).

9.7.5 Business Interruption, Etc.

The procedure set forth above shall not apply to proceeds of business interruption insurance and delayed start up insurance, which proceeds shall be available to be utilized by the Borrower.

9.7.6 Total Loss

If a total loss (which term shall include actual total loss and constructive total loss) occurs under the insurance policies maintained by the Borrower or another Loan Party, the Borrower will provide to the Administrative Agent prompt notice once such loss or total loss has been determined, followed by a report as to adequacy of the insurance proceeds and other funds received by the Borrower or another Loan Party for rebuilding. Within 30 days after receiving such notice, the Borrower shall use such proceeds to repay the Credit Facilities in accordance with Section 2.3 unless otherwise agreed by the Lenders.

**ARTICLE 10
COVENANTS**

10.1 **Affirmative Covenants**

Until the Outstanding Obligations are paid and satisfied in full and this Agreement has been terminated, and in addition to any other covenants herein set forth, the Borrower covenants as set forth in this Section 10.1.

10.1.1 Existence

It will do all things necessary:

- (a) to maintain the corporate or partnership existence of each Loan Party, as applicable; and
- (b) to develop, construct and Operate, or to cause the development, construction and Operation of, the Project in the name of Milner Power II LP and to carry on its business and the businesses of the other Loan Parties in their respective names and in a proper and efficient manner in like manner as prudent operators of similar businesses.
- (c) It shall promptly advise the Administrative Agent in writing of any change of its name or the names of any other Loan Party, the issued and outstanding shareholdings or partnership interests of any other Loan Party, and its jurisdiction of organization or the jurisdiction of its place of business (or if such Loan Party has more than one place of business, then any change in the jurisdiction of its chief executive office) and shall obtain written consent of the Administrative Agent prior to making any material amendments to its constating documents and the constating documents of any Loan Party (including without limitation its articles of incorporation, by-laws, partnerships agreements and shareholders' agreements, as applicable), provided that the jurisdiction of organization of each Loan Party, its place of business (or if such Loan Party has more than one place of business, then its chief executive office) shall remain in Canada and any change of the

name of any Loan Party or the jurisdiction of its domicile, its place of business, or if such Loan Party has more than one place of business, then its chief executive office shall be provided at least 30 days prior to the same becoming effective.

10.1.2 Compliance with Laws

Other than as provided in Section 10.1.19 with respect to the BLA, it will comply, and cause each other Loan Party to comply, with all Laws (including Environmental Laws) applicable to it or the Project and do all things necessary to obtain, renew and maintain in good standing from time to time and duly observe all valid requirements of any Official Body (including those requirements respecting the protection of the environment, Release of Hazardous Materials, and occupational health and safety), except, in any case, to the extent failure to do so does not, or could not reasonably be expected to, result in a MAE.

10.1.3 Payment of Taxes and Claims

It will file, and cause each other Loan Party to file, as and when required by applicable Law, all Tax returns and, except where payment and discharge could not be reasonably expected to have a MAE, will pay and discharge before the same shall become delinquent:

- (a) all Taxes imposed upon it or upon its property; and
- (b) all lawful claims (including claims for labour, materials, supplies or services) which, if unpaid, might become a Lien upon its property,

except in each case any such Tax or claim which is being Contested in Good Faith.

10.1.4 Keeping of Books

It will keep, and cause each other Loan Party to keep, proper and complete books of record and account, in which full and correct entries shall be made of all financial transactions and its assets and business in accordance with GAAP and which shall be kept separate from those of any other person or entity.

10.1.5 Maintain Properties

It will, and cause each other Loan Party to, continuously and diligently pursue the Substantial Completion Date and Completion, will maintain, preserve, protect and keep the Collateral and the Project in reasonable repair, working order and condition in accordance with the O&M Plan and Strategy and in accordance with Good Engineering and Operating Practices for facilities of this type, will employ or caused to be employed personnel to operate the Project or will retain an operator, experienced in the operation of projects similar to the Project (such external operator to be satisfactory to the Lenders, acting reasonably) and will make any necessary proper repairs, renewals and replacements to the Project to ensure the Project is at all times maintained, preserved, protected and kept in accordance with the foregoing.

10.1.6 Pay Obligations to Lenders and Perform Other Covenants

The Borrower will make full and timely payment out of its own funds (including funds advanced to or invested in the Borrower) of the Outstanding Obligations, whether now existing or hereafter arising,

and the Borrower will, and will cause each other Loan Party to, duly comply with all the terms and covenants contained in each of the Credit Facility Documents to which it is a party, as applicable, all at the times and places and in the manner set forth therein and at all times take all action necessary to maintain the Liens provided for under or pursuant to this Agreement and the Security as valid and perfected first Liens on the property intended to be covered thereby (subject only to Permitted Encumbrances) and supply to the Administrative Agent all information that the Administrative Agent may request which is reasonably necessary for such maintenance.

10.1.7 Use of Proceeds

The Borrower will, and will cause each other applicable Loan Party to, use the proceeds of all Advances made available to it only for the purposes set forth in Section 2.1.2.

10.1.8 Financial and Other Reporting

The Borrower will deliver or cause to be delivered to the Administrative Agent:

- (a) within 120 days after the end of each Financial Year, a copy of the consolidated audited financial statements of the Borrower prepared in accordance with GAAP (which financial statements shall initially include statements of earnings and of changes in financial position and a balance sheet) and a summary and discussion of operations during such Financial Year;
- (b) within 60 days after the first three Financial Quarters in any Financial Year, a copy of the consolidated unaudited financial statements of the Borrower, prepared in accordance with GAAP, certified by the Borrower;
- (c) after the Construction Term-Out Date, with each of the financial statements in (a) and (b) above, a Compliance Certificate;
- (d) prior to the Construction Term-Out Date:
 - (i) monthly construction status reports (each such report, a “**Construction Report**”) no later than the 30th day after the end of each calendar month, including a statement of all amounts paid under the Material Project Contracts in the previous month and anticipated to be payable in the next succeeding month, an estimate of the remaining Cost to Complete, a statement that the Project is being completed in a timely manner so as not to delay Substantial Completion beyond the Scheduled Completion Date or delay Completion beyond the Outside Date and such other construction matters as the Majority Lenders, acting reasonably, may request and which status reports shall contain a confirmation (such confirmation, the “**Independent Engineer’s Monitoring Confirmation**”) that: (A) all Change Orders made pursuant to the EPC Contract or any other Material Project Contract are reasonable and appropriate, and (B) Available Funds are sufficient to fund the remaining Costs to Complete;
 - (ii) a copy of the Independent Engineer’s monthly report no later than the 5th day after receipt of each Construction Report verifying the content of such Construction Report; and

- (iii) promptly upon request of the Administrative Agent therefore, and in any event within 5 Business Days of such request, copies of all exhibits, notices, reports, schedules, plans, scope, design and engineering documents, detail design documents, mechanical completion documents, substantial completion documents, completion plans, final completion documents, performance and capacity test documents and information and all other material documents delivered by the EPC Contractor to the Borrower or Milner II LP under or pursuant to the EPC Contract;
- (e) in the event that the Independent Engineer advises that the Substantial Completion is to be completed beyond the Scheduled Completion Date or that Completion is to be completed beyond the Outside Date, the Independent Engineer and the Borrower shall, within thirty (30) days thereof, develop a plan (the "**Recovery Plan**") to be initiated and complied with by the Borrower to ensure that the Substantial Completion will be completed by the Scheduled Completion Date and that Completion will be completed by the Outside Date; and
- (f) after the Construction Term-Out Date, quarterly operating reports within 60 days after the end of each Financial Quarter, summarizing (i) electricity sales made during the Financial Quarter and all other revenue received by the Project during such Financial Quarter, (ii) scheduled and unscheduled maintenance and operational availability, (iii) replacement equipment not contemplated in the current operating budget, and (iv) a review of current or planned major maintenance and such other operational matters as the Majority Lenders may reasonably request in consultation with the IE.

10.1.9 Notice of Certain Events

The Borrower will promptly notify the Administrative Agent in writing of:

- (a) any Event of Default or any Default;
- (b) any litigation or governmental action that could reasonably be expected to result in expenses, liabilities or obligations of any Loan Party in excess of (i) up to the Construction Term-Out Date, **\$Redacted** individually or **\$Redacted** in the aggregate, and (ii) thereafter, **\$Redacted** individually or **\$Redacted** in the aggregate; [**Commercially sensitive amounts redacted**]
- (c) any material breach or receipt of written allegation of a material breach by any party or any material dispute under any Material Project Contract or Permit and provide the Administrative Agent with copies of all material information relating to any of the foregoing;
- (d) any change to the anticipated Substantial Completion Date;
- (e) Cost Overruns which in the aggregate are in excess of **\$Redacted** in the aggregate since the last Drawdown Certificate delivered pursuant to Section 6.2.2; [**Commercially sensitive amount redacted**]
- (f) any change in the financial condition, operations or properties of any Loan Party that could reasonably be expected to have a MAE;

- (g) any Change of Control or proposed Change of Control of any Loan Party;
- (h) any "Force Majeure" under any Material Project Contract;
- (i) achievement or failure to achieve within the Project Schedule of Mechanical Completion, Substantial Completion and Final Completion (as each of those terms is defined under the EPC Contract) and whether Substantial Completion is achieved by the Substantial Completion Guarantee Date (as that term is defined under the EPC Contract);
- (j) any insurance claims in excess of (i) up to the Construction Term-Out Date, **\$Redacted**, and (ii) thereafter, **\$Redacted; [Commercially sensitive amounts redacted]**
- (k) any receipt by any Loan Party of any proceeds of the AESO Losses Receivable or any appeals filed with, or decisions or judgments rendered by, any Official Body in regard to the AESO Losses Receivable or any other material development with respect thereto;
- (l) any claim, demand, request, order, directive, judgment, notice, requirement, instruction, determination or suit, whether brought or threatened arising from or in relation to any Environmental Liability;
- (m) to the extent that there are events of material non-compliance with Environmental Law during a Financial Quarter which do not require notification under paragraph (l) above, the Borrower will provide to the Administrative Agent a report of such events at the same time as the Compliance Certificate under Section 10.1.8(c) above;
- (n) any intentional withholding of material compensation to any Counterparty under any Material Project Contract other than any holdback required to be made under the terms of such Material Project Contract or under any applicable Law;
- (o) any notice from any First Nation regarding a First Nations Claim by such First Nation or any other action, suit, litigation, investigation or proceeding, whether actual or threatened, by a First Nation against any Loan Party or the Project;
- (p) the creation, acquisition or designation of any new Material Subsidiary (together with a copy of its constating documents, a complete copy of an updated Schedule 11 and an organizational chart setting forth the ownership of the other Material Subsidiaries) including details as to its ownership concurrently with any new Material Subsidiary being created, acquired or designated;
- (q) (i) the institution of any steps by any person to terminate or effect a partial wind-up of any Pension Plan, (ii) the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under any applicable Law, (iii) the taking of any action with respect to a Pension Plan that is reasonably likely to result in the requirement that any Loan Party furnish a bond or other security to such Pension Plan or any applicable Official Body, or (iv) the occurrence of any event with respect to any Pension Plan that has not been disclosed on Schedule 27 and that is reasonably likely to result in the incurrence by any Loan Party of any material liability, fine or penalty, and in the notice to the Administrative Agent thereof, provide copies of all documentation relating thereto;

- (r) any event or circumstance that could reasonably be expected to have a Material Adverse Effect; and
- (s) any other information relating to a Loan Party or the Project that the Administrative Agent and any Lender may reasonably request.

10.1.10 Visitation, Inspection, Etc.

The Borrower shall permit, and the Borrower shall cause the other Loan Parties to permit, the Administrative Agent, the Lenders and the Independent Engineer, at any reasonable time or times, within normal business hours, following reasonable notice to the Borrower, at the Borrower's expense, to visit and inspect the Plant and any of the other Project Assets and examine and make copies of and abstracts from the books and records of, the Borrower and discuss its affairs, finances and accounts with its officers or its independent auditors, provided that, so long as no Event of Default has occurred and is continuing, each of the Administrative Agent, the Lenders and the Independent Engineer shall be limited to one visit per calendar year or in the cases of the Independent Engineer, as otherwise agreed to with the Borrower. The Administrative Agent and the Lenders shall use reasonable commercial efforts to minimize the disruption to the Operation of the Project in the exercise of its rights under the provisions of this Section.

10.1.11 Expropriation and Other Transactions

The Borrower will give prompt notice to the Administrative Agent should any of the Project Assets be taken by reason of any Taking or should it receive any notice or other information regarding such proceedings, and will upon receipt of such proceeds from such Taking repay the Credit Facilities in accordance with Section 2.3.

10.1.12 Environmental Matters

The Borrower shall, and shall cause each person within its control (including each other Loan Party) to:

- (a) conduct its operations and keep and maintain the Site Lands, the Plant, the Project and all other Real Property Interests it owns or controls in compliance with all Environmental Laws and Permits other than non-compliance that could not reasonably be expected to have a MAE;
- (b) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Site Lands, the Plant, the Project and all other Real Property Interests it owns or controls or otherwise to comply at all times with Environmental Laws and Permits, other than non-compliance that could not reasonably be expected to have a MAE;
- (c) notify the Administrative Agent promptly after the Borrower becomes aware of any violation of Environmental Laws or Permits or any Release on, at, in, under, above, to, from or about the Site Lands, the Plant, the Project or any of its other Real Property Interests or of any order, directive, requirement, notice, warning or intention to issue an order under any Environmental Laws or Permits that is reasonably likely to result in Environmental Liabilities;

- (d) promptly forward to the Administrative Agent a copy of any order, notice, request for information or any communication or report received by the Borrower in connection with any violation, breach, non-compliance or Release or any other matter relating to any non-compliance with Environmental Laws or the Permits that could reasonably be expected to result in Environmental Liabilities that could reasonably be expected to result in a MAE, in each case; and
- (e) prepare an environmental management plan if contemplated in the environmental assessment conducted and completed in respect of the Project under Environmental Laws, a copy of which, if applicable, shall be delivered to the Administrative Agent, and to the extent applicable comply with all material terms and provisions thereof.

If the Administrative Agent at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws or the Borrower is subject to any Environmental Liability, or a Release of Hazardous Materials on, at, in, under, above, to, from or about the Site Lands, the Plant, the Project or any of the Borrower's other Real Property Interests or of the issuance or threat to issue any order under Environmental Laws, that, in each case, could reasonably be expected to have a MAE, then the Borrower shall, upon the Administrative Agent's written request:

- (i) cause the performance of such environmental investigations, audits, including subsurface sampling of soil and groundwater and response and mitigative measures, and preparation of such environmental reports, at Borrower's expense, as the Administrative Agent may from time to time reasonably request, which shall be conducted by reputable environmental consulting firms reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent; and
- (ii) permit the Administrative Agent or its representatives to have access to the Site Lands, the Plant, the Project and all Real Property Interests for the purpose of verifying, overseeing or conducting such environmental investigations, measures, audits and testing as the Administrative Agent deems appropriate, including subsurface sampling of soil and groundwater and other testing.

The Borrower shall reimburse the Administrative Agent for the costs of such efforts, measures and undertakings and the same will constitute a part of the Obligations secured hereunder.

10.1.13 Project Assets

The Borrower will ensure that all Project Assets will be acquired and owned by the Loan Parties, free and clear of all Liens (other than Permitted Encumbrances) and shall forthwith be made subject to the Liens of the Security at the Borrower's expense in such manner as the Administrative Agent shall reasonably request and will ensure that its assets are not inter-mingled with those of any other person (other than another Loan Party).

10.1.14 COD Survey and As Built Drawings

The Borrower shall, if requested by the Administrative Agent, make available to the Administrative Agent for review a survey of the Site Lands and fixtures thereon and "as built" drawings for the Project within 180 days after the Substantial Completion Date.

10.1.15 Material Project Contracts

The Borrower shall enter into, or shall cause another Loan Party to enter into, as and when required all Material Project Contracts required to construct, design, commission and Operate the Project. With respect to any Material Project Contract entered into after the Closing Date and prior to the execution and delivery thereof by the applicable Loan Party, the Borrower shall provide a true and complete copy thereof to the Administrative Agent for approval by the Majority Lenders (the Lenders shall act reasonably in connection with considering the granting of any such approval) and, subject to approval thereof by the Majority Lenders of such Material Project Contract and concurrently with the execution and delivery of such Material Project Contract, shall require that the Counterparty to such Material Project Contract provide a Consent to the Administrative Agent together with an opinion of legal counsel to such Counterparty, which Consent shall be satisfactory to the Administrative Agent (acting reasonably) and acceptable to the Majority Lenders, and if the obligations of the Counterparty thereunder are guaranteed, a Consent in respect of such guarantee together with an opinion of counsel to the guarantor (which opinion may be given by internal or external legal counsel to the guarantor), acceptable to the Majority Lenders and in form and substance satisfactory to the Administrative Agent (acting reasonably). The Borrower shall comply with, and cause each other Loan Party to comply with, and diligently enforce, all obligations under the Material Project Contracts, save where failure to do so neither has, nor could reasonably be expected to have, a MAE.

10.1.16 Collateral Accounts

- (a) The Borrower shall cause Milner Power II LP to open and maintain the Construction Accounts with the Administrative Agent. Except as otherwise expressly provided in this Agreement, prior to the Construction Term-Out Date, all Project Revenues and other amounts received by any Loan Party relating to the Project (including Delay Liquidated Damages, warranty payments, insurance proceeds, GST refunds pertaining to payments made from any Construction Account, all interest earned in the Collateral Accounts, amounts received in connection with any Required Hedges and proceeds from the resolution of any claims or disputes relating to the Project) and all drawdowns of the Construction Facility shall be deposited to the applicable Construction Account. All disbursements relating to the development and construction of the Project, including the payment of Project Costs or repayment of the Credit Facilities shall be made from the Construction Accounts on or prior to the Construction Term-Out Date other than any such disbursements funded from the Subordinated Credit Agreement and cash on hand. Prior to the Construction Term-Out Date, Milner Power II LP shall be entitled to transfer funds between each of the Construction Account Cdn. and the Construction Account U.S. as reasonably required in order to fund any U.S. Dollar disbursements relating to the development and construction of the Project. After the Construction Term-Out Date, subject to the approval of the Administrative Agent acting reasonably, all amounts remaining in the Construction Accounts, other than the Completion Reserve Amount (which shall remain in the Construction Account Cdn.), shall be transferred to another account of the Borrower or another Loan Party established with the Administrative Agent at the end of the first full Fiscal Quarter following the Construction Term-Out Date, provided the Final Punch List Items have been paid for in full.
- (b) The Borrower will create each other Collateral Account as and when required by the terms of this Agreement. Each Collateral Account will be maintained separate and apart from each other account maintained by the Borrower and Milner Power II LP and shall be

maintained with the Administrative Agent. All funds held in a Collateral Account shall be invested by the Borrower and Milner Power II LP in Approved Securities and interest or other returns earned thereon shall be included in Project Revenues. The Borrower and Milner Power II LP shall not be entitled to withdraw amounts from a Collateral Account except as provided herein.

10.1.17 Receivables

It will use all commercially reasonable efforts to collect, and cause each other Loan Party to collect, all Project accounts and receivables.

10.1.18 Title

It will, and cause each other Loan Party to, maintain and, as soon as reasonably practicable, defend and take all action necessary or advisable at any time and from time to time to maintain and defend its legal and beneficial right, title and interest in and to all Project Assets and the priority and enforceability of the Security and the Liens of the Security.

10.1.19 Builders' Lien Act (Alberta)

It will comply in all material respects with the BLA and, in that regard, establish such holdback accounts and arrangements as may be required by Law (it being acknowledged that the Borrower intends to rely upon the BLA Holdback Letter of Credit in lieu of retaining funds on payment required by the BLA in respect of the EPC Contract). If the BLA Holdback Amount in respect of the EPC Contract at any time exceeds the face amount of the BLA Holdback Letter of Credit in effect at such time, the Borrower requests that the holdback monies actually be advanced under the Construction Facility in respect of the EPC Contract and placed in the BLA Holdback Account as opposed to simply withheld under such Credit Facilities. Amounts in the BLA Holdback Account may only be used by the Borrower to pay holdbacks in respect of work already performed and provided that any such payment is made in accordance with the BLA.

10.1.20 Punctual Payment

The Borrower will punctually pay out of its own funds (including funds advanced to it or invested in the Borrower) all sums when due for Project construction and Operation unless the amount due is subject to a bona fide dispute and is being Contested in Good Faith.

10.1.21 Permitted Hedges and Required Hedges

- (a) The Borrower will enter into Interest Hedges with the Interest Hedge Lender within 3 Business Days of the Initial Advance for the period up to and including June 30, 2020, on such terms and conditions as are acceptable to such Interest Hedge Lender, with a notional principal amount equal to at least 33¹/₃% and not more than 105% of the projected principal amount under the Term Facility on the Construction Term-Out Date, based on the full amount of the Construction Facility being drawn on the Construction Term-Out Date and thereafter the Borrower will enter into further Interest Hedges with the Interest Hedge Lender with effect on or before July 1, 2020 reflecting the amortization schedule for the Term Facility in the Financial Model, provided that:

- (i) at no time after the Construction Term-Out Date shall the Borrower have Interest Hedges in place under which the aggregate notional principal amounts exceed 105% of the aggregate Outstanding Principal under the Term Facility;
 - (ii) such Interest Hedges may be terminated by the Interest Hedge Lender on the Final Maturity Date (with the Borrower being liable for any applicable Mark-to-Market payments resulting therefrom (if any)), if arrangements have not been completed to the sole and unfettered discretion of the Interest Hedge Lender for the transfer of such Interest Hedges to another financial institution acceptable to such Interest Hedge Lender, in its sole discretion; and
 - (iii) such Interest Hedges shall provide for terms, provisions, defaults and events of default against the Borrower thereunder that are not more restrictive than the terms, provisions, Defaults and Events of Default hereunder.
- (b) The Borrower shall maintain such Interest Hedges until the full and final repayment of the Outstanding Credit Obligations under the Construction Facility and the Term Facility.
- (c) If in order to comply with Section 10.1.21(a)(i) the Borrower requires a reduction of the notional principal amount of the Interest Hedges, the Borrower shall: (i) provide notice to the Hedge Lenders that the notional principal amount of each outstanding Interest Hedge is to be reduced, the amount by which (on a pro rata basis) each such Interest Hedge is to be reduced and the date of such reduction (which shall not be less than five Business Days prior to such reduction); and (ii) request that the Interest Hedge Lender amends its Interest Hedge to reduce the notional principal amount of such Interest Hedge by the amount referred to in (c) above and calculate the applicable Mark-to-Market payment with respect to the amount of such reduction.
- (d) The Borrower will enter into (and maintain) Commodity Hedges with the Commodity Hedge Lender within 3 Business Days after the Substantial Completion Date for the period up to and including the Final Maturity Date, on such terms and conditions as are acceptable to such Commodity Hedge Lender, with (i) an electricity price hedge of six months at 100% of 30MW for the first 3 months and then at 50% of 30MW for the subsequent 3 months on a monthly rolling basis, and (ii) a gas price hedge the volume of which corresponds with the electricity price hedge based on the heat rate of the Plant, provided that:
 - (i) such Commodity Hedges may be terminated by the Commodity Hedge Lender on the Final Maturity Date (with the Borrower being liable for any applicable Mark-to-Market payments resulting therefrom (if any)), if arrangements have not been completed to the sole and unfettered discretion of the Commodity Hedge Lender for the transfer of such Commodity Hedges to another financial institution acceptable to such Commodity Hedge Lender, in its sole discretion; and
 - (ii) such Commodity Hedges shall provide for terms, provisions, defaults and events of default against the Borrower thereunder that are not more restrictive than the terms, provisions, Defaults and Events of Default hereunder.

- (e) The Borrower's obligation to enter into any Required Hedge under this Agreement is subject to the Hedge Lender making such Required Hedges available to the Borrower on commercially reasonable terms.

10.1.22 Further Assurances

It will at its cost and expense, upon request of the Administrative Agent, duly execute and deliver, or cause to be duly executed and delivered, to the Administrative Agent or (as the case may be) the Lenders, such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Administrative Agent to carry out more effectually the provisions and purposes of this Agreement and the other Credit Facility Documents.

10.1.23 Permits

It will obtain, or will cause another Loan Party to obtain, all Permits (including Additional Permits) as and when required by applicable Law to construct, design, commission, maintain and Operate the Project. It will comply with, or will cause the applicable Loan Party to comply with, all Permits and do all things necessary to obtain, renew and maintain in good standing, from time to time, all Permits except to the extent where a failure to do so could not reasonably be expected to result in a MAE. Any Additional Permit obtained by the Borrower or any other Loan Party shall be provided to the Administrative Agent as soon as reasonably practicable after the Borrower or any other Loan Party obtains such Additional Permit.

10.1.24 Required DSCR

Commencing on the last day of the first full Financial Quarter ended after the Construction Term-Out Date, the Borrower will maintain a DSCR of not less than **Redacted** determined as at the last day of each Financial Quarter until the Financial Quarter ending on December 31 and then, after which, determined as at the last day of each Financial Year. [**Commercially sensitive ratio redacted**]

10.1.25 Real Property Interests

It will obtain and maintain, or will cause another Loan Party to obtain and maintain, all Real Property Interests required to construct, design, commission and Operate the Project. It will comply with, or cause the applicable Loan Party to comply with, all agreements and documents relating to the Real Property Interests held by it and do all things necessary to obtain, renew and maintain in good standing, from time to time all of its Real Property Interests, except to the extent that a failure to do so could not reasonably be expected to result in a MAE. The Borrower will ensure that the Real Property Interests which are capable of registration are, or once obtained will be, properly registered against the certificates of title to the applicable Site Lands, and shall promptly ensure the registration of all instruments necessary or desirable from time to time to protect the priority and enforceability of such registrable Real Property Interests. The Borrower will promptly defend and take, or will cause the appropriate Loan Party to promptly defend and take, all action necessary or advisable at any time and from time to time to maintain and defend the priority and enforceability of such Real Property Interests and the instruments registered against the certificates of title to the Site Lands relating thereto.

10.1.26 Notices Under Material Project Contracts

If the Borrower or any other Loan Party is provided with a notice of a default with respect to any Material Project Contract, the Borrower shall provide as soon as reasonably possible thereafter, a copy of

such notice to the Administrative Agent with a description of the applicable default and a report indicating the status of such default and the steps taken and to be taken (as applicable) to cure such default. If such default is not cured within 10 days after the receipt by the Borrower or any other Loan Party of such default notice, the Borrower will so advise the Administrative Agent and thereafter will co-operate and work with the Independent Engineer and the Administrative Agent to attempt to cure such default within the then remaining cure period available to the Borrower or such other Loan Party under the applicable agreement.

10.1.27 Know Your Customer

The Borrower will provide: (i) such documentation as is required for the Administrative Agent and each Lender to comply with applicable Law and maintain and update information as reasonably requested by such persons to satisfy related obligations, as they may change from time to time, and (ii) such documentation as is reasonably required for the Administrative Agent and each Lender to comply with "Know Your Customer" requirements, and maintain and update information as reasonably requested by such persons to satisfy related obligations, as they may change from time to time, and any documentation and information requested by a Lender that is similar to that delivered by the Borrower to the Administrative Agent and the Lenders in connection with the Closing Date shall be deemed "reasonably" required and "reasonably" requested.

10.1.28 Updated Financial Model

The Borrower shall deliver an Updated Financial Model to the Administrative Agent, as required to comply with Section 2.2.2.

10.1.29 O&M Plan and Strategy

Prior to the Substantial Completion Date, the Borrower and Milner Power II LP shall implement and maintain the O&M Plan and Strategy, and enter into all required contracts and agreements required to maintain, operate, service and repair, and supply replacement parts and materials for the Plant in accordance with the O&M Plan and Strategy. Each contract entered into in connection with the O&M Plan and Strategy shall be in form and substance and be with a competent provider satisfactory to the Lenders (in consultation with the Independent Engineer), be deemed to be a Material Project Contract, a true and complete copy thereof shall be provided by the Borrower to the Administrative Agent. The Borrower and Milner Power II LP shall comply with, and diligently enforce, all obligations under the contacts under the O&M Plan and Strategy, except where failure to do so neither has, nor could reasonably be expected to have, a MAE.

10.1.30 Asset Coverage

The Borrower shall ensure that, as at the end of each Financial Quarter the tangible assets of the Loan Parties (calculated on an unconsolidated basis and excluding, to the extent included therein, all amounts attributable to goodwill, patents, trademarks, affiliate investments and other similarly classified intangible assets and for greater certainty excluding investments, whether debt, equity or quasi-equity, in any Subsidiary which is not a Material Subsidiary) are not less than the lesser of (a) 95% of Consolidated Tangible Assets; and (b) Consolidated Tangible Assets (less any Consolidated Tangible Assets attributed to Forked River II, Inc., Forked River II, LLC, Summit Coal, Summit Coal LP, Deerland Power Inc. and Deerland Power Limited Partnership).

10.1.31 Loan Parties

The Borrower shall ensure that, at all times, it directly or indirectly owns 100% of the issued and outstanding Shares of the Loan Parties.

10.1.32 Financial Covenants

Commencing on the last day of the first full Financial Quarter ended after the Construction Term-Out Date, the Borrower will ensure that the Debt to EBITDA Ratio determined as at the last day of each Financial Quarter on a rolling four quarter basis shall not exceed 3.00:1.00.

10.1.33 BMO Letters of Credit

The Borrower shall ensure that as of the date that is 12 months following the Closing Date, any letters of credit issued by Bank of Montreal for the Borrower or any of its Subsidiaries (as referred to in subparagraph (o) of the definition of Permitted Encumbrances) have either been terminated or been replaced with one or more Letters of Credit issued by the LC Lender hereunder.

10.1.34 Deerland Power

The Borrower shall cause Deerland Power Inc. and Deerland Power Limited Partnership to distribute the net proceeds of any one or more asset dispositions by Deerland Power Inc. or Deerland Power Limited Partnership to the Borrower.

10.1.35 Milner Held Permits

The Borrower shall, commencing on the Completion Date, use reasonable commercial efforts to transfer to Milner Power II or Milner Power II LP, the Power Plant Approval and any other material Permits required for the Project that are held by either Milner Power or Milner Power LP.

10.1.36 Bilateral Agreement Consent

The Borrower shall use reasonable commercial efforts to obtain a Consent and a legal opinion from counsel to the Balancing Pool in respect of the Bilateral Agreement, which shall be in form and substance satisfactory to the Administrative Agent and its legal counsel, on or before January 31, 2020.

10.1.37 **Redacted [Commercially sensitive terms redacted]**

10.2 **Negative Covenants**

Until the full and final payment of the Outstanding Obligations and the termination of this Agreement, and in addition to any other covenants herein set forth, the Borrower, covenants and agrees that without the prior written consent of the Lenders:

10.2.1 Debt

It will not incur, nor will it permit any other Loan Party to incur, any Debt other than the Credit Facilities or provide financial assistance to any third party. Notwithstanding the foregoing, the Borrower and each other Loan Party may:

- (a) incur Debt that is permitted to be secured by Permitted Encumbrances (and only to the extent of the amount permitted under Permitted Encumbrances) provided that no Default or Event of Default exists under this Agreement or any other Credit Facility Documents will occur as a result of the issuance of such additional Debt;
- (b) incur Debt in respect of current liabilities in the ordinary course of business (and not on account of a borrowing), including any such Debt incurred:
 - (i) pursuant to Project Contracts and Permits;
 - (ii) pursuant to a contract service agreement with General Electric Canada (or such other counterparty acceptable to the Borrower) provided the aggregate sum of deferred payments thereunder does not exceed US\$16,085,000;
 - (iii) in respect of goods and services obtained in the ordinary course of business;
 - (iv) in respect of Taxes; and
 - (v) that is not Debt for borrowed money;
- (c) incur Debt owing to another Loan Party.

10.2.2 No Liens

No Loan Party will create, incur or otherwise permit to exist any Liens on any of its assets, other than Permitted Encumbrances.

10.2.3 Merger, Etc.

No Loan Party will, without the consent of the Lenders, merge, consolidate or amalgamate with or into, sell, convey, transfer, lease or otherwise dispose of (in one transaction or a series of transactions) all or substantially all of its assets to, any other person, provided that a Loan Party (other than Milner Power and Milner Power LP) may merge or amalgamate with another Loan Party (other than Milner Power or Milner Power LP). For greater certainty, Milner Power and Milner Power LP may not merge, consolidate, amalgamate, wind-up into or otherwise sell, convey, transfer, lease or otherwise dispose of (in one transaction or a series of transactions) all or substantially all of its assets to any other person without the prior written consent of the Lenders, in their sole discretion.

10.2.4 Non-Consolidation

No Loan Party will take any actions which could reasonably result in it being consolidated with any other entity in any insolvency or bankruptcy (or equivalent) proceedings.

10.2.5 Other Business

No Loan Party will enter into any line of business other than the construction, development, ownership and Operation of the Project or the business of generating and selling electricity and thermal energy.

10.2.6 Financial Year

It will not change its Financial Year without the prior written consent of the Lenders, such consent not to be unreasonably withheld.

10.2.7 Sale of Assets

No Loan Party will directly or indirectly consummate any Asset Disposition other than a Permitted Disposition. The Administrative Agent shall deliver a discharge of the Security in respect of any property (but not the proceeds thereof) disposed of in accordance with this Section 10.2.7.

10.2.8 Distributions

No Loan Party will make any Distribution other than Permitted Distributions.

10.2.9 No Change in Project Capacity, Etc.

The Borrower shall not make or permit to be made by any Loan Party any material change in the scope, design or nature of the Project or materially expand the Project; provided any increase or decrease in the capacity of the Project, in aggregate, of less than 10 megawatts will be deemed to not be a material change or a material expansion of the Project and further provided that the Borrower may make or permit any such changes or expansions that: (i) do not, in the aggregate, impair or delay the satisfaction of the requirements for Completion, or (ii) do not otherwise materially adversely affect any Permit, or the economic viability or performance of the Project.

10.2.10 Amendment of Material Project Contracts

The Borrower shall not, and shall not permit any Loan Party to:

- (a) amend, extend, suspend, release or otherwise modify any material provision of any Material Project Contract in any material respect (excluding any Change Order permitted pursuant to Section 10.2.16);
- (b) waive, delay enforcement of or forgive any of the rights or obligations of others or settle any claims under any Material Project Contract in any material respect; provided that any Change Order will be made in accordance with Section 8.2.14 and will not be governed by this Section 9.2.10;
- (c) terminate any Material Project Contract, unless prior to the termination of such Material Project Contract the Borrower or the applicable Loan Party has arranged for a replacement of such Material Project Contract in accordance with Section 10.2.11;
- (d) assign any of its rights or obligations under any Material Project Contract, except in favour of the Administrative Agent pursuant to the Security; or

- (e) provide any consent or agreement to the release or termination of any rights or obligations of a Counterparty under any Material Project Contract in any material respect; or
- (f) in addition to the foregoing, the Borrower shall keep the Administrative Agent and the Independent Engineer apprised of all material disputes with any Counterparty and not settle any material dispute which affects rights of the Borrower or another Loan Party as a beneficiary of such Material Project Contract without the prior written consent of the Administrative Agent.

Provided that, notwithstanding the foregoing provisions of this Section 9.2.10, Milner Power II LP may agree to amend or waive its rights under the EPC Contract in order to allow Milner Power II LP to be paid by or receive credits from the EPC Contractor the remaining value of the punch list items under the EPC Contract not to exceed \$**Redacted** and accept Final Completion (as that term is defined in the EPC Contract) and in such circumstances Milner Power II LP will complete or cause the completion of the remaining punch list items. [**Commercially sensitive amount redacted**]

10.2.11 Replacement Material Project Contracts

It will not enter into any Material Project Contract which replaces an existing Material Project Contract unless:

- (a) the prior written approval of the Majority Lenders, acting reasonably, has been obtained; and
- (b) if requested by the Administrative Agent, the Counterparty has provided a Consent with respect to such replacement Material Project Contract.

10.2.12 Non-Arms' Length Transactions

It will not enter into any transactions relating to the Project with parties with whom any Loan Party does not deal at arms' length, except on terms no less favourable to Loan Parties taken as a whole than would have been obtained in an arm's length transaction, except for transactions with another Loan Party or the Permitted Subordinated Debt.

10.2.13 Assignment

It will not consent to the assignment by the Counterparty of any Material Project Contract without Majority Lenders' consent, not to be unreasonably withheld.

10.2.14 Hedge Agreements

It will not enter into or permit to be outstanding at any time any Hedge Agreement, except for:

- (a) any Hedge Agreement that is a Required Hedge;
- (b) any Currency Hedges in respect of US dollar based payment commitments under any Material Project Contracts;
- (c) any Hedge Agreement in respect of power and/or natural gas in excess of any Required

Hedges up to the capacity of the Project in regard to power hedges and up to the natural gas demand for the Project in regard to natural gas hedges; and

(d) Hedge Agreements for the Existing Plant in respect of power (not to exceed **Redacted** megawatts) and/or natural gas (not to exceed **Redacted** GJ/day), for a period not to extend beyond Substantial Completion. [**Commercially sensitive hedging amounts redacted**]

10.2.15 Change of Control Covenant

The Borrower shall not permit a Change of Control.

10.2.16 Investments

Prior to the Completion Date, no Loan Party shall make or permit to remain outstanding any loans, advances or other extensions of credit to or any other investments in any person, other than (a) Approved Securities, (b) to other Loan Parties, provided that such loans, advances or other extensions of credit to or investments in other Loan Parties are used only for the purposes of the business of such Loan Parties described in Section 7.9, (c) as contemplated in subparagraph (g) of Permitted Distributions, and (d) **Redacted**, and without limiting the foregoing, the Borrower will not organize or acquire any Subsidiary other than existing Subsidiaries. [**Commercially sensitive terms redacted**]

10.2.17 Change Orders

The Borrower will not, and will not permit any Loan Party to, issue any Change Orders under any Material Project Contract, except the EPC Contract, in excess of **\$Redacted** individually or in excess of **\$Redacted** in the aggregate with all other Change Orders issued under all of the Material Project Contracts except the EPC Contract, and in respect of the EPC Contract in excess of **\$Redacted** in the aggregate, unless such Change Order has been approved by the Majority Lenders, in consultation with the Independent Engineer or unless such Change Order is funded by Permitted Subordinated Debt. [**Commercially sensitive amounts redacted**]

10.2.18 Substantial Completion

The Borrower will not permit, or allow any Loan Party to permit, "Substantial Completion" (as defined in the EPC Contract) to occur if the unfunded Final Punch List Items thereunder exceed, in the aggregate, **\$Redacted** (such unfunded amount to be confirmed by the Independent Engineer). [**Commercially sensitive amount redacted**]

10.2.19 Anti-Terrorism Law; Anti-Money Laundering

The Borrower agrees that it will not, and will not allow any Loan Party to, at any time, directly or indirectly: (i) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property in violation of any applicable Law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), or (ii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

10.2.20 Illegal Funds

The Borrower will not permit any of its funds that are used to repay the Credit Facilities to be knowingly derived from any unlawful activity.

10.2.21 Real Property Interests

The Borrower will not permit, and will not allow any other Loan Party to permit, the discharge, transfer or postponement of any instrument registered against title to the Site Lands in respect of the Real Property Interests.

10.2.22 Accounts

From and after the date which is 90 days after the Closing Date, except for the Permitted Accounts, the Borrower and each other Loan Party shall not establish or maintain any bank account or investment account with any person other than the Administrative Agent or its Affiliates.

10.3 Administrative Agent May Perform Covenants

If the Borrower shall fail to perform or observe any covenant or obligation on its part contained herein or in any other Credit Facility Document, the Administrative Agent may, in its sole discretion acting reasonably, and shall upon the instructions of the Majority Lenders, after receiving appropriate indemnities and undertakings from the Lenders to pay their *pro rata* share of any such costs, perform (or cause to be performed) any of the said covenants or obligations capable of being performed by the Administrative Agent and, if any such covenant or obligation requires the payment or expenditure of money, the Administrative Agent may make such payment or expenditures with its own funds or with money borrowed for that purpose (but the Administrative Agent shall be under no obligation to do so); provided that the Administrative Agent shall first have provided written notice of its intention to the Borrower and a reasonable opportunity (not to exceed five days, or such longer period as the Lenders shall approve) to cure the failure. All amounts paid by the Administrative Agent pursuant to this Section 10.3 shall be repaid by the Borrower to the Administrative Agent on demand therefor, shall form part of the Obligations and shall be secured by the Security. No payment or performance under this Section 10.3 shall relieve the Borrower from any Event of Default.

**ARTICLE 11
CHANGES IN CIRCUMSTANCES**

11.1 **Illegality**

If any Lender determines that any Law has made it unlawful, or that any Official Body has asserted that it is unlawful, for any Lender or its applicable Lending Branch to make or maintain any Advance (or to maintain its obligation to make any Advance), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if Conversion would avoid the activity that is unlawful, convert any Advances, or take any

necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or Conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Branch if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

11.2 **Circumstances Re CDOR Advances**

If the Majority Lenders, acting reasonably, determine that for any reason:

- (a) adequate and reasonable means do not exist for determining CDOR Rate for any requested Interest Period with respect to a requested CDOR Advance; or
- (b) CDOR Rate for any requested Interest Period with respect to a requested CDOR Advance will not adequately and fairly reflect the cost to such Lenders of funding such CDOR Advance,

the Administrative Agent shall promptly so notify the Borrower and each Lender. Thereafter, the obligations of the Lenders to make CDOR Advances to the Borrower shall be suspended until the Administrative Agent (upon the instruction of the Majority Lenders) revokes such notice. Upon receipt of such notice the Borrower may revoke any pending request for a borrowing, Conversion or Rollover of a CDOR Advance or, failing that, will be deemed to have converted such request into a request for a borrowing of a Canadian Prime Rate Advance in the amount specified therein.

11.3 **Increased Costs**

11.3.1 Increased Costs Generally

If any Change in Law shall:

- (a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
- (b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Advance made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or other Taxes covered by Section 11.4 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or
- (c) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Advances made by such Lender or any Letter of Credit or Bankers' Acceptances,

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Advance (or of maintaining its obligation to make any such Advance), or to increase the cost to such Lender or the LC Lender of issuing or maintaining any Letter of Credit or Bankers' Acceptance (or of maintaining their obligation to issue any Letter of Credit or Bankers' Acceptance), or to reduce the amount of any sum received or receivable by such Lender or the LC Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender or the LC Lender

the Borrower will pay to such Lender or the LC Lender such additional amount or amounts as will compensate such Lender or LC Lender for such additional costs incurred or reduction suffered.

11.3.2 Capital Requirements

If any Lender determines that any Change in Law affecting such Lender, or the Lending Branch of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts ("**Additional Amounts**") as will compensate such Lender or its holding company for any such reduction suffered.

11.3.3 Mitigation of Increased Costs

If, in respect of any Lender, circumstances arise which would, or would upon the giving of notice, result in the Borrower being obliged to pay such Lender any additional amounts under Section 11.3, then, without in any way limiting, reducing or otherwise qualifying the Borrower's Obligations under this Agreement, such Lender shall, after consultation with the Administrative Agent and the Borrower and to the extent that it can lawfully do so and without prejudice to its own position, take all such steps as it may reasonably consider to be available to it (including a change in its Lending Branch or the transfer of its rights, benefits and obligations hereunder to another financial institution willing to participate in the Credit Facilities) to mitigate the effects of such circumstances on the Borrower; provided that, for the avoidance of doubt, the reasonable costs of such Lender taking any such steps shall be borne by the Borrower. If, notwithstanding the taking of any such steps, payments in material amounts continue to be required to be made by the Borrower to such Lender under Section 11.3, the Borrower may, at its sole expense and effort by 10 days' notice in writing to the Administrative Agent and such Lender, nominate a financial institution (a "**proposed Transferee**") willing to accept a transfer in accordance with Section 14.12.2 of all of such Lender's rights and obligations hereunder and if:

- (a) the Administrative Agent is satisfied that as a result of such transfer the Borrower would not be required to make any such payments or would only be required to make such payments in materially lesser amounts;
- (b) such Lender receives from the proposed Transferee an amount equal to the aggregate of such Lender's share of all Advances then outstanding, all interest and fees accrued thereon to the date of such receipt and all other amounts due to such Lender under the Credit Facility Documents (other than amounts owing under any Lender Hedge entered into by such Lender) and not theretofore paid by the Borrower;
- (c) the Administrative Agent is paid the assignment fee specified in Section 14.12.2(i);
- (d) prior to the Construction Term-Out Date, such proposed Transferee (unless it is already a Lender) is acceptable to the Administrative Agent, acting reasonably;

- (e) if such Lender is the LC Lender, such proposed Transferee is acceptable to the Administrative Agent, acting reasonably; and
- (f) such assignment does not conflict with applicable Law.

such Lender shall effect such transfer to the proposed Transferee. In connection with any such transfer to a proposed Transferee, such affected Lender, or such Lender's affiliate, as the case may be, shall use Commercially Reasonable Efforts to transfer any Lender Hedges to which it is a party to such proposed Transferee, another Lender or an affiliate of another Lender, on terms of novation that are acceptable to such transferring Lender (or its affiliate, as applicable), at the sole cost and expense of the Borrower.

11.3.4 Certificates for Reimbursement

A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 11.3.1 or 11.3.2, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive evidence of such amount, absent manifest error. The Borrower shall pay such Lender the Additional Amounts within 10 days after receipt of such certificate.

11.3.5 Delay in Requests

Failure or delay on the part of any Lender to demand compensation pursuant to this Section 11.3 shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section 11.3 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

11.4 **Taxes, Costs, Etc.**

11.4.1 Payments Subject to Taxes

Any and all payments by or on account of any Obligation of the Borrower hereunder or under any other Credit Facility Document shall be made free and clear of, and without reduction, set-off, counterclaim or withholding for, any Indemnified Taxes (including Other Taxes), provided that if the Borrower, the Administrative Agent, or any Lender is required by Law to deduct or pay any Indemnified Taxes (including any Other Taxes) from such payments, then:

- (a) the sum payable shall be increased by the Borrower when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section 11.4) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required;
- (b) the Borrower shall make any such deductions required to be made by it under Law; and
- (c) the Borrower shall timely pay the full amount required to be deducted to the relevant Official Body in accordance with Law.

11.4.2 Payment of Other Taxes by the Borrower

Without limiting the provisions of Section 11.4.1 above, the Borrower shall timely pay any Other Taxes to the relevant Official Body in accordance with Law.

11.4.3 Indemnification by the Borrower

The Borrower shall indemnify the Administrative Agent and each Lender for, and shall pay within ten (10) days after demand therefor, the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 11.4) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive evidence absent manifest error.

11.4.4 Evidence of Payments

As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to an Official Body, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Official Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

11.4.5 Status of Lenders

Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Facility Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition:

- (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements; and
- (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.

11.4.6 Treatment of Certain Refunds

If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 11.4 or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise

payable by it, it shall pay to the Borrower an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or under this Section 11.4 with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Official Body with respect to such refund). The Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Official Body) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Official Body. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

ARTICLE 12 EVENTS OF DEFAULT

12.1 Events of Default

Each of the events set forth in this Section 12.1 shall constitute an **“Event of Default”**.

12.1.1 Payment

The Borrower shall fail:

- (a) to pay any of the Outstanding Principal when the same becomes due and payable;
- (b) to reimburse any Lender in respect of any Letter of Credit, or pay the Face Amount thereof, when required hereunder; or
- (c) to pay any interest, fee, cost or other amount due hereunder or any Hedge Liability owing to the Administrative Agent or a Lender Party when the same becomes due and payable and such failure shall remain unremedied for a period of three Business Days.

12.1.2 Representations and Warranties Incorrect

Any of the representations or warranties made or deemed to be made by the Borrower or any other Loan Party in any Credit Facility Document to which it is a party shall prove to be or have been incorrect when made or deemed to have been made, and the underlying facts, if capable of being remedied such that the representation and warranty if made at such time would be correct, are not so remedied within 30 days after the earlier of (i) the Borrower’s knowledge thereof, and (ii) written notice thereof has been given to the Borrower by the Administrative Agent.

12.1.3 Failure to Perform Covenants

Any Loan Party shall:

- (a) fail to observe or perform any of the covenants in Section 10.1.1 (except 10.1.1(b) and (c)), 10.1.7, 10.1.13, 10.1.24, **Error! Reference source not found.** or Section 10.2;

- (b) fail to obtain and maintain the insurance required pursuant to Article 9; or
- (c) fail to perform or observe any other covenant contained in any Credit Facility Document to which it is a party on its part to be performed or observed (except as otherwise provided under this Section 12.1),

provided that in the case of (c) only, if such failure is capable of being remedied, no Event of Default shall occur as a result thereof unless and until such failure shall have remained unremedied for 30 days after written notice thereof has been given to the Borrower by the Administrative Agent.

12.1.4 Cross Default

A default or event of default shall have occurred in respect of other Debt of the Borrower or any Loan Party that is outstanding in an amount of at least \$250,000 in the aggregate (or the Equivalent Amount in other currencies) beyond any applicable grace period and as a result thereof the lender or counterparty thereunder has demanded, accelerated or has the right to demand or accelerate repayment of such Debt if the same is not already due and payable.

12.1.5 Subordinated Credit Agreement Default

A default, event of default or other similar condition or event (however described) in respect of the Borrower or any Loan Party shall have occurred under the Subordinated Credit Agreement and any applicable grace period in respect thereof shall have expired.

12.1.6 Voluntary Events of Bankruptcy

Any Loan Party shall:

- (a) apply for or consent to the appointment of, or the taking of possession by a receiver, custodian, administrator, trustee, liquidator or other similar official for itself or for all or any substantial part of its assets;
- (b) generally not pay its debts as such debts become due or admit in writing its inability to pay its debts generally, or declare any general moratorium on its indebtedness;
- (c) commit an act of bankruptcy, or make a general assignment for the benefit of creditors or a proposal under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies' Creditors Arrangement Act (Canada)* or a similar Law of any applicable jurisdiction;
- (d) institute any proceeding seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, dissolution, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any statute, rule or regulation relating to bankruptcy, insolvency, reorganization, relief or protection of debtors or at common law or in equity; or
- (e) take any corporate or partnership action to authorize any of the actions described in this Section 12.1.6.

12.1.7 Involuntary Events of Bankruptcy

If a receiver is appointed over all or any substantial part of the assets of any Loan Party or any cause, petition or proceeding against any Loan Party shall be instituted in any court of competent jurisdiction seeking, in respect of such Loan Party, an adjudication in bankruptcy, reorganization, dissolution, winding-up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or the like of any Loan Party, or of all or any substantial part of its assets, or any other like relief in respect of any Loan Party under any bankruptcy or insolvency law and:

- (a) such receiver is not removed within five days thereof or such cause, petition, proceeding or other action results in an entry of an order for relief or any such adjudication or appointment unless such order, adjudication or appointment is stayed or otherwise effectively reversed within five days thereof; or
- (b) if such receivership, cause, petition, proceeding or other action is being contested by such Loan Party, as applicable, in good faith (and a stay has been obtained, as contemplated in (a) above), the same shall continue undismissed and in effect, for any period of 45 consecutive days.

12.1.8 Execution

All or any material part of the assets of a Loan Party are sequestered or distrained upon or become subject to any order of a court or other process and such attachment, execution, sequestration, distraint, order or process:

- (a) relates to claims in the aggregate in excess of (i) up to the Construction Term-Out Date, **\$Redacted**, and (ii) thereafter, **\$Redacted** (or, in each case, the Equivalent Amount in other currencies); and **[Commercially sensitive amounts redacted]**
- (b) such Loan Party shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, or deposit with the Administrative Agent cash collateral or other security satisfactory to the Lenders in the amount of the claim, within 30 days from the date of entry thereof.

12.1.9 Judgments

A final judgment or judgments for the payment of money shall be rendered against any Loan Party in an amount in excess of (i) up to the Construction Term-Out Date, **\$Redacted**, and (ii) thereafter, **\$Redacted** (or, in each case, the Equivalent Amount in other currencies) and the same shall remain undischarged for a period of 30 days during which such judgment or judgments shall not be on appeal or execution thereof shall not be effectively stayed. **[Commercially sensitive amounts redacted]**

12.1.10 Credit Facility Document Unenforceable

Any Credit Facility Document or any material provision thereof shall become unenforceable or the Lien of any of the Security shall cease to rank in priority in the manner contemplated herein or in the Security other than by reason of the direct act of the Administrative Agent or the Lenders.

12.1.11 Completion Date

In the opinion of the Independent Engineer, acting reasonably, Completion will not be achieved by the Outside Date and within thirty (30) days of the Independent Engineer or the Administrative Agent advising the Borrower of same, the Recovery Plan has not been initiated or is thereafter not complied with.

12.1.12 Insufficient Funds

In the opinion of the Independent Engineer, acting reasonably, the Available Funds are insufficient to fund the remaining Cost to Complete and such insufficiency shall have remained unremedied for 60 days after written notice thereof has been given to the Borrower by the Administrative Agent.

12.1.13 Breach under Material Project Contract

Any party to a Material Project Contract breaches any term thereof and such breach is not remedied or fully mitigated within the Applicable Cure Period, if any, provided that for any Material Project Contract, (i) such breach will not be a Default or Event of Default if the breach of such Material Project Contract could not reasonably be expected to have a MAE, or (ii) within 45 days the Borrower diligently undertakes to replace the Material Project Contract with a new Material Project Contract acceptable to the Majority Lenders, acting reasonably, provided such new Material Project Contract is entered into within 90 days following such 45 day period.

12.1.14 Repudiation or Early Termination of Material Project Contract

Any Material Project Contract or any material provision thereof is repudiated, becomes unenforceable or terminates prior to its scheduled termination following satisfaction of the mutual obligations of the parties thereto unless for any Material Project Contract: (a) the repudiation, unenforceability or early termination could not reasonably be expected to have a MAE, or (b) within 30 days the applicable Loan Party thereto diligently undertakes to cure such event or to replace the Material Project Contract with a new Material Project Contract acceptable to the Majority Lenders, acting reasonably, provided, the event is cured or such new Material Project Contract is entered into within 60 days.

12.1.15 Major Counterparty Insolvency Event

The occurrence of a "**Major Counterparty Insolvency Event**", which means any of the following events as they may apply to the EPC Contractor, either EPC Contract Guarantor prior to the Construction Term-Out Date, or both EPC Contract Guarantors after the Construction Term-Out Date (in this definition, a "**Major Counterparty**") only for so long as they have outstanding obligations, including warranty obligations, under the EPC Contract to which they are a party, namely:

- (a) a Major Counterparty shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors;
- (b) any proceeding shall be instituted by or against a Major Counterparty seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement adjustment, protection, relief or composition of it or its debts under any law

relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver or trustee or other similar official for it or for any substantial part of its property, including without limitation any such proceeding under the *Companies' Creditors Arrangement Act* (Canada) and, in the case of any such proceeding instituted against a Major Counterparty (but not instituted by such Major Counterparty), either such proceeding shall remain undismitted or unstayed for a period of 60 days or any of the actions sought in such proceeding (including without limitation the entry of an order for relief or the appointment of a receiver or trustee or other similar official for it or for any substantial part of its property) shall occur;

- (c) a Major Counterparty shall take any action to authorize any of the actions set forth above;

and in the event of any such occurrence, the Borrower has failed to replace the applicable Material Project Contract with a replacement Material Project Contract and new Major Counterparty (acceptable to the Lenders, acting reasonably) within 45 days thereof.

12.1.16 Revocation or Withdrawal of Permit

Thirty or more days have elapsed since any Permit necessary to construct or Operate the Project has been revoked, withdrawn or not obtained if such revocation, withdrawal or failure to obtain could reasonably be expected to have a MAE.

12.1.17 Third Party Permits

Any failure of a Counterparty to obtain a Third Party Permit or to obtain a Third Party Permit in a timely manner if the failure to so obtain such Third Party Permit would reasonably be expected to either (a) have a MAE, or (b) cause a delay such that Completion would not reasonably be expected to occur on or prior to the Outside Date.

12.1.18 Taxes

Any failure by the Borrower or any other Loan Party to pay Taxes that results in Project Assets being material to the Project being subject to execution or similar proceedings for such unpaid Taxes by the applicable Official Body.

12.1.19 Insufficient Insurance Proceeds

In the event of loss or damage to the Project resulting in insurance proceeds of more than **\$Redacted**, the insurance proceeds, together with other available funds held or arranged by the Loan Parties including the contingency (and which sources of funds, in the case of funds arranged and not yet held by the Loan Parties, are acceptable to the Lenders, in their discretion) are not sufficient to repair, rebuild or replace the damage or destruction in respect of which the insurance proceeds are payable, unless within 30 days after written notice thereof has been given to the Borrower by the Administrative Agent: [**Commercially sensitive amount redacted**]

- (a) the Borrower eliminates the shortfall; or
- (b) initiates a review by the Independent Engineer and the Independent Engineer provides an opinion that the repair, rebuilding or replacement can be completed with the insurance proceeds and other funds held or arranged by the Loan Parties (including the

Construction Facility and the Permitted Subordinated Debt), including the contingency, the sources of which are acceptable to the Lenders, in their discretion.

12.1.20 Change of Control

- (a) Change of Control occurs; or
- (b) any of the Material Subsidiaries ceases to be a wholly owned direct or indirect subsidiary of the Borrower.

12.1.21 Abandonment

The Borrower and the other Loan Parties shall voluntarily cease all or substantially all activities: (a) in the modification of the Existing Plant, and the construction, development and start-up of the Plant for 30 consecutive days prior to the Substantial Completion Date, or (b) in the operation and maintenance of the Plant for 30 consecutive days following the Substantial Completion Date.

12.1.22 Constating Documents

The constating documents of the Borrower or any other Loan Party shall be amended in a manner that changes the objects and powers of the Borrower or any other Loan Party.

12.1.23 Expropriation

There is a Taking of all or a substantial part of the Project.

12.1.24 Change in Law

The introduction of or change in the interpretation or application of, or any revocation or replacement of any applicable Law has occurred which, in any case is likely to materially adversely affect the ability of a Loan Party to meet its obligations under any Credit Facility Document or Material Project Contract.

12.1.25 Independent Engineer Monitoring Confirmation

The Independent Engineer is unable to certify the matters required to be confirmed in the Independent Engineer Monitoring Confirmation to be contained in each Construction Report.

12.1.26 **Redacted [Commercially sensitive terms redacted]**

12.2 **Effect**

12.2.1 General

Upon the occurrence and continuance of an Event of Default, except as provided in Section 12.2.2 below, the Administrative Agent:

- (a) shall, at the request of Majority Lenders, by notice to the Borrower cancel all obligations of the Lenders in respect of the Commitments (whereupon no further Advances may be

made and any Advance Request given with respect to an Advance occurring on or after the date of such Advance Request shall cease to have effect);

- (b) shall, at the request of Majority Lenders, by notice to the Borrower declare the Outstanding Credit Obligations to be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) shall, at the request of the Majority Lenders, take any such action as is required to protect the interests of the Lenders and the Hedge Lenders in and to any portion of the assets or undertaking subject to the Lien granted pursuant to the Security, including taking any action required to protect and defend such interests in any proceedings or process arising out of or in connection with an Insolvency Event of Default or any other administrative, arbitral or judicial proceeding or hearing.

12.2.2 Specific Defaults

If any Event of Default specified in Section 12.1.6 or 12.1.7 shall occur then all obligations of the Lenders in respect of the Commitments shall be automatically cancelled and the Outstanding Credit Obligations shall be forthwith due and payable, all as if the request and notice specified in each of Sections 12.2.1(a) and 12.2.1(b) above had been received and given by the Administrative Agent.

12.2.3 Enforcement

Upon the occurrence of an Event of Default and acceleration of the Outstanding Credit Obligations, the Administrative Agent may, and shall at the request of Majority Lenders, commence such legal action or proceedings as it may deem expedient, including exercising and enforcing its rights and remedies under any Security, all without any additional notice, presentation, demand, protest, notice of dishonour, entering into of possession of any of the property or assets of the Borrower, or any other action, notice of all of which the Borrower hereby expressly waives.

The rights and remedies of the Administrative Agent and the Lender Parties hereunder and under the other Credit Facility Documents are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Law; provided that nothing herein contained shall permit any Lender Party to take any steps which, pursuant to this Agreement, may only be undertaken by or with the consent of all the Lender Parties, all the Lenders or the Majority Lenders, as the case may be. Nothing contained herein or in any Security now or hereafter held by the Administrative Agent, with respect to the Collateral or any part thereof, nor any act or omission of the Administrative Agent or any Lender Party with respect to such Security, shall in any way prejudice or affect the rights, remedies and powers of the Administrative Agent or the Lender Parties with respect to any other such Security.

12.3 **Right of Set-Off**

If an Event of Default has occurred and is continuing and a declaration under Section 12.2.1(b) has been made or the Outstanding Credit Obligations have become due and payable under Section 12.2.2, each of the Lender Parties and each of their respective Affiliates is hereby authorized by the Borrower at any time and from time to time to the fullest extent permitted by Law to set-off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held or other obligations (in whatever currency) at any time owing by such Lender Party or any such

Affiliate to or for the credit or the account of the Borrower against any and all of the Outstanding Obligations of the Borrower now or hereafter existing under this Agreement or any other Credit Facility Document to such Lender Party, and without limitation the Administrative Agent may debit any account of the Borrower for any such Outstanding Obligations, whether owed to the Administrative Agent in its capacity as Administrative Agent or Lender or owed to other Lender Parties. The rights of each of the Lender Parties and their respective Affiliates under this Section 12.3 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender Parties or their respective Affiliates may have. Each Lender Party agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application, but the failure to give such notice shall not affect the validity of such set-off and application. If any Affiliate of a Lender Party exercises any rights under this Section 12.3, it shall share the benefit received in accordance with Section 14.1 as if the benefit had been received by the Lender Party of which it is an Affiliate.

12.4 **Priorities and Application of Realization Proceeds**

- (a) Following commencement of an Enforcement Action, the Administrative Agent shall apply or cause to be applied the applicable Collateral and any proceeds of any sale, disposition, realization, redemption, foreclosure or any other method of enforcement of the Security against the Collateral and all other payments received in respect thereof (collectively, the **"Realization Proceeds"**) in the following order of priority:
- (i) first, in payment to, or reimbursement of, the Administrative Agent of its compensation, costs (including legal fees and disbursements), charges, expenses, borrowings, advances or other amounts furnished or provided by or at the instance of the Administrative Agent in the execution of its duties under, or otherwise in relation to, this Agreement and the other Credit Facility Documents;
 - (ii) second, in payment to, or reimbursement of, the Lender Parties for the costs, charges, expenses, borrowings, advances or other amounts furnished or provided by them in conjunction with exercising any remedies under this Agreement and the other Credit Facility Documents including, but not limited to, any indemnities provided by it to the Administrative Agent or any trustee, receiver, receiver and manager or any other person performing a similar function; and
 - (iii) third, to the payment in full of the Outstanding Obligations owed to the Lender Parties;
 - (iv) fourth, the surplus, if any, remaining from such proceeds will be paid to the Borrower, unless otherwise directed by a court of competent jurisdiction or as required by applicable Law.
- (b) The Realization Proceeds distributed in accordance with Section 12.4(a) shall be shared and distributed among the Lender Parties at each priority level according to their respective Proportionate Share of the Outstanding Obligations owed to such Lender Party at such priority level, determined at the time the Realization Proceeds are distributed to such Lender Parties; provided that no Lender Party shall be entitled to receive Realization Proceeds greater than the amount of Outstanding Obligations owed to such Lender Party.

- (c) Notwithstanding Sections 12.4(a) and 12.4(b) and subject to the prior reimbursement of costs in accordance with Sections 12.4(a)(i) and 12.4(a)(ii) with respect to any Enforcement Action relating to (i) the Collateral Accounts, the Realization Proceeds thereof shall be used to repay in full the Lenders (including the Hedge Lenders) based on their Proportionate Share of Outstanding Obligations; and (ii) the Realization Proceeds thereof shall be first used to repay in full the Lenders based on their Proportionate Share of the Outstanding Credit Obligations owing to the Lenders prior to the Hedge Lenders being entitled to any such proceeds.
- (d) For the purposes of payments and distributions hereunder, the full amount of Outstanding Credit Obligations represented by the Face Amount of any Letter of Credit or Bankers' Acceptance shall be deemed to be then due and owing, and the Face Amount of any Letters of Credit and Bankers' Acceptances then outstanding and all unreimbursed obligations due on any Letters of Credit and Bankers' Acceptances that have been drawn upon shall be considered principal owing pursuant to Outstanding Credit Obligations relating to Letters of Credit and Bankers' Acceptances and the amount outstanding under the Letters of Credit and Bankers' Acceptances for purposes of determining each Lender's Proportionate Share. Amounts distributable hereunder to the Lenders on account of such Outstanding Credit Obligations under Letters of Credit and Bankers' Acceptances shall be deposited in a separate collateral account in the name of and under the control of the applicable Lender who issued the applicable Letter of Credit or Bankers' Acceptance and held by such Lender first as security for such Letter of Credit and Bankers' Acceptance Outstanding Credit Obligations and then shall be paid over to the Administrative Agent as security for all other Outstanding Credit Obligations and the amount so deposited shall be applied to the Letter of Credit and Bankers' Acceptance Outstanding Credit Obligations at such times and to the extent that such Letter of Credit and Bankers' Acceptance Outstanding Credit Obligations become an absolute liability and, if and to the extent that such Letter of Credit indebtedness, liability and obligation fails to become absolute Outstanding Credit Obligations because of the expiration or termination of the underlying Letters of Credit without being drawn upon, then such amounts shall be applied to the remaining Outstanding Obligations in the order provided above.

This Section 12.4 shall apply to all forms of proceeds forming part of any of the Collateral, including proceeds arising from insurance coverage and expropriation, eminent domain, forced sale or similar disposition of property (including sale under threat of expropriation).

12.5 Payments to be Held in Trust

To the extent that a Lender Party receives any Realization Proceeds or any payment or distribution (whether by exercise of any right of set off, combination of accounts or other similar right or remedy or otherwise) from or on behalf of the Borrower, or takes control, custody or possession of any Collateral (other than as a result of the close-out netting or transactions netting permitted by a Hedge Agreement in calculating the net amount payable upon the termination of a transaction under a Hedge Agreement or in calculating the net amount payable in respect of specific transactions under Hedge Agreements), in respect of any Outstanding Obligations which pursuant to this Agreement it should not have received or is not entitled to retain for its own benefit, it will hold such payment or distribution in trust for the other Lender Parties entitled thereto pursuant to the terms hereof and will deliver the payment,

distribution or possession thereof to the Administrative Agent on behalf of such Lenders Parties forthwith after receiving same.

ARTICLE 13 THE ADMINISTRATIVE AGENT AND THE LENDERS

13.1 Authorization and Action

Each Lender Party hereby appoints and authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under this Agreement and the other Credit Facility Documents (other than under any documents evidencing the Lender Hedges) as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement or such other Credit Facility Documents, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully indemnified and protected in so acting or refraining from acting) upon the instructions of the Majority Lenders (or such other number or percentage of the Lenders or the Lender Parties as shall be expressly provided for in this Agreement or other Credit Facility Document, subject in all cases to Sections 14.2.1, 14.2.2 and 14.2.3) and such instructions shall be binding upon all Lender Parties; provided that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or such other Credit Facility Documents or applicable Law. Without limitation of the foregoing, the Administrative Agent may grant releases and postponements of the Security to the extent in each case the Security extends to assets which are disposed of in accordance with this Agreement. The provisions of this Article 13 are solely for the benefit of the Administrative Agent and the Lender Parties, and the Borrower shall not have rights as a third party beneficiary of any such provisions.

13.2 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition under Sections 6.1 and 6.2 hereunder to the making of Advances and that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Advances. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

13.3 **Exculpatory Provisions**

13.3.1 Express Duties

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Facility Documents (excluding for the purposes of this Section 13.3 the Lender Hedges). Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by such other Credit Facility Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders or Lender Parties as shall be expressly provided for in such Credit Facility Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to such Credit Facility Document or Law; and
- (c) shall not, except as expressly set forth herein and in such other Credit Facility Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.

13.3.2 Limitation of Liability

The Administrative Agent shall not be liable for any action taken or not taken by it:

- (a) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders or Lender Parties as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Credit Facility Documents (excluding for the purposes of this Section 13.3.2 the Lender Hedges)); or
- (b) in the absence of its own gross negligence or wilful misconduct.

The Administrative Agent shall be deemed not to have knowledge of any Default or an Event of Default unless and until notice describing the Default or Event of Default is given to the Administrative Agent by the Borrower or a Lender.

13.3.3 No Obligation to Inquire

Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

- (a) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Facility Document;

- (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or an Event of Default;
- (d) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Facility Document or any other agreement, instrument or document; or
- (e) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

13.4 **Non-Reliance on Administrative Agent and Other Lender Parties**

Each Lender Party acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender Party or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender Party also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender Party or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Facility Document or any related agreement or any document furnished hereunder or thereunder.

13.5 **Administrative Agent and Affiliates**

The Administrative Agent, which is also a Lender, shall have the same rights and powers in its capacity as a Lender under this Agreement and every other Credit Facility Document (other than the Lender Hedges which it is not a party to) as any other Lender and may exercise the same as though it were not the Administrative Agent; and the terms "**Lender**" and "**Lenders**" shall, unless otherwise expressly indicated, include the Administrative Agent in its capacity as Lender. Each Lender Party (including the Administrative Agent) and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower and its Affiliates, or any corporation or other entity owned or Controlled by such persons, and any person which may do business with such persons, all as if it were not a party hereto and without any duty to account therefor to any other Lender Party; provided that nothing in this Section 13.5 shall affect in any manner whatsoever any covenant or other obligation on the part of the Borrower or any other person to be observed or performed under this Agreement or any such other Credit Facility Document.

13.6 **Lender Party Credit Decision**

13.6.1 Lender Party's Own Decision

It is understood and agreed by each Lender Party 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 Borrower and its Affiliates.

Accordingly, each Lender Party confirms to the Administrative Agent and each other Lender Party that it has not relied, and will not hereafter rely, on the Administrative Agent or any other Lender Party:

- (a) to check or inquire on its behalf into the adequacy, accuracy or completeness of any information provided by or on behalf of the Borrower or any of its Affiliates under or in connection with this Agreement or any other Credit Facility Document or the transactions herein or therein contemplated (whether or not such information has been or is hereafter distributed to such Lender by the Administrative Agent or other Lender Party); or
- (b) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or any of its Affiliates.

13.6.2 Lender Party's Satisfaction

Each Lender Party acknowledges that a copy of this Agreement and the other Credit Facility Documents have been made available to it for its review and that it is satisfied with the form and substance hereof.

13.7 **Collective Action of the Lender Parties**

Each of the Lender Parties hereby acknowledges that to the extent permitted by Law, any collateral security and the remedies provided under the Credit Facility Documents to the Lenders Parties (other than the remedies provided to the Hedge Lenders under the Lender Hedges) are for the benefit of the Lender Parties collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders or Lender Parties as shall be expressly provided for in the Credit Facility Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lender Parties hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders or Lender Parties as shall be expressly provided for in the Credit Facility Documents). Each of the Lender Parties hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent reasonably requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lender Parties and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lender Parties take such action on behalf of the Lender Parties as it deems appropriate or desirable in the interest of the Lender Parties.

13.8 **No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Sole Lead Arranger and bookrunner, or holders of similar titles, if any, specified on the cover page of this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Facility Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender Party hereunder.

13.9 **Indemnification of Administrative Agent**

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Advances and other amounts owing to them (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Credit Facility Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

13.10 **Replacement of Administrative Agent**

13.10.1 Resignation/Removal of the Administrative Agent

The Administrative Agent may at any time give notice of its resignation to the Lender Parties and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having an office in Calgary, Alberta, or an Affiliate of any such Lender with an office in Calgary. The Administrative Agent may also be removed at any time by the Majority Lenders upon 30 days' notice to the Administrative Agent and the Borrower as long as the Majority Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having an office in Calgary, or an Affiliate of any such Lender with an office in Calgary.

13.10.2 Appointment of Successor Administrative Agent

If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lender Parties, appoint a successor Administrative Agent meeting the qualifications specified in Section 13.10.1, provided that if the Administrative Agent shall notify the Borrower and the Lender Parties that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and:

- (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Facility Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lender Parties under any of the Credit Facility Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed); and
- (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender Party directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

13.10.3 Successor Administrative Agent's Rights

Upon a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Facility Documents (if not already discharged therefrom as provided in Section 13.10.2 above). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Section 13.10 and of Section 14.6 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent. Upon the resignation or removal of the Administrative Agent pursuant to this Section 13.10, the Administrative Agent shall assign and transfer to the successor Administrative Agent all of its right, title and interest, as agent, in and to the Credit Facility Documents to which the Administrative Agent is a party or under which it has been provided with any rights. The successor Administrative Agent shall ensure that all required notices, registrations and filings in connection with such assignment are given or made, as the case may be, and the Borrower shall reimburse the successor Administrative Agent for and in respect of all of its reasonable costs and expenses in connection therewith.

13.11 **Sub-Agent or Co-Agent**

At any time or times, in order to comply with any legal requirement in any province, state or other jurisdiction, or to facilitate the taking by the Administrative Agent of any action provided for in any Credit Facility Document to which the Administrative Agent is a party or under which it has been provided with any rights, such Administrative Agent may appoint one or more trust companies, chartered banks or other persons (any of whom may, but need not be, a Lender) to act either as co-agent or sub-agent, jointly with the Administrative Agent or as a separate agent or agents on behalf of the Lender Parties, with such powers and authorities as the Administrative Agent deems necessary for the effective operation of the provisions of any Credit Facility Document. In the discretion of the Administrative Agent, any instrument or agreement appointing any such co-agent or sub-agent may include provisions for the protection of such co-agent or sub-agent similar to but no broader than the provisions of this Article 13. Upon the appointment of any such co-agent or sub-agent by the Administrative Agent, all references to the Administrative Agent in this Agreement and in all other Credit Facility Documents to which the Administrative Agent is a party or under which it has been provided with any rights shall thereafter be construed as references to such co-agent or sub-agent to the extent necessary in order to give effect to its powers, authorities and obligations.

ARTICLE 14 MISCELLANEOUS

14.1 **Sharing of Payments; Records**

14.1.1 Sharing of Payments by Lender Parties

If any Lender Party, by exercising any right of set-off or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender Party receiving payment or other reduction of a proportion of the aggregate amount of its Advances and accrued interest thereon or other obligations

hereunder greater than its *pro rata* share thereof as provided herein, then such Lender Party receiving such payment or other reduction shall:

- (a) notify the Administrative Agent of such fact; and
- (b) purchase (for cash at face value) participations in the Outstanding Obligations of the other Lender Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments and reductions shall be shared by the Lender Parties, rateably in accordance with the aggregate amount of the Outstanding Obligations owing to all the Lender Parties, provided that:
 - (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;
 - (ii) the provisions of this Section 14.1 shall not be construed to apply to:
 - (A) any payment made by the Borrower pursuant to, in accordance with and permitted by the express terms of this Agreement; or
 - (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participations in disbursements under Letters of Credit to any assignee or Participant, other than to the Borrower or any Affiliate of the Borrower (as to which the provisions of this Section 14.1 shall apply);
 - (iii) the provisions of this Section 14.1 shall not be construed to apply to:
 - (A) any payment made in respect of obligations of the Borrower to such Lender Party that do not arise under or in connection with the Credit Facility Documents and that are not otherwise prohibited by the provisions of this Agreement, if such payment is made while no Event of Default has occurred and is continuing;
 - (B) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Credit Facility Documents;
 - (C) a Hedge Lender netting the obligations owing to and by the Borrower under the Lender Hedge, to which such Hedge Lender is a party; or
 - (D) any payment to which such Lender Party is entitled as a result of any form of credit protection obtained by such Lender Party.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender Party acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim and similar rights of Lender Parties with respect to such participation as fully as if such Lender Party were a direct creditor of the Borrower in the amount of such participation.

14.1.2 Records

The Outstanding Principal under the Credit Facilities, the unpaid interest accrued thereon, the interest rate or rates applicable to any unpaid principal amounts, the duration of such application, the date of acceptance or issue, Face Amount and maturity of all Letters of Credit, Banker's Acceptances and BA Equivalent Advances and the Commitments shall at all times be ascertained from the records of the Administrative Agent, which shall be *prima facie* evidence of such amount.

14.2 **Amendments, Etc.**

14.2.1 Amendments – General

Subject to Section 14.2.2 below, no amendment or waiver of any provision of this Agreement or of any other Credit Facility Document, nor any consent to any departure by the Borrower or any Affiliate herefrom or therefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent on the instruction of the Majority Lenders (or all of the Lenders, as applicable), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Any reference herein to action to be taken by “**the Lenders**” and not “**all of the Lenders**” shall mean the Majority Lenders. Notwithstanding the foregoing: (i) any Hedge Lender may amend or waive any provision of any Lender Hedge to which it is a party, provided that any amendment to the early termination provisions of a Lender Hedge shall require the approval of the Majority Lenders, and (ii) any amendment or waiver to the Lender Hedge assignment provisions in Section 11.3.3 or Section 14.12.2(i) shall require the prior written consent of all of the Hedge Lenders that have Lender Hedges at such time.

14.2.2 Amendments – Unanimous

No amendment, waiver or consent listed in this Section 14.2.2 shall be effective, unless it is in writing and signed by the Administrative Agent on the instruction of all of the Lenders (which for the purpose of an amendment, waiver or consent applicable to 14.2.2(e), 14.2.2(h) and 14.2.2(i) below only, shall include the Hedge Lenders):

- (a) reduce the principal of, or interest on, any Advance or any fees hereunder;
- (b) increase the Commitment of any Lender or subject any Lender to any additional obligation;
- (c) postpone any date fixed for any payment of principal of or reduce any principal payment to be made hereunder, or postpone any date fixed for any payment of interest on, any Advance or any fees hereunder or increase the term of the Credit Facilities;
- (d) amend the types of Advances available under any of the Credit Facilities;
- (e) amend this Section 14.2;
- (f) amend the definition of “**Lenders**” or “**Majority Lenders**”;
- (g) permit a change in the Borrower or an assignment or transfer of any of its rights or obligations under any Credit Facility Document;

- (h) release any material portion of the Security or make any material amendment thereto or postponement thereof, except to the extent specifically provided for in this Agreement; or
- (i) amend or waive the requirements in Section 12.4.

14.2.3 Amendments – Administrative Agent

No amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent or the LC Lender, as applicable, affect the rights or duties of the Administrative Agent or the LC Lender under any Credit Facility Document.

14.3 **Notices, Etc.**

14.3.1 Notices Generally

Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.3.2 below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 14.3.2 below, shall be effective as provided in said Section 14.3.2.

14.3.2 Electronic Communications

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender of Advances to be made or Letters of Credit to be issued if such Lender has notified the Borrower that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes:

- (a) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient; and

- (b) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing paragraph (a) of notification that such notice or communication is available and identifying the website address therefor.

The addresses referred to above for the Borrower, the Administrative Agent, the Administrative Agent and the Independent Engineer are as follows, and in respect of the Lenders as set forth in Schedule 1 annexed hereto:

Borrower

Maxim Power Corp.

[Confidential contact information redacted]

with a copy to:

Burnet, Duckworth & Palmer LLP
2400, 525 - 8th Avenue S.W.
Calgary, AB T2P 1G1

[Confidential contact information redacted]

Administrative Agent

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

ATB Financial

Eighth Avenue Place, West Tower
Suite 600, 585 - 8th Avenue SW,
Calgary, AB T2P 1G1

[Confidential contact information redacted]

with a copy to:

McCarthy Tétrault LLP

Suite 4000
421-7th Avenue S.W.
Calgary, AB T2P 4K9
Canada

[Confidential contact information redacted]

Independent Engineer

BTY Group

2288 Manitoba Street,
Vancouver, BC V5Y 4B5

[Confidential contact information redacted]

14.3.3 Change

Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

14.3.4 Deliveries

All deliveries of financial statements and other documents to be made by the Borrower to the Lenders hereunder shall be made by making delivery of such financial statements and documents to the Administrative Agent (in sufficient copies for each Lender) to the address in Section 14.3.2 above or to such other address or by such electronic means as the Administrative Agent may from time to time notify to the Borrower. All such deliveries shall be effective only upon actual receipt.

14.3.5 Notice Irrevocable

Each Advance Request shall be irrevocable and binding on the Borrower.

14.3.6 Reliance

The Administrative Agent may act upon the basis of telephonic notice believed by it in good faith to be from the Borrower prior to receipt of an Advance Request. In the event of conflict between the Administrative Agent's record of the applicable terms of any Advance and such Advance Request, the Administrative Agent's record shall prevail, absent demonstrated error.

14.4 **No Waiver; Remedies**

No failure on the part of the Administrative Agent or any of the Lenders to exercise, and no delay in exercising, any right under any Credit Facility Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right under any Credit Facility Document preclude any other or further exercise thereof or the exercise of any other right. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by Law.

14.5 **Expenses**

14.5.1 Payment of Expenses

The Borrower shall pay to the Administrative Agent, on its own account and on behalf of the Lender Parties, all reasonable out-of-pocket costs and expenses (including all reasonable out-of-pocket legal fees and disbursements on a solicitor and own client basis) incurred by the Administrative Agent and the Lender Parties in connection with this Agreement, the other Credit Facility Documents and the Credit Facilities, including:

- (a) the negotiation, preparation, printing, execution and delivery, both prior and subsequent to the Closing Date, of the Credit Facility Documents (in this Section 14.5, collectively, the “**Documents**”);
- (b) the performance by the Administrative Agent of its duties;
- (c) the fees and expenses of the Independent Engineer, the Insurance Consultant and such other engineering, environmental, insurance consulting and other expert or professional services (provided no Default or Event of Default has occurred and is continuing, such consultants, experts or professionals are approved by the Borrower in advance, which approval shall not be unreasonably withheld, and in respect of the current Independent Engineer and the Insurance Consultant such approval has been granted), and necessary onsite inspections by the Administrative Agent, the Administrative Agent and the other Lender Parties or their respective representatives;
- (d) advice of counsel with respect to the Credit Facilities, any Document or any transaction contemplated thereunder;
- (e) the enforcement of any Credit Facility Document or the enforcement or preservation of rights under, and the refinancing, renegotiation or restructuring (including negotiation of any so called “**workout**” or similar transaction) of the Credit Facilities under, this Agreement or any other Credit Facility Document or the bringing of any action, suit or proceeding with respect to the enforcement of any Document or any such right or seeking any remedy which may be available to the Administrative Agent or the Lender Parties at law or in equity;
- (f) the maintenance of the registration, filing and the perfection of the Security and the Liens thereof; and
- (g) any amendments, waivers or consents requested by the Borrower pursuant to the provisions hereof or any other Credit Facility Document.

14.5.2 Survival

The obligations of the Borrower under this Section 14.5 shall survive the payment and performance of the Outstanding Obligations.

14.6 **Indemnification by the Borrower**

14.6.1 General

The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender Party and each Related Party of any of the foregoing persons (each such person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, costs, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party (including in connection with any suits or other proceedings commenced by the Borrower, any other Loan Party or their Affiliates) arising out of, in connection with, or as a result of:

- (a) the execution or delivery of this Agreement, any other Credit Facility Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation or non-consummation of the transactions contemplated hereby or thereby or the occurrence of a Default or Event of Default;
- (b) any Advance or the use or proposed use of the proceeds therefrom (including any refusal by the LC Lender to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit);
- (c) any Environmental Law or any actual or alleged presence or Release of Hazardous Materials relating to the Collateral or on or from any property owned or operated by the Borrower, or any Environmental Liability related in any way to the Borrower, the Plant or the Project; or
- (d) any actual or prospective claim, litigation, suit, judgment, investigation, order or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses:
 - (i) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee; or
 - (ii) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Credit Facility Document, if the Borrower or such other Loan Party has obtained a final and non-appealable judgment in its favour on such

claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 11.3 and 11.4.

14.6.2 Matching Funds

The Borrower shall promptly pay to each Lender any amounts required to compensate such Lender for any breakage or similar cost, loss, cost of redeploying funds or other cost or expense suffered or incurred by such Lender as a result of:

- (a) any payment being made by the Borrower in respect of a CDOR Advance (due to acceleration hereunder or a mandatory or voluntary repayment or prepayment of principal or for any other reason) on a day other than the last day of an Interest Period applicable thereto; provided that, where the event giving rise to such payment is a mandatory repayment or prepayment (other than by reason of the occurrence of an Event of Default), the Borrower may at its option instead deposit the amount of the repayment or prepayment (together with all interest and fees accruing to the last day of such Interest Period) into a Collateral Account pending expiry of the existing Interest Period and the monies in such Collateral Account shall be applied by the Administrative Agent to the required repayment or prepayment on the expiry of such Interest Period;
- (b) the Borrower's failure to give notice in the manner and at the times required hereunder; or
- (c) the failure of the Borrower to fulfill or honour, before the date specified for any Advance, the applicable conditions set forth in Article 6 or to accept an Advance after delivery of an Advance Request in the manner and at the time specified in such Advance Request.

A certificate of such Lender submitted to the Borrower (with a copy to the Administrative Agent) as to the amount necessary to so compensate such Lender or its Participants shall be conclusive evidence, absent demonstrated error, of the amount due from the Borrower to such Lender.

14.7 **Reimbursement by Lenders**

To the extent that the Borrower for any reason fails indefeasibly to pay any amount required under Section 14.5 or 14.6 to be paid by it to the Administrative Agent (or any sub-agent thereof), the LC Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the LC Lender or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the LC Lender in their capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the LC Lender in connection with such capacity. The obligations of the Lenders under this Section 14.7 are subject to the other provisions of this Agreement concerning several liability of the Lenders.

14.8 **Waiver of Consequential Damages, Etc.**

To the fullest extent permitted by Law, the Borrower shall not assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive,

aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Facility Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Facility Documents or the transactions contemplated hereby or thereby.

14.9 **Payments**

All amounts due under Section 14.6 shall be payable promptly after demand therefor. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in Section 14.5 or 14.6, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

14.10 **Judgment Currency**

14.10.1 Exchange Rate

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder to the Administrative Agent or a Lender in one currency (in this Section 14.10, the "**Original Currency**") into another currency (in this Section 14.10, the "**Judgment Currency**"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent or Lender could purchase the Original Currency with the Judgment Currency on the Business Day preceding that on which final judgment is paid or satisfied.

14.10.2 Obligation

The obligations of the Borrower in respect of any sum due in the Original Currency from it to the Administrative Agent or a Lender under any Credit Facility Document shall, notwithstanding any judgment in any Judgment Currency, be discharged only to the extent that, on the Business Day following receipt by the Administrative Agent or Lender of any sum adjudged to be so due in such Judgment Currency, the Administrative Agent or Lender may in accordance with normal banking procedures purchase the Original Currency with such Judgment Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Administrative Agent or Lender in the Original Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or Lender against such loss and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Administrative Agent or Lender in the Original Currency, the Administrative Agent or Lender agrees to remit such excess to the Borrower.

14.11 **Governing Law and Jurisdiction**

14.11.1 Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein.

14.11.2 Submission to Jurisdiction

The Borrower irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Alberta, in any action or proceeding arising out of or relating to this Agreement or any other Credit Facility Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of inconvenient forum to the maintenance of such action or proceeding. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Facility Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Facility Document against the Borrower or its properties in the courts of any jurisdiction.

14.11.3 Waiver of Venue

The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Facility Document in any court referred to in Section 14.11.2.

14.12 **Successors and Assigns**

14.12.1 General

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or grant participations except:

- (a) to an Eligible Assignee in accordance with the provisions of Section 14.12.2;
- (b) by way of participation in accordance with the provisions of Section 14.12.4; or
- (c) by way of pledge or assignment of a security interest subject to the restrictions of Section 14.12.6 (and any other attempted assignment or transfer by any party hereto shall be null and void).

Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 14.12.4 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

14.12.2 Assignments by Lenders

Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it) provided that:

- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Advances at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the Outstanding Principal balance of the Advance of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date), shall not be less than \$2,500,000, in the case of any assignment in respect of the Construction Facility and the Term Facility or the Letter of Credit Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);
- (b) unless the Administrative Agent and the Borrower consent otherwise, each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Advance or the Commitment assigned;
- (c) any assignment of the Letter of Credit Facility Commitment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless the person that is the proposed assignee is itself already a Lender with a Commitment;
- (d) any assignment must be in the same form of the Assignment and Assumption Agreement in Schedule 12 attached and be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:
 - (i) in the case of an assignment of a Commitment relating to an Advance under the Construction Facility, the proposed assignee is itself already a Lender with the same type of Commitment; or
 - (ii) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to an Advance under the Term Facility that is fully advanced;
- (e) unless an Event of Default has occurred and is continuing, if the assignment is prior to the Construction Term-Out Date, the proposed assignee (or a guarantor of the obligations of such assignee under this Agreement) is a financial institution whose senior, unsecured, non-credit enhanced, long-term debt is rated at least A3 by Moody's or A- by S&P;

- (f) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed if the assignment does not increase the costs to the Borrower pursuant to Article 11 or otherwise) unless:
 - (i) the assignment is by a Lender to an Affiliate of such Lender or to another Lender and the assignment does not increase the costs to the Borrower pursuant to Article 11 or otherwise or does not result in termination of any Interest Hedge, and the Administrative Agent provides notice to the Borrower of such assignment;
 - (ii) a Default of an Event of Default has occurred and is continuing; or
 - (iii) such assignment is made by a Lender to an Official Body purporting to have jurisdiction over such Lender who requires such assignment;
- (g) the relevant Lender must assign the same percentage of the amount of each of the Construction Facility, the Term Facility, Revolver Facility #1, Revolver Facility #2 and the Letter of Credit Facility which it holds unless the Administrative Agent and the Borrower consent or a Default or an Event of Default has occurred and is continuing;
- (h) the relevant Lender (or its affiliate) shall, if it is a Hedge Lender, concurrent with any permitted assignment by such Lender of the entirety of its rights and obligations under this Agreement (including in respect of the Commitments and the Advances owing to it), use Commercially Reasonable Efforts to transfer its rights and obligations under its Lender Hedges to the relevant permitted transferee or to another Lender Party or Affiliate of another Lender Party. With respect to any permitted assignment by a Lender of less than the entirety of its rights and obligations under and in respect of this Agreement, such Lender or its Affiliate shall not be required to make a corresponding transfer of its rights and obligations under any Lender Hedge to which it is a party, provided that, except if an Event of Default has occurred and is continuing, the Borrowers shall have the right to require such Lender or its Affiliate to use Commercially Reasonable Efforts to effect such a corresponding transfer in the event that (and only in the event that) the remaining Commitment of the relevant assignor Lender under this Agreement would be less than ten percent (10%) of that Lender's Commitment as of the Closing Date. Notwithstanding the foregoing, the Borrowers' right to require such a transfer by a Hedge Lender of its corresponding Lender Hedge is subject to the terms of any such novation being acceptable to such Hedge Lender, acting reasonably, and using Commercially Reasonable Efforts to give effect to such proposed novation; and
- (i) the transferee and transferor party to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$**Redacted** and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. [**Commercially sensitive amount redacted**]

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 14.12.3, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement

and the other Credit Facility Documents (other than the rights and obligations of a Hedge Lender unless such Lender assigns its rights under the Lender Hedges to which it is a party), including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 11 and Section 14.6, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 14.12.4. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

14.12.3 Register

The Administrative Agent shall maintain at one of its offices in Calgary, Alberta a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

14.12.4 Participations

Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any person (other than a natural person or any Affiliate of the Borrower) (each, a "**Participant**") in all or a portion of such Lender's rights under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); provided that:

- (a) such Lender's obligations under this Agreement shall remain unchanged;
- (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and
- (c) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

14.12.5 Limitations upon Participant Rights

A Participant shall not be entitled to receive any greater payment under Sections 11.3 and 11.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant had such Participation not been sold. Without limiting the generality of the foregoing, a

Participant shall not be entitled to the benefits of Section 11.4 if the Lender who has sold such Participation is not entitled to the benefits of Section 11.4 with respect to the portion of its Advances so sold.

14.12.6 Certain Pledges

Any Lender may at any time grant a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such grant of a security interest shall release such Lender from any of its obligations hereunder or substitute any such secured party for such Lender as a party hereto. No person to whom such a security interest has been granted shall be entitled to the benefits of Section 11.4. Any assignment by a person to whom a security interest in the Advances has been granted by a Lender shall be subject to this Section 14.12 as if it were an assignment by the Lender.

14.12.7 Financial Information

A Lender may deliver a copy of any financial statement or any other information relating to the business, assets or condition (financial or otherwise) of the Borrower or its Affiliates which may be furnished to it under this Agreement or otherwise to any assignee or any prospective assignee to the extent reasonably required by the assignee or prospective assignee in connection with its interest or the proposed acquisition of an interest in a Credit Facility, subject to compliance by such Lender with Section 14.18.

14.12.8 Certificates, Etc.

Without limitation of its obligations hereunder, the Borrower shall, at its sole cost and expense, give such certificates, acknowledgements and further assurances in respect of this Agreement and a Credit Facility as a Lender may reasonably require in connection with any assignment pursuant to this Section 14.12.

14.13 **Conflict**

In the event of a conflict between the provisions of this Agreement and the provisions of any other Credit Facility Document, the provisions of this Agreement shall prevail to the extent necessary to resolve the conflict, provided however: (a) a conflict or inconsistency shall not occur or be deemed to have occurred if this Agreement or a Credit Facility Document provides for a matter and the other does not; and (b) to the extent that any Lender Hedge contains a provision that includes any of the matters referred to in any of Section 14.3, such provisions in such Lender Hedges shall prevail with respect to the interpretation and enforcement of such Lender Hedges.

14.14 **Severability**

The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

14.15 Prior Understandings

This Agreement and the other Credit Facility Documents supersedes all prior understandings and agreements, whether written or oral, among the parties relating to the availability of the Credit Facilities provided for herein, except for the Fee Letter to the extent such letter refers to fees payable to the Administrative Agent not otherwise set forth in this Agreement.

14.16 Time of Essence

Time shall be of the essence hereof.

14.17 Waiver of Jury Trial

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

14.18 Treatment of Certain Information: Confidentiality

14.18.1 Maintenance of Confidentiality

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed:

- (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential);
- (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority);
- (c) to the extent required by Laws or regulations or by any subpoena or similar legal process;
- (d) to any other party hereto;
- (e) in connection with the exercise of any remedies hereunder or under any other Credit Facility Document or any action or proceeding relating to this Agreement or any other Credit Facility Document or the enforcement of rights hereunder or thereunder;

- (f) subject to an agreement containing provisions substantially the same as those of this Section, to:
 - (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement; or
 - (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations;
- (g) with the consent of the Borrower; or
- (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 14.18 or (ii) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than the Borrower.

14.18.2 Confidential Information

For purposes of this Section, “**Information**” means all information received in connection with this Agreement including without limitation from the Borrower relating to the Borrower or any of its Affiliates or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

14.19 **Counterparts: Effectiveness: Electronic Execution**

14.19.1 Counterparts: Integration: Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

14.19.2 Electronic Execution of Assignments

The words “**execution**”, “**signed**”, “**signature**” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature

or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Law, including Parts 2 and 3 of the personal *Information Protection and Electronic Documents Act* (Canada) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

14.20 Indemnity Survival

The obligations of the Borrower under Sections 11.3 and 11.4 shall survive the payment and performance of the Outstanding Obligations and the termination of this Agreement.

14.21 U.S.A. Patriot Act Notification

The Administrative Agent and the Lenders hereby notify the Borrower that pursuant to the requirements of the *U.S.A. Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), they are required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Administrative Agent and the Lenders to identify the Borrower in accordance with the Act.

IN WITNESS WHEREOF, the parties hereto, by their offices duly authorized, intending to be legally bound, have caused this Credit Agreement to be duly executed and delivered as of the date and year first above written

MAXIM POWER CORP., as Borrower

(signed)

By: _____
Name: **Redacted**
Title: **Redacted**

(signed)

By: _____
Name: **Redacted**
Title: **Redacted**

ATB FINANCIAL, as Administrative Agent

(signed)

By: ***Redacted***
Name: ***Redacted***
Title: ***Redacted***

(signed)

By: ***Redacted***
Name: ***Redacted***
Title: ***Redacted***

ATB FINANCIAL, as Lender

(signed)

By: ***Redacted***
Name: ***Redacted***
Title: ***Redacted***

(signed)

By: ***Redacted***
Name: ***Redacted***
Title: ***Redacted***

SCHEDULE 1
LENDERS AND COMMITMENTS

Lender & Address	Facility	Commitment	Total
ATB Financial 600, 585 – 8 th Ave SW Calgary, Alberta Canada Attention: <i>Redacted</i> Email: <i>Redacted</i>	Construction Facility	\$30,000,000	\$30,000,000
	Revolver Facility #1	\$10,000,000	\$10,000,000
	Revolver Facility #2	\$4,000,000	\$4,000,000
	Letter of Credit Facility	\$8,000,000	\$8,000,000
	Term Facility	\$30,000,000	\$30,000,000

[Confidential contact and banking information redacted]

SCHEDULE 2
ADVANCE REQUEST

TO: ATB Financial, as **[Administrative Agent/LC Lender]**

DATE: []

Dear Sirs/Madams:

The undersigned refers to the Credit Agreement dated as of December 19, 2019 (as amended from time to time, the "**Credit Agreement**") among Maxim Power Corp., as Borrower, ATB Financial, as Administrative Agent, and the lenders signatory thereto as Lenders. Capitalized terms used in this Advance Request have the same meanings herein as are ascribed thereto in the Credit Agreement. The Borrower hereby gives you notice pursuant to the Credit Agreement that the undersigned requests an Advance under the **[Construction Facility/Revolver Facility #1/Revolver Facility #2/Letter of Credit Facility]** under the Credit Agreement as follows¹:

1. If a Canadian Prime Rate Advance is requested:
 - (a) The date of such Canadian Prime Rate Advance, being a Business Day, is [].
 - (b) The aggregate principal amount of such Canadian Prime Rate Advance is \$[].

2. If a CDOR Advance is requested:
 - (a) The date of the CDOR Advance, being a Business Day, is [].
 - (b) The aggregate amount of \$[] being comprised of the principal amount of the CDOR Advance.
 - (c) The Interest Period for such CDOR Advance is [] days (occurring approximately (i) one , two, three or six months before the Construction Term-Out Date and (ii) three or six months after the Construction Term-Out Date).

3. If Bankers' Acceptances or a BA Equivalent Advance is requested:
 - (a) The date of such Bankers' Acceptances or BA Equivalent Advance, being a Business Day, is [].
 - (b) The aggregate Face Amount of the Bankers' Acceptances or BA Equivalent Advance is \$[].
 - (c) The BA Period of such Bankers' Acceptances or BA Equivalent Advance is [] days.

¹ Pursuant to Section 3.2.1 of the Credit Agreement, the Advance Request must be provided to the Administrative Agent no later than 1:00 p.m. (Calgary time) at least three (3) Business Days prior to the proposed Advance Date.

4. If a Letter of Credit Advance is requested:
- (a) The date of issuance, being a Business Day, is [____].
 - (b) The Face Amount of the Letter of Credit is \$[____] and other terms thereof are attached hereto.
 - (c) The expiry date of such Letter of Credit is [____].
 - (d) The beneficiary of such Letter of Credit is [____].
 - (e) Enclosed herewith is the LC Lender's application and indemnity with respect to the requested Letter of Credit.
5. If a Conversion of a Canadian Prime Rate Advance is requested:
- (a) The principal amount of \$[____] of such Canadian Prime Rate Advance is to be converted into [____] **[CDOR Advances/Bankers Acceptances/BA Equivalent Advances]**.
 - (b) The date of the Conversion is [____].
 - (c) The **[Interest Period/BA Period]** for such **[CDOR Advances/Bankers' Acceptances/BA Equivalent Advances]** is [____] (occurring approximately (i) one, two, three or six months before the Construction Term-Out Date and (ii) three or six months after the Construction Term-Out Date).
6. If a Conversion or Rollover of CDOR Advances is requested:
- (a) The aggregate amount of \$[____] being comprised of CDOR Advances having an Interest Period for such CDOR Advances expiring on [____].
 - (b) The aggregate amount of \$[____] being comprised of CDOR Advances is to be converted into **[a Canadian Prime Rate Advance/Bankers Acceptances/a BA Equivalent Advance]** in the principal amount of \$[____].
 - (c) The aggregate amount of \$[____] being comprised of CDOR Advances are rolled-over for a further Interest Period of [____] days (occurring approximately (i) one, two, three or six months before the Construction Term-Out Date and (ii) three or six months after the Construction Term-Out Date).
 - (d) The date of the Conversion or Rollover is [____].
7. If a Conversion or Rollover of Bankers' Acceptances or a BA Equivalent Advance is requested:
- (a) The aggregate amount of \$[____] being comprised of Bankers' Acceptances/BA Equivalent Advances having a BA Period for such Bankers' Acceptances/BA Equivalent Advances expiring on [____].
 - (b) The aggregate Face Amount of \$[____] being comprised of Bankers' Acceptances/BA Equivalent Advances is to be converted into **[a Canadian Prime Rate Advance/a CDOR Advance]** in the principal amount of \$[____], **[for an Interest Period of [____] (occurring approximately (i) one, two, three or six**

months before the Construction Term-Out Date and (ii) three or six months after the Construction Term-Out Date)].

- (c) The aggregate amount of \$[] being comprised of Bankers' Acceptances/BA Equivalent Advances are rolled-over for a further BA Period of [] days.
- (d) The date of the Conversion or Rollover is [].

8. If a voluntary prepayment is requested pursuant to Section 2.4 of the Credit Agreement:

- (a) The principal amount of \$[] of such Canadian Prime Rate Advance is to be repaid.
- (b) The aggregate principal amount of \$[] of CDOR Advances with a maturity date of [] is to be repaid.
- (c) The aggregate Face Amount of \$[] of Bankers Acceptances/BA Equivalent Advances with a maturity date of [] is to be repaid.
- (d) The date of the voluntary prepayment is [].

9. **[No Default or Event of Default has occurred and is continuing or shall result from the requested [Rollover/Conversion].]**

[Signature page follows]

MAXIM POWER CORP.

Per: _____
Name: _____
Title:

Per: _____
Name: _____
Title:

SCHEDULE 3
AMORTIZATION SCHEDULE

(see attached)

SCHEDULE 4A
DRAWDOWN CERTIFICATE – CONSTRUCTION FACILITY / REVOLVER FACILITY #1 / TERM FACILITY

TO: ATB Financial, as Administrative Agent

DATE: []

The undersigned, [name], an officer of Maxim Power Corp. (the “**Borrower**”) hereby certifies to you for and on behalf of the Borrower (and not in any personal capacity) as follows:

- (i) This certificate is being delivered to you pursuant to Section 6.2.2 of the credit agreement dated as of December 19, 2019 (as amended from time to time, the “**Credit Agreement**”) among the Borrower, ATB Financial, as Administrative Agent, and the Lenders signatory thereto, in connection with a proposed Advance Request (the “**Request**”) in the principal amount of \$[] under the Construction Facility (the “**Construction Facility Principal Amount**”) and in the amount of \$[] under the Revolver Facility #1 (the “**Revolver Facility #1 Principal Amount**”), for a total principal amount of \$[] (the “**Principal Amount**”).
- (ii) Capitalized terms used but not defined in this certificate shall have the meanings ascribed thereto in the Credit Agreement.
- (iii) The Project Costs relating to the Project forming the basis of this Drawdown Certificate incurred up to [] are \$[]. The BLA Holdback Amount for such Project Costs (if any in accordance with Section 10.1.19 of the Credit Agreement) and a detailed description of the use of any contingency from the Project Budget since the delivery of the immediately preceding Drawdown Certificate, if any, are summarized and identified in Exhibit 1 attached hereto. The Principal Amount is comprised of [The Maximum Unrestricted Initial Advance Amount of \$[],] [The Leverage True-Up amount of \$[],] Project Costs incurred up to [] (not covered by the previous drawdown certificate) in the amount of \$[] and forecasted Project Costs for the period (which shall not exceed 30 days) beginning [] and ending [] in the amount of \$[].
- (iv) True and complete copies of the invoices, statements, receipts or other supporting documents reflecting the Project Costs described in (iii) above are attached as Appendix A to Exhibit 1 attached hereto.
- (v) The aggregate amount of Project Costs paid to date after giving effect to payments of such Project Costs to be made with the Principal Amount, are in the amount of \$[].
- (vi) The Project Costs paid to date conform with the requirements of the EPC Contract and the other applicable Material Project Contracts.
- (vii) The BLA Holdback Amount for the Project Costs referred to in paragraph (iii) above is \$[]. Immediately prior to this Request, the current BLA Holdback Amount relating to the Project Costs is \$[]. The Administrative Agent is directed to deposit the BLA Holdback Amount of CDN\$[] directly into the BLA Holdback Account from the proceeds of the Principal Amount of the Advance requested pursuant to this Drawdown Certificate.

- (viii) The Available Funds relating to the Project after giving effect to the Principal Amount of the Advance pursuant to the Request, is \$[], itemized in Exhibit 1 attached hereto. **[NTD: include amounts from paragraphs (a) through (e) under the definition of “Available Funds” after giving effect to this Advance.]**
- (ix) The Cost to Complete the Project after the payment of Project Costs with the Principal Amount of the Advance pursuant to the Request is \$[], as described in Exhibit 1 attached hereto.
- (x) The Borrower’s reasonable estimate of the Cost to Complete for the Project does not exceed the applicable Available Funds for the Project.
- (xi) The estimated date by which the Substantial Completion Date is expected to be achieved is [•]. The estimated date by which Completion is expected to be achieved is [•], which date is [•] days prior to the Outside Date.
- (xii) A detailed description of the variances between the actual total Project Costs to date from the Project Costs in the Project Budget is summarized in Exhibit 2 attached hereto, which description shall include a reconciliation of amounts advanced under the Construction Facility and/or the Revolver Facility #1 pursuant to any previous Advance to invoices paid from the proceeds of such previous Advance, which shall include calculations evidencing:
 - (a) any excess amount from the previous Advance that was not required to fund Project Costs and the corresponding decrease of the current Advance requested by such excess amount; or
 - (b) any shortfall in the amount that was required to fund Project Costs from the previous Advance and the corresponding increase of the current Advance requested by such shortfall amount.

and such calculations are supported by true and complete copies of the invoices, statements, receipts and other supporting documents which are attached hereto as Appendix 1 to Exhibit 2. all of which shall be supported by invoices, statements, receipts or other supporting documentation reflecting Project Costs incurred which are certified by the Borrower including a certification that such conform with the requirements of the EPC Contract and the other Material Project Contracts, if applicable.
- (xiii) The STS Amending Agreement has been or is expected to be obtained in the normal course so as to allow the Completion Date to occur on or before the Outside Date.
- (xiv) The Borrower is in compliance with its obligations under the Material Project Contracts to which it is a party and the Borrower is not aware of any material breach thereunder by any corresponding Counterparty.
- (xv) No material provision of any Material Project Contract in any material respect has been amended otherwise than in accordance with Section 10.2.10 of the Credit Agreement.
- (xvi) The Project has not been abandoned or terminated.
- (xvii) No Liens have been registered pursuant to the BLA against any of the Project Assets which have not been discharged or vacated (other than Liens under the BLA which will be discharged with the

proceeds of the Principal Amount and arrangements to such effect have been approved by the Administrative Agent). The Borrower has not incurred or permitted to exist any other Liens on the Project or any part thereof or on any other assets of the Borrower, except as permitted under the Credit Agreement.

- (xviii) Attached hereto as Exhibit 3 is a list of all approved, pending and submitted for approval Change Orders since the previous Drawdown Certificate pertaining to the Project, together with copies of all such Change Orders not previously delivered to the Administrative Agent.
- (xix) No default or event of default has occurred under the Subordinated Credit Agreement or will occur as a result of the Request.
- (xx) All registrations, filings or recordings necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Encumbrances) have been completed and remain in effect.
- (xxi) All of the representations and warranties contained in the Credit Agreement are true and correct in all material respects in each case on and as of the date hereof and will be true and correct as of the date of the requested Advance of the Principal Amount as though made on and as of such date (unless expressly stated to be made as of a specified date).
- (xxii) No Default or Event of Default has occurred and is continuing or shall result from the requested Advance of the Principal Amount.
- (xxiii) No event or circumstance has occurred which has or could reasonably be expected to have a MAE.
- (xxiv) The conditions set forth in Section 6.2 of the Credit Agreement are satisfied or have been waived in writing by the Administrative Agent as of the date hereof and as of the date of the requested Advance of the Principal Amount.

[Signature Page Follows]

MAXIM POWER CORP.

Per:

Authorized Signatory

EXHIBIT 1

[Confidential business plans and amounts redacted]

APPENDIX A

TO EXHIBIT 1

**INVOICES, STATEMENTS, RECEIPTS AND OTHER SUPPORTING DOCUMENTS REFLECTING THE
PROJECT COSTS**

[Confidential documents redacted]

EXHIBIT 2

[Confidential business plans and amounts redacted]

**EXHIBIT 3
LIST OF CHANGE ORDERS**

[Confidential business plans redacted]

SCHEDULE 4B
DRAWDOWN CERTIFICATE – LETTER OF CREDIT FACILITY

TO: ATB Financial, as Administrative Agent and as LC Lender

DATE: []

The undersigned, [name], an officer of Maxim Power Corp. (the “**Borrower**”) hereby certifies to you for and on behalf of the Borrower (and not in any personal capacity) as follows:

- (i) This certificate is being delivered to you pursuant to Section 6.5.1 of the credit agreement dated as of December 19, 2019 (as amended from time to time, the “**Credit Agreement**”) among the Borrower, ATB Financial, as Administrative Agent, and the Lenders signatory thereto, in connection with a proposed Advance Request (the “**Request**”) of a Letter of Credit in the Face Amount of \$[] (the “**Principal Amount**”).
- (ii) Capitalized terms used but not defined in this certificate shall have the meanings ascribed thereto in the Credit Agreement.
- (iii) The Letter of Credit shall have an expiration date on a Business Day which occurs no later than the earlier of: (i) one year after the date of issuance (subject to standard extension provisions); or (ii) the Final Maturity Date.
- (iv) All of the representations and warranties contained in the Credit Agreement are true and correct in all material respects in each case on and as of the date hereof and will be true and correct as of the date of the requested Advance of the Principal Amount as though made on and as of such date (unless expressly stated to be made as of a specified date).
- (v) No Default or Event of Default has occurred and is continuing or shall result from the requested Advance of the Principal Amount.
- (vi) No event or circumstance has occurred which has or could reasonably be expected to have a MAE.
- (vii) The conditions set forth in Section 6.5 of the Credit Agreement are satisfied or have been waived in writing by the Administrative Agent as of the date hereof and as of the date of the requested Advance of the Principal Amount.

[Signature Page to Follow]

MAXIM POWER CORP.

Per:

Authorized Signatory

SCHEDULE 5
INDEPENDENT ENGINEER'S DRAWDOWN CERTIFICATE

TO: ATB Financial, as Administrative Agent

AND TO: The Lenders

DATE: []

RE: Maxim Power Corp. Project

The undersigned is delivering this certificate to you in its capacity as the Independent Engineer appointed under and referred to in the credit agreement dated as of December 19, 2019 (as amended from time to time, the "**Credit Agreement**") among Maxim Power Corp., as Borrower, ATB Financial, as Administrative Agent, and the Lenders signatory thereto.

Capitalized terms used but not defined in this certificate shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

Reference is made to the Drawdown Certificate (the "**Drawdown Certificate**") dated [] being delivered by the Borrower under the Credit Agreement, in connection with an Advance Request in the principal amount of \$[] under the Construction Facility (the "**Construction Facility Principal Amount**") and in the principal amount of \$[] under the Revolver Facility #1 (the "**Revolver Facility #1 Principal Amount**"), for a total principal amount of \$[] (the "**Principal Amount**") on [] (the "**Drawdown Date**") and in connection with which this certificate is provided. The Independent Engineer's review is based on the understanding and assumption that we have been provided true, complete and accurate information, which is satisfactory in form and scope to us, from other parties as to the matters covered by the Drawdown Certificate. The undersigned has reviewed the Drawdown Certificate, Section 6.2 and Schedules 4A and 5 of the Credit Agreement as each pertains to the responsibilities of the undersigned to provide this certificate, the certificates provided therewith and certifies the following as of the Drawdown Date:

- (A) The undersigned conducted its most recent site visit of the Project on _____, 20__.
- (B) The undersigned is not aware that any Laws or Permits affecting the Project have not been complied with, except to the extent that non-compliance has not had and could not reasonably be expected to have a MAE.
- (C) The description and calculation of Project Costs and the BLA Holdback Amount included in the Drawdown Certificate are materially correct.
- (D) Payments to persons described in Exhibit 1 of the Drawdown Certificate are supported by invoices (or with respect to the payment of Project Costs that will be due and payable before the next expected drawdown and where invoices are not available, reasonable estimates by the Borrower of the Project Costs to be incurred in connection therewith) and construction performed during the period covered by the Drawdown Certificate appears to be in general conformance with the EPC Contract and the other applicable Material Project Contracts.

- (E) The full amount of the immediately preceding drawdown (if any) under the Construction Facility and/or the Revolver Facility #1 received by the Borrower has been applied in respect of payment of Project Costs on the basis of construction invoices or other payment evidence provided to the undersigned or if not, the amount of \$[____] remains in the Construction Accounts and available to be used to pay the Project Costs.
- (F) The estimated Cost to Complete the Project as certified in the Drawdown Certificate is a reasonable estimate and such estimated Cost to Complete does not exceed the Available Funds.
- (G) The electrical interconnection and synchronization with the AIES at the ATCO Electric switchyard will be completed in a timely manner so as not to delay either the Substantial Completion Date or Completion beyond the Outside Date.
- (H) The Change Orders made pursuant to the EPC Contract or any other Material Project Contract and set forth in the Borrower's Drawdown Certificate, are reasonable.
- (I) It is reasonable to expect: (i) the Substantial Completion Date to be achieved by the Scheduled Completion Date, and (ii) Completion to be achieved by the Outside Date.
- (J) We have periodically reviewed the progress of engineering, procurement and construction matters for the Project and in the course of this review we have not discovered any errors or omissions in the claims for materials that have been procured and work performed for which payment has been requested by the applicable Advance Request and all previous Advances relating to the Project.
- (K) To the best of our knowledge, the Borrower has all material Permits required to own, develop, construct and Operate the Project, other than those Permits that are expected to be obtained in the normal course so as not to delay the Substantial Completion Date or Completion beyond the Outside Date.
- (L) The quality of construction performed during the period covered by this Independent Engineer's Certificate is, in our opinion, satisfactory and appears to have been performed in a good and workmanlike manner and in conformance with the Material Project Contracts.
- (M) To the best of our knowledge, there are no approved or material pending Change Orders submitted for approval which are not listed in the Drawdown Certificate or that have not been listed in a previous Drawdown Certificate.
- (N) The undersigned has not discovered any material uncorrected error in the matters set forth in the Drawdown Certificate.

[NTD: the following paragraphs (O) through (X) inclusive are to be provided only in connection with the Initial Advance on the Closing Date]

- (O) The Maximum Unrestricted Initial Advance Amount is equal to \$[____].
- (P) The portion of the Initial Advance to be deposited into the Construction Account Cdn. pursuant to Section 2.1.3(a)(iii) of the Credit Agreement is equal to \$[____].

- (Q) The Project Costs Satisfied is equal to \$[____], which amount is equal to [____]% of the Project Budget and the aggregate amount of the Construction Loan Commitment and the Revolving Facility #1 Commitment is equal to or exceeds the aggregate of Costs to Complete, which Costs to Complete are equal to \$[____], all as determined as of the Closing Date.
- (R) The Independent Engineer acknowledges that pursuant to the Credit Agreement, the Administrative Agent is arranging financing to the Borrower for, among other things, the construction and development of the Project and in so doing the Lenders are relying on this Certificate, the work completed by the Independent Engineer and the Independent Engineer's report dated [<>], titled "Independent Engineer's Report".
- (S) Attached hereto as Annex I is an accurate and complete copy of the Independent Engineer's Report.
- (T) The Independent Engineer's Report was prepared in good faith by the Independent Engineer pursuant to the scope of services to the Services Agreement dated ●, 2019, made between the Borrower and the Independent Engineer (the "**Services Agreement**") and in accordance with generally accepted consulting practices.
- (U) Nothing has come to the attention of the Independent Engineer that causes the Independent Engineer to believe that the Independent Engineer's Report, as of the date hereof; contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.
- (V) The Independent Engineer hereby confirms, as of the date hereof, that the evaluations, conclusions and recommendations contained in the Independent Engineer's Report are accurate and complete in all material respects.
- (W) In connection with the preparation of the Independent Engineer's Report, personnel of the Independent Engineer have participated in meetings or telephonic discussions with representatives of the Borrower and its affiliates in respect of the Project.
- (X) Notwithstanding anything in the Independent Engineer's Report or the Services Agreement to the contrary, the undersigned, on behalf of the Independent Engineer, hereby confirms that the Lenders shall be permitted to receive and rely on the Independent Engineer's Report pursuant to Section 12.0 thereof.

[SIGNATURE PAGE FOLLOWS]

BTY GROUP

Per:

Authorized Signatory

ANNEX I

INDEPENDENT ENGINEER'S REPORT

[Confidential report redacted]

SCHEDULE 6
ACCOUNTS

[Confidential account information redacted]

SCHEDULE 6.1.31
FORM OF INSURANCE CONSULTANT CERTIFICATE
[Letterhead of Insurance Consultant]

[<>], 2019

ATB Financial, as Administrative Agent
Eight Avenue Place, West Tower
Suite 600, 505 – 8th Ave SW
Calgary, Alberta T2P 1G1

Attention: [**Confidential contact information redacted**]

And to:

The Lenders (as defined in the Credit Agreement, as defined below)

To Whom It May Concern:

Re: Maxim Power Corp.
Project Wrap Up Liability Policy, Policy Number: **[TBA]**
Project Builder's Risk Policy, Policy Number: **[TBA]**

The undersigned, a duly authorized officer of Intech Risk Management hereby provides this letter in connection with the above-mentioned and pursuant to Article 9 of the credit agreement dated on December 19, 2019 (as amended, supplemented, restated or replaced from time to time, the "**Credit Agreement**") entered into by Maxim Power Corp., as Borrower, ATB Financial, as Administrative Agent, and those institutions that from time to time become Lenders under and in accordance with the Credit Agreement.

Except as provided for herein, all capitalized terms used herein which are defined in the Credit Agreement shall have the respective meanings set forth in the Credit Agreement.

The Insurance Consultant acknowledges that the Agent, for itself and for each of the Lenders, together with its successors and assigns, will be relying on this Certificate and the Insurance Consultant's report dated __, which report is attached hereto and the Insurance Consultant consents to such reliance. The Insurance Consultant's report was prepared in good faith by the Insurance Consultant in accordance with generally accepted consulting practices. Nothing has come to the attention of the Insurance Consultant that causes the Insurance Consultant to believe that the Insurance Consultant's report, as of the date thereof, contains any untrue statements of material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Insurance Consultant hereby confirms, as of the date hereof, that the evaluation, conclusions and recommendations contained in the Insurance Consultant's report are accurate and complete in all material respects.

The Insurance Consultant has reviewed Article 9 Insurance of the Credit Agreement and is familiar with the insurance requirements stated therein. It is the Insurance Consultant's opinion that the types and amounts of insurance required by Article 9 Insurance of the Credit Agreement are reasonable and adequate for a project of the size and scope of the Project.

Included within the Insurance Consultant's report is a true, correct and complete list of the insurance coverages which have been obtained in connection with the Project. The Insurance Consultant hereby confirms that the Agent has been added as first mortgagee and loss payee under the policies covering

physical damage and as an additional insured under the general liability insurance and/or wrap-up liability insurance in force on the Project. Through the certificates of insurance, copies of which are attached to the Insurance Consultant's report, the Borrowers have provided satisfactory evidence of compliance with the provisions of Article 9 Insurance of the Credit Agreement as it pertains the Project.

Yours truly,

IN TECH RISK MANAGEMENT INC.

[Confidential contact information redacted]

SCHEDULE 7
MATERIAL PROJECT CONTRACTS
MAXIM POWER CORP.

PART I

Material Project Contracts entered into before Closing and the Initial Advance

[Commercially sensitive list of agreements redacted]

SCHEDULE 8
SECURITY AGREEMENTS

Borrower

1. Debenture
2. Pledge Agreement re shares and limited partnership interests, as applicable, held by the Borrower in the capital of each Loan Party

Milner Power

3. Guarantee
4. Debenture
5. Pledge Agreement re: general partner interest in Milner Power LP
6. Assignment of Material Project Contracts
7. Assignment of Permits
8. Assignment of Insurance
9. Conditional Surrender of Lease re Miscellaneous Lease No. DML 020048
10. Conditional Surrender of Lease re License of Occupation No. DLO 001712
11. Conditional Surrender of Lease re Miscellaneous Lease No. DML 000102
12. Conditional Surrender of Lease re License of Occupation No. DLO 0100091
13. Conditional Surrender of Lease re License of Occupation No. DLO 3526
14. Conditional Surrender of Lease re Easement No. EZE 780082

Milner Power LP

15. Guarantee
16. Debenture
17. Assignment of Material Project Contracts
18. Assignment of Permits
19. Assignment of Insurance

Milner Power II

20. Guarantee
21. Debenture
22. Pledge Agreement re: general partner interest in Milner Power II LP

- 23. Assignment of Material Project Contracts
- 24. Assignment of Permits
- 25. Assignment of Insurance
- 26. Conditional Surrender of Lease re Pipeline Installation Lease No. PIL 195069
- 27. Conditional Surrender of Lease re Pipeline Installation Lease No. PIL 195068
- 28. Conditional Surrender of Lease re Pipeline Agreement No. PLA 195144

Milner Power II LP

- 29. Guarantee
- 30. Debenture
- 31. Assignment of Material Project Contracts
- 32. Assignment of Permits
- 33. Assignment of Insurance

**SCHEDULE 9
PERMITS AND AUTHORIZATIONS**

PART I

BORROWER

Permits and Authorizations Obtained on or Prior to Closing and the Initial Advance

Permit	Permit Holder	Issuer	Status of Permit
Alberta Environment Approval No. 9814-02-00	Milner Power Limited Partnership, by its general partner Milner Power Inc.	Alberta Environment	Approved Amending Approval 9814-02-13 dated November 22, 2019. The purpose of this amendment was to update the gas turbine model for Milner 2 Phase 1 and to include the provision for a bypass stack to operate the Milner 2 Phase 1 gas turbine in simple cycle mode.
Power Plant Approval 24632-D02-2019	Milner Power Inc.	Alberta Utilities Commission	Approved
Municipal Development Permit D19-009	Milner Power Limited Partnership	Municipal District of Greenview No. 16	Approved
Alberta Transportation Permit No. RSDP024118	Milner Power Limited Partnership	Alberta Transportation	Approved

PART II

BORROWER

Permits and Authorizations Obtained After Closing and Initial Advance

A. PERMITS AND APPROVALS REQUIRED FOR CONSTRUCTION

Permit/Approval	Issuer
Municipal Building Permit(s)	Municipal District of Greenview No. 16

B. PERMITS AND APPROVALS REQUIRED BEFORE COMMERCIAL OPERATION

Permit/Approval	Issuer
Nil.	Nil.

PART III**THIRD PARTIES****Permits and Authorizations Obtained After Closing and Initial Advance****A. PERMITS AND APPROVALS REQUIRED FOR CONSTRUCTION**

Permit/Approval	Issuer
Nil.	Nil.

B. PERMITS AND APPROVALS REQUIRED BEFORE COMMERCIAL OPERATION

Permit/Approval	Issuer
Nil.	Nil.

SCHEDULE 10

PART I

SITE LANDS

[Commercially sensitive site locations redacted]

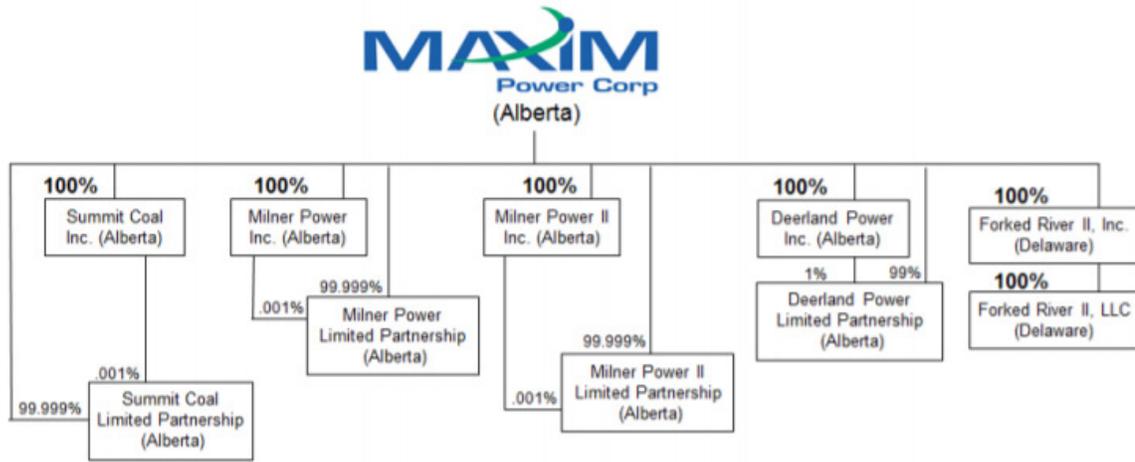
PART II

REAL PROPERTY INTERESTS

Secured Real Property Interests

[Commercially sensitive real property interests redacted]

SCHEDULE 11
OWNERSHIP STRUCTURE AND EQUITY HOLDINGS



Entity	Chief Executive Office
Maxim Power Corp.	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Milner Power Inc.	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Milner Power II Inc.	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Deerland Power Inc.	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Milner Power Limited Partnership	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Milner Power II Limited Partnership	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6
Deerland Power Limited Partnership	1210, 715 – 5 th Avenue S.W. Calgary, AB T2P 2X6

SCHEDULE 12
LENDER ASSIGNMENT AND ASSUMPTION AGREEMENT

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

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below:

- (a) all of the Assignor’s rights and obligations in its capacity as a Lender under:
 - (i) the Credit Agreement, including any Commitment of the Assignor;
 - (ii) any other Credit Facility Documents; and
 - (iii) the Credit Facilities identified below (including without limitation any Letters of Credit included in such Credit Facilities),

in each case to the extent related to the amount and percentage of the Credit Facilities identified below assigned to the Assignee by the Assignor in the amount and percentage interest of the Credit Facilities identified in paragraph 6 below; and

- (b) to the extent permitted to be assigned under Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Credit Facility Documents or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, statutory claims and all other claims at law or in equity related to and in the same proportion of the rights and obligations sold and assigned pursuant to paragraph (a) above,

(the rights and obligations sold and assigned pursuant to paragraphs (a) and (b) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- 1. Assignor: [____].
- 2. Assignee: [____].
- 3. Borrower: Maxim Power Corp.

- 4. Administrative Agent: ATB Financial, as the administrative agent under the Credit Agreement.
- 5. Credit Agreement: The credit agreement dated as of [<>], 2019 among Maxim Power Corp., ATB Financial as Administrative Agent and the Lenders parties thereto.
- 6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitments / Advances for all Lenders	Amount of Commitment / Advances Assigned	Percentage Assigned of Commitment / Advances
	\$[]	\$[]	[]%
	\$[]	\$[]	[]%

Effective Date: _____, 20____ **[TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

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

ASSIGNOR

[]

Per: _____
 Authorized Signatory
 Title:

ASSIGNEE

[]

Per: _____
 Authorized Signatory
 Title:

Consented to and Accepted:

ATB FINANCIAL,
as Administrative Agent

Per: _____
Authorized Signatory
Title:

[If applicable, Consented to and] Accepted:

MAXIM POWER CORP.

Per: _____
Authorized Signatory
Title:

ANNEX 1 to Assignment and Assumption

[_____]

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

1.0 REPRESENTATIONS AND WARRANTIES

1.1 Assignor

The Assignor:

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

1.2 Assignee

The Assignee:

- (A) represents, warrants and agrees that:
 - (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement;

- (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement);
 - (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder;
 - (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements of the Borrower delivered pursuant to the Credit Agreement, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender; and
 - (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and
- (B) agrees that:
- (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Facility Documents; and
 - (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Facility Documents are required to be performed by it as a Lender.

2.0 PAYMENTS

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

3.0 GENERAL PROVISIONS

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

SCHEDULE 13
BORROWER'S CLOSING DATE CERTIFICATE

CLOSING DATE CERTIFICATE OF THE BORROWER
AND OFFICER'S CERTIFICATE OF THE TRANSACTION PARTIES

TO: ATB Financial ("**ATB**"), as administrative agent

AND TO: The Lenders (as defined below)

AND TO: McCarthy Tétrault LLP ("**McCarthy**")

AND TO: Burnet, Duckworth & Palmer LLP ("**BDP**")

RE: Credit agreement dated as of the date hereof (the "**Credit Agreement**") among, *inter alios*, the Maxim Power Corp., as borrower, ATB and those institutions and other persons that from time to time become lenders, as lenders (collectively, the "**Lenders**"), and ATB, as administrative agent for the Lenders (in such capacity, the "**Agent**")

DATE: December [·], 2019

Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the Credit Agreement.

The undersigned, being an officer of each of the Loan Parties identified on the signature page hereto (each a "**Represented Loan Party**") and Deerland Power Inc. ("**Deerland**" and, together with each Represented Loan Party and Deerland Power Limited Partnership, collectively, the "**Transaction Parties**" and, individually, a "**Transaction Party**"), in his capacity as such and without personal liability, certifies on behalf of each applicable Transaction Party, in its own capacity and, to the extent so identified on the signature page hereto, in such Transaction Party's capacity as general partner of the applicable Transaction Party identified on the signature page hereto, that:

1. Chief Executive Office. The chief executive office of each Loan Party is located at [**Confidential contact information redacted**].
2. Tangible Collateral. The only jurisdictions in which the Loan Parties keep tangible collateral is Alberta, other than tangible Collateral in transit to or from such jurisdictions.
3. Constituting Documents. Attached hereto as Schedule "A" are true and complete copies of the currently effective constituting documents (including, without limitation, articles, by-laws, and unanimous shareholder agreements, as applicable) of each Transaction Party, together with any amendments thereto or continuations thereof and no acts or proceedings have been taken or are pending to amend, supplement, surrender or cancel the same as of the date hereof.
4. Limited Partnership Agreements. Attached hereto as Schedule "B" are true and complete copies of:
 - (a) the limited partnership agreement in respect of each Transaction Party that is a limited partnership (collectively, the "**Partnership Agreements**" and each, individually, a "**Partnership Agreement**"); and

- (b) the certificate of limited partnership of each Transaction Party that is a limited partnership (collectively, the "**Certificates**" and each, individually, a "**Certificate**").

Each Partnership Agreement and each Certificate is in full force and effect, unamended and each Partnership Agreement is the only agreement relating to the construction or governance of such limited partnership. No proceedings or steps have been taken or are pending or contemplated to amend, restate, replace, supplement, extend, novate or cancel any Partnership Agreement.

5. General Partners and Limited Partners. As of the date hereof:

- (a) the only partners of Milner Power Limited Partnership are Milner Power Inc. and Maxim Power Corp., and Milner Power Inc. is the only general partner of Milner Power Limited Partnership;
- (b) the only partners of Milner Power II Limited Partnership are Milner Power II Inc. and Maxim Power Corp., and Milner Power II Inc. is the only general partner of Milner Power II Limited Partnership; and
- (c) the only partners of Deerland Power Limited Partnership are Deerland Power Inc. and Maxim Power Corp., and Deerland Power Inc. is the only general partner of Deerland Power Limited Partnership.

6. Authorization. Attached hereto as Schedule "C" are true and complete copies of the authorizing resolutions passed by the directors of each of the Transaction Parties or the directors of its general partner, as applicable, authorizing or ratifying and confirming, as applicable, among other things, the execution, delivery and performance by the applicable Loan Party (in its own capacity and, to the extent applicable, its capacity as the general partner of any limited partnership that is a Loan Party of which it is the general partner) of all the Credit Facility Documents to which it or the applicable Loan Party that is a limited partnership is a party and all other documents to be entered into by the applicable Loan Party (in its own capacity and, to the extent applicable, its capacity as the general partner of any limited partnership that is a Loan Party of which it is the general partner) in connection therewith (collectively, the "**Documents**"), these resolutions being duly adopted and in full force and effect as of the date hereof, and have not been altered, amended, modified, rescinded or repealed as of the date hereof.

7. Incumbency. Attached hereto as Schedule "D" is a list of certain officers, directors and authorized signatories of the Transaction Parties. Such officers, directors and authorized signatories hold the offices of the applicable Transaction Party as set forth opposite their respective names and the specimen signatures appearing opposite certain of those names are true signatures thereof.

8. Authorized Capital. As of the date hereof:

- (a) the authorized share capital of Milner Power Inc. is an unlimited number of Common Shares;
- (b) the authorized share capital of Milner Power II Inc. is an unlimited number of Common Shares;
- (c) the authorized share capital of Deerland Power Inc. is:
- (i) an unlimited number of Class A Voting Common Shares;

- (ii) an unlimited number of Class B Voting Common Shares;
 - (iii) an unlimited number of Class C Non-Voting Common Shares;
 - (iv) an unlimited number of Class D Non-Voting Common Shares;
 - (v) an unlimited number of Class E Voting Preferred Shares; and
 - (vi) an unlimited number of Class F Non-Voting Preferred Shares;
- (d) the authorized capital of Milner Power Limited Partnership is an unlimited number of Units;
- (e) the authorized capital of Milner Power II Limited Partnership is an unlimited number of Units; and
- (f) the authorized capital of Deerland Power Limited Partnership is:
- (i) an unlimited number of LP Units; and
 - (ii) one (1) GP Unit.

9. Beneficial and Registered Owners. As of the date hereof:

- (a) the following persons are the beneficial and registered owners of all of the issued and outstanding shares of Milner Power Inc.:

Shareholder	Number and Class of Shares	Share Certificate Number
Maxim Power Corp.	240 Common Shares	C-2
	960 Common Shares	C-4

- (b) the following persons are the beneficial and registered owners of all of the issued and outstanding shares of Milner Power II Inc.:

Shareholder	Number and Class of Shares	Share Certificate Number
Maxim Power Corp.	100 Common Shares	1

- (c) the following persons are the beneficial and registered owners of all of the issued and outstanding shares of Deerland Power Inc.:

Shareholder	Number and Class of Shares	Share Certificate Number
Maxim Power Corp.	100 Class A Voting Common Shares	A-1

- (d) the following persons are the beneficial and registered owners of all of the issued and outstanding units of Milner Power Limited Partnership:

Unitholder	Number of Units	Unit Certificate Number
Maxim Power Corp.	2,080,000	20
	20,000,000	21
	8,181,300	22

- (e) the following persons are the beneficial and registered owners of all of the issued and outstanding units of Milner Power II Limited Partnership:

Unitholder	Number of Units	Unit Certificate Number
Maxim Power Corp.	100	1

- (f) the following persons are the beneficial and registered owners of all of the issued and outstanding units of Deerland Power Limited Partnership:

Unitholder	Number and Type of Units	Unit Certificate Number
Maxim Power Corp.	100 LP Units	LP-1
	8,000,000 LP Units	LP-2
	375,000 LP Units	LP-3
	1,425,000 LP Units	LP-4
	263,000 LP Units	LP-5
	49,000 LP Units	LP-6
	57,000 LP Units	LP-7
Deerland Power Inc.	1 GP Unit	GP-1

10. Representations and Warranties. Each of the representations and warranties contained in the Credit Agreement are true and correct in all respects and each of the representations and warranties in the other Credit Facility Documents are true and correct in all material respects in each case, on and as of the date hereof as though made on and as of such date (unless expressly stated to be made as of a specified date).

11. Compliance Certificate. As of the date hereof:
- (a) each Material Project Contract listed in Part I of Schedule 7 to the Credit Agreement is in full force and effect, unamended, and enforceable in accordance with its terms;
 - (b) no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default of any Loan Party under any of the Material Project Contracts listed in Part I of Schedule 7 has occurred; and
 - (c) to my knowledge, no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default by a Counterparty under any of the Material Project Contracts listed in Part I of Schedule 7 to the Credit Agreement has occurred.
12. Material Project Contracts. Attached hereto as Schedule "E" are true and complete copies of each of the Material Project Contracts listed in Part 1 of Schedule 7 to the Credit Agreement, each of which is in full force and effect, unamended as of the date hereof.
13. Permits and Compliance.
- (a) Attached hereto as Schedule "F" are true and complete copies of each of the Permits listed in Part I of Schedule 9 to the Credit Agreement that have been obtained in the name of a Loan Party or where specified, in respect of the Project, each of which is valid and in full force and effect as of the date hereof and there are no rights of objection or appeal in respect thereof as of the date hereof;
 - (b) All Permits referred to in Part II of Schedule 9 to the Credit Agreement are expected to be obtained in the normal course by a Loan Party or the EPC Contractor so as not to delay the Substantial Completion Date or the Completion beyond the Scheduled Completion Date; and
 - (c) To the extent there are any Third Party Permits referred to in Part III of Schedule 9 to the Credit Agreement, they are expected to be obtained in the normal course by the Counterparties to the applicable Material Project Contracts so as not to delay the Substantial Completion Date or the Completion beyond the Scheduled Completion Date.
14. No Default. No Default or Event of Default has occurred and is continuing on the date hereof and no Default or Event of Default is expected to occur as a result of the Closing.
15. No Litigation. No Loan Party has received notice of any action, suit, litigation, investigation or proceeding (whether or not purportedly on any Loan Party's behalf), nor has knowledge of any pending or threatened actions, suits, litigation, investigations or proceedings (whether or not purportedly on any Loan Party's behalf) in each case against or affecting the Project, any Loan Party or the EPC Contractor before any Official Body in excess of \$500,000.
16. No Material Adverse Effect. No event or circumstance has occurred and is continuing which has, or could reasonably be expected to have, a Material Adverse Effect.
17. No Blockades and other Civil Disobedience. No Loan Party is aware of any blockades, demonstrations or other civil disobedience that have or may reasonably be expected to have the effect of delaying, impeding or suspending the development, construction or Operation of the Project.
18. Subordinated Credit Agreement. No default or event of default has occurred under the Subordinated Credit Agreement or will occur as a result of the Advance contemplated by Section 6.2 of the Credit Agreement.

[Signature Page Follows]

The undersigned acknowledges that this Closing Certificate is to be relied upon by the Agent in respect of the Credit Agreement and by BDP to deliver certain opinions in connection with the Credit Agreement.

DATED as of the date first written above.

Name: Michael R. Mayder
Title: President and Chief Financial Officer of Maxim Power Corp.
President and CEO of Milner Power Inc. in its own capacity and in its capacity as general partner of Milner Power Limited Partnership
President and CEO of Milner Power II Inc. in its own capacity and in its capacity as general partner of Milner Power II Limited Partnership
President and CEO of Deerland Power Inc. in its own capacity and in its capacity as general partner of Deerland Power Limited Partnership

SCHEDULE "A"

CONSTATING DOCUMENTS

(See attached)

SCHEDULE "B"

CERTIFICATES & PARTNERSHIP AGREEMENTS

(See attached)

SCHEDULE "C"
AUTHORIZATIONS

(See attached)

SCHEDULE "D"**CERTIFICATE OF INCUMBENCY**

Name	Obligor	Position	Specimen Signature
Michael R. Mayder	Maxim Power Corp.	President and Chief Financial Officer	_____
	Milner Power Inc.	President and CEO	
	Milner Power II Inc.	President and CEO	
	Deerland Power Inc.	President and CEO	
Rob Watson	Maxim Power Corp.	Vice President, Canadian Facilities	_____
	Milner Power Inc.	Vice President	
	Milner Power II Inc.	Vice President	
	Deerland Power Inc.	Vice President	

SCHEDULE "E"

MATERIAL PROJECT CONTRACTS

(See attached)

SCHEDULE "F"

PERMITS AND COMPLIANCE

(See attached)

SCHEDULE 14
BORROWER'S COMPLETION DATE CERTIFICATE

TO: The Lenders

AND TO: ATB Financial, as Administrative Agent

DATE: []

The undersigned, [name], an officer of Maxim Power Corp. (the "**Borrower**"), hereby certifies to you for and on behalf of the Borrower (and not in any personal capacity) as follows:

1. I am delivering this Completion Date certificate to you pursuant to the credit agreement (as amended from time to time, the "**Credit Agreement**") dated as of December 19, 2019 among the Borrower, as borrower, ATB Financial, as Administrative Agent, and the Lenders signatory thereto, in connection with fulfillment of the conditions to Completion of the Project.
2. Capitalized terms used in this certificate without definition shall have the meanings ascribed thereto in the Credit Agreement.
3. Substantial Completion under the EPC Contract occurred on [<>], 2019 without the waiver in any material respect by the EPC Contractor of the requirements for Substantial Completion under the EPC Contract.
4. The Borrower has established to the reasonable satisfaction of the Independent Engineer that (i) it is reasonable to expect that the Project will be capable of operating at the forecasted capacity (as set out in the Updated Financial Model) in all seasons, and (ii) that the Project is reasonably expected to operate within the restrictions of any Permits necessary for the operation of the Project.
5. The Project Performance Tests have been successfully completed under and in compliance in all material respects with all applicable Material Project Contracts, Permits and all applicable Laws.
6. The Outstanding Principal under the Construction Facility and the Revolver Facility #1 is \$[<>], which is equal to or less than 27% of the Project Costs.
7. The Borrower has entered into and maintains all of the Required Hedges, as described in Exhibit 1.
8. All of the representations and warranties contained in the Credit Agreement are true and correct in all material respects in each case on and as of the date hereof as though made on and as of such date (unless expressly stated to be made as of a specified date).
9. No Default or Event of Default has occurred and is continuing.
10. The Borrower has amounts on deposit in the Construction Accounts and/or the BLA Holdback Account (including the amount of any BLA Holdback Letter of Credit), or paid into court, or any combination thereof, an aggregate amount at least equal to:
 - (a) the amount required to be paid by any Loan Party in respect of all accounts for labour, subcontracts, products, materials, machinery and equipment in connection with the

improvements to the Site Lands prior to the Completion Date (including without limitation the amount of all holdbacks under the BLA that the Loan Parties are obligated to have held back unless provided for by any BLA Holdback Letters of Credit) and which, if not paid, could give rise to a lien under the BLA; and

- (b) the amount necessary to pay all of the Completion Project Costs not yet paid and to be incurred or paid after the Completion Date.

Attached hereto as Exhibit 2 is a statement, in reasonable detail, describing the amounts on deposit in the Construction Accounts, the BLA Holdback Accounts (including the amounts of any BLA Holdback Letters of Credit) or paid into Court and payments required to be made by the Loan Parties with respect to paragraph (a) above and the work to be completed in respect of the expected remaining Project Costs. The Completion Reserve Amount is \$_____.

11. The Project is serviced with all utilities that are in each case necessary to permit the Project to operate in the manner contemplated by the Material Project Contracts.
12. The Project has been connected to the AIES and if applicable, synchronized with the AIES, and all other matters have been completed to permit the delivery of electricity in accordance with the ISO Rules and the STS Amending Agreement.
13. The Borrower has entered into all required Crossing Agreements and true, correct and complete fully executed copies of such Crossing Agreements are attached hereto as Exhibit 3.
14. All Material Project Contracts (or any permitted replacement thereof) relating to the Project required to be in effect as of Completion continue to be in full force and effect (except where fully performed in accordance with the terms thereof) and no default has occurred and is continuing under any Material Project Contract (or any permitted replacement thereof), except as permitted by the Credit Agreement.
15. The Borrower has obtained and maintains all applicable Permits necessary to allow the Project to commence and continue to Operate in accordance with the Material Project Contracts required to be in effect as of Completion, Good Engineering and Operating Practices and in accordance with applicable Law. The applicable Permits are in full force and effect, the Borrowers have no reasonable belief that any such applicable Permit will be suspended or revoked or materially modified, and the Borrower is in compliance with all such applicable Permits.
16. The Third Party Permits necessary to allow the Project to commence and continue to Operate in accordance with Good Engineering and Operating Practices and in accordance with applicable Laws have been received and are held by each applicable Counterparty.
17. The Insurance Consultant has reviewed all Project operating insurance and confirmed in writing, to the satisfaction of the Majority Lenders, each acting reasonably, the conformity of such insurance with the provisions of the Credit Agreement and all such Project operating insurance is in full force and effect.
18. The property and assets of the Loan Parties are free and clear of Liens, other than the Liens created by the Security and other Permitted Encumbrances and all Liens under the BLA have been satisfied, discharged, vacated or withdrawn as provided in the BLA unless being Contested in Good Faith and for which appropriate cash reserves have been established to the satisfaction of the Administrative Agent.

19. Attached hereto as Exhibit 4 is the amortization schedule, revised to reflect the applicable Updated Financial Model.
20. The Borrower has not received notice of any actions, suits, litigation, investigations or proceedings nor is the Borrower aware of any pending or threatened actions, suits, litigation, investigations or proceedings against or affecting the Borrower, the Sponsor or the Project before any Official Body which could reasonably be expected to have a MAE.

MAXIM POWER CORP.

Per:

Authorized Signatory

EXHIBIT 1
BORROWER'S COMPLETION DATE CERTIFICATE

Description of Required Hedges

[Commercially sensitive information redacted]

EXHIBIT 2
BORROWER'S COMPLETION DATE CERTIFICATE

Post-Completion Project Costs and BLA Holdback Amounts

[Commercially sensitive information redacted]

EXHIBIT 3
BORROWER'S COMPLETION DATE CERTIFICATE

Crossing Agreements

[Commercially sensitive information redacted]

EXHIBIT 4
BORROWER'S COMPLETION DATE CERTIFICATE

Updated Amortization Schedule

[Commercially sensitive information redacted]

SCHEDULE 15
INDEPENDENT ENGINEER'S COMPLETION DATE CERTIFICATE

TO: The Lenders

AND TO: ATB Financial, as Administrative Agent

DATE: []

RE: Maxim Power Corp. Project

The undersigned is delivering this certificate to you in its capacity as the Independent Engineer appointed under and referred to in the credit agreement (the "**Credit Agreement**") dated as of December 19, 2019 among Maxim Power Corp., as Borrower, ATB Financial, as Administrative Agent and the Lenders signatory thereto.

Capitalized terms used but not defined in this certificate have the same meanings herein as are ascribed thereto in the Credit Agreement.

Reference is made to the Borrower's Completion Date Certificate dated [] (the "**Completion Certificate**") being delivered by the Borrower under the Credit Agreement. The undersigned has reviewed the Completion Certificate, the definition of "Completion" and Schedules 14 and 15 of the Credit Agreement as each pertains to the responsibilities of the undersigned to provide this certificate, has reviewed matters pertinent to this certificate with the Administrative Agent for the Lenders and appropriate third parties (including the counterparties to the EPC Contract and all other relevant Material Project Contracts) and has made such inspections, examinations and investigations as were reasonably necessary to establish the accuracy of this certificate. The Independent Engineer's review is based on the understanding and assumption that we have been provided true, complete and accurate information, which is satisfactory in form and scope to us, from other parties as to the matters covered by this Certificate.

Our review and observations were performed in accordance with generally accepted engineering practice and in accordance with the standards of care practiced by leading independent and consulting engineers in performing similar tasks on like projects.

In the undersigned's professional opinion:

1. We have observed and/or confirmed, as reasonably necessary, the Project Performance Tests for the Project and all other commissioning activities under and in compliance in all material respects with all applicable Material Project Contracts and in accordance with Law (the "**Commissioning and Performance Tests**") conducted during the period of [] through [] and have reviewed the Commissioning and Performance Test reports provided by the Borrower setting forth the results of the Commissioning and Performance Tests.
2. Based on our observation of the Commissioning and Performance Tests and documentation thereof, our review of other Project documentation and our most recent visit to the Project on [], we are of the opinion that:
 - (a) Substantial Completion has occurred;

- (b) the design, development, construction and commissioning of the Project have all been completed in accordance with Good Engineering and Operating Practices;
 - (c) the Project Performance Tests have all been successfully completed;
 - (d) the Project has been connected to the AIES and if applicable, synchronized with the AIES, and all other matters have been completed to permit the delivery of electricity in accordance with the ISO Rules and the STS Amending Agreement; and
 - (e) the Borrower has established to our reasonable satisfaction that (i) the Project will be capable of operating at the forecasted capacity (as set out in the Updated Financial Model) in all seasons, and (ii) that the Project is reasonably expected to operate within the restrictions of any Permits necessary for the operation of the Project.
3. The Borrower has amounts on deposit in the Construction Accounts and/or the BLA Holdback Account (including the amount of any BLA Holdback Letter of Credit), or paid into court, or any combination thereof, an aggregate amount at least equal to:
- (a) the amount required to be paid by any Loan Party in respect of all accounts for labour, subcontracts, products, materials, machinery and equipment in connection with the improvements to the Site Lands prior to the Completion Date (including without limitation the amount of all holdbacks under the BLA that the Loan Parties are obligated to have held back unless provided for by any BLA Holdback Letters of Credit) and which, if not paid, could give rise to a lien under the BLA; and
 - (b) the amount necessary to pay all of the Completion Project Costs not yet paid and to be incurred or paid after the Completion Date, which amount is not less than the Completion Reserve Amount.
4. The estimate of such Project Costs as set forth in the Completion Certificate is reasonable.
5. We confirm the Borrower has obtained and maintains all Permits necessary to allow the Project to commence and continue to Operate in accordance with the Material Project Contracts required to be in effect as of Completion, Good Engineering and Operating Practices and in accordance with applicable Law.

This certificate may be relied upon only by the Administrative Agent and the Lenders. The undersigned accepts no responsibility for reliance by any other person.

BTY GROUP

Per:

Authorized Signatory

SCHEDULE 16
FINANCIAL MODEL

[Commercially sensitive information redacted]

SCHEDULE 17
FORM OF COMPLIANCE CERTIFICATE

TO: ATB Financial, as Administrative Agent

DATED: []

RE: Borrower's Compliance Certificate

The undersigned, **[name]**, an officer of Maxim Power Corp. (the "**Borrower**"), hereby certifies to you for and on behalf of the Borrower (and not in any personal capacity) as follows:

1. This compliance certificate is being delivered to you pursuant to Section 6.1.2 of the credit agreement (as amended from time to time, the "**Credit Agreement**") dated as of December 19, 2019 among the Borrower, ATB Financial, as Administrative Agent, and the Lenders signatory thereto.
2. Capitalized terms used but not defined in this certificate shall have the meanings ascribed thereto in the Credit Agreement.
3. This Certificate applies to the Financial **[Quarter/Year]** ending [], 20[].
4. I am familiar with and have examined the provisions of the Credit Agreement and have made such reasonable investigations of the corporate records and inquiries of other officers and senior personnel of the Borrower as I have deemed necessary for purposes of this certificate.
5. All of the representations and warranties contained in the Credit Agreement are true and correct in all material respects, in each case on and as of the date hereof as though made on and as of such date.
6. The Borrower confirms as of the date hereof:
 - (a) each Material Project Contract listed in Part I of Schedule 7 is in full force and effect, unamended, enforceable in accordance with its terms;
 - (b) no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default of any Loan Party under any of the Material Project Contracts listed in Part I of Schedule 7 has occurred; and
 - (c) to the best of the knowledge of the certifying Senior Officer, no material event of default or event that would constitute, with giving of notice or lapse of time, a material event of default by a Counterparty under any of the Material Project Contracts listed in Part I of Schedule 7 has occurred.
7. The Borrower has performed or caused to be performed or observed the covenants set forth in Article 10 of the Credit Agreement to be observed or performed by it to the date hereof.
8. No Default or Event of Default has occurred and is continuing.

9. Pursuant to Section 10.1.9(m), attached as Exhibit 1 attached hereto is a report of events of material non-compliance with Environmental Law during the previous Financial Quarter that did not require notification pursuant to Section 10.1.9(l).

[Note: the following Paragraph is to be included in Compliance Certificates issued after the Construction Term-Out Date if applicable pursuant to Section 10.1.24 of the Credit Agreement]

10. As at [_____, 20[]], the Debt Service Coverage Ratio for the Borrower is [], which is equal to or greater than 1.50:1.00. The calculation of such Debt Service Coverage Ratio is set out in Exhibit 2 attached hereto.

[Note: the following Paragraph is to be included in Compliance Certificates issued after the Construction Term-Out Date pursuant to Section 10.1.32 of the Credit Agreement]

11. As at [_____, 20[]], the Debt to EBITDA Ratio for the Borrower is [], which is equal to or lesser than 3.00:1.00. The calculation of such Debt to EBITDA Ratio is set out in Exhibit 3 attached hereto.

MAXIM POWER CORP.

Per:

Authorized Signatory

EXHIBIT 1
BORROWER'S COMPLIANCE CERTIFICATE

Report of events of non-compliance with Environmental Law

EXHIBIT 2
BORROWER'S COMPLIANCE CERTIFICATE

Debt Service Coverage Ratio Calculation

EXHIBIT 3
BORROWER'S COMPLIANCE CERTIFICATE

Debt to EBITDA Ratio Calculation

SCHEDULE 18

[Intentionally Deleted]

SCHEDULE 19

[Intentionally Deleted]

SCHEDULE 20
CONSENTS

PART I

Consents to be obtained before Closing and the Initial Advance

[Commercially sensitive information redacted]

PART II

Consents to be obtained before Completion

[Commercially sensitive information redacted]

SCHEDULE 21
PROJECT BUDGET

[Commercially sensitive information redacted]

SCHEDULE 22
PROJECT SCHEDULE

[Commercially sensitive information redacted]

SCHEDULE 23
PROJECT PERFORMANCE TESTS

[Commercially sensitive information redacted]

SCHEDULE 24

[Intentionally Deleted]

SCHEDULE 25
POWER OF ATTORNEY – BANKERS’ ACCEPTANCES AND BA EQUIVALENT ADVANCES

All capitalized terms not defined herein have the meanings ascribed thereto in the Credit Agreement dated as of December 1, 2019 (the “**Credit Agreement**”) made between Maxim Power Corp., as Borrower, ATB Financial, as administrative agent (the “**Agent**”), and those institutions that from time to time become lenders under and in accordance with the Credit Agreement, as lenders. In order to facilitate the acceptance of Bankers’ Acceptances or the issuance of promissory notes evidencing the BA Equivalent Advances pursuant to the terms of the Credit Agreement, Maxim Power Corp. (the “**Borrower**”) hereby appoints each Lender (individually, the “**Bank**”), acting by its duly authorized signatories (the “**Attorney**”) for the time being at the Bank’s main branch in Calgary, Alberta (the “**Branch of Account**”), the attorney of the Borrower:

1. to sign for and on behalf and in the name of the Borrower as drawer, drafts in the Bank’s standard form which may be “**depository bills**” under and as defined in the *Depository Bills and Notes Act* (the “**DBNA**”) (“**Drafts**”) drawn on the Bank payable to the order of the Borrower or to the order of the Bank or to a “**clearing house**” under the DBNA or its nominee for deposit by the Bank with the “**clearing house**” after acceptance thereof by the Bank;
2. to sign for and on behalf and in the name of the Borrower as drawer, promissory notes in the Bank’s standard form for advances in the nature of BA Equivalent Advances (the “**Notes**”) payable to the Bank or its order evidencing BA Equivalent Advances made by the Bank to the Borrower pursuant to the Credit Agreement; and
3. to fill in the amount, date and maturity date of such Drafts or Notes;

provided that such acts in each case are to be undertaken by the Bank in accordance with instructions given to the Bank by the Borrower as provided in this power of attorney.

Instructions to the Bank relating to the execution, completion, endorsement, discount and/or deposit by the Bank on behalf of the Borrower of Drafts which the Borrower wishes to submit to the Bank for acceptance by the Bank or relating to the execution and completion by the Bank on behalf of the Borrower of Notes which the Borrower wishes to issue to the Bank shall in each case be communicated by the Borrower in writing to the Agent by delivery to the Agent of the Borrowing Notice or relevant notice of Conversion or notice of Rollover, as the case may be, in accordance with the Credit Agreement, which in turn, shall be communicated by the Agent, on behalf of the Borrower, to the Bank in writing at the Branch of Account following delivery by the Borrower of a notice in respect of a Drawdown, Conversion or Rollover pursuant to the Credit Agreement and shall specify the following information:

1. a Canadian Dollar amount, which shall be the aggregate face amount of the Drafts to be accepted or BA Equivalent Advances to be made by the Bank in respect of a particular Drawdown, Conversion or Rollover;
2. a specified period of time, as provided in the Credit Agreement, which shall be the number of days after the date of such Drafts or Notes that such Drafts or Notes are to be payable, and the dates of issue and maturity of such Drafts or Notes; and
3. payment instructions specifying the account number of the Borrower and the financial institution at which the net proceeds from the sale of such Drafts or the proceeds of such BA Equivalent Advances are to be credited.

The communication in writing by the Borrower to the Bank of the instructions referred to above shall constitute the authorization and instruction of the Borrower to the Bank to complete and execute and, if applicable, endorse Drafts and to complete and execute Notes in accordance with such

information as set out above and the request of the Borrower to the Bank to accept such Drafts and deliver the same, or deposit the same with the “**clearing house**”, against payment as set out in the instructions. The Borrower acknowledges that the Bank shall not be obligated to accept any such Drafts or make any BA Equivalent Advance and thereafter complete and execute any Notes evidencing the same except in accordance with the provisions of the Credit Agreement. The Bank shall be and it is hereby authorized to act on behalf of the Borrower upon and in compliance with instructions communicated to the Bank as provided herein if the Bank reasonably believes them to be genuine.

The Borrower agrees to indemnify the Bank and its directors, officers, employees, affiliates and agents and to hold it and them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any way relating to or arising out of this power of attorney or the acts contemplated hereby including the deposit of any draft with the “**clearing house**”; provided that this indemnity shall not apply to any such loss, liability, expense or claim which results from the gross negligence or wilful misconduct of the Bank or any of its directors, officers, employees, affiliates or agents.

This power of attorney may be revoked by the Borrower at any time upon not less than five (5) Business Days' written notice served upon the Bank at the Branch of Account, provided that (i) it may be replaced with another power of attorney forthwith in accordance with the requirements of the Credit Agreement; and (ii) no such revocation shall reduce, limit or otherwise affect the obligations of the Borrower in respect of any Draft or Note executed, completed, endorsed, discounted and/or delivered in accordance herewith prior to the time at which such revocation becomes effective.

Any revocation or termination of this power of attorney shall not affect the rights of the Bank and the obligations of the Borrower with respect to the indemnities of the Borrower above stated with respect to all matters arising prior in time to any such revocation or termination.

This power of attorney is in addition to and not in substitution for any agreement to which the Bank and the Borrower are parties.

This power of attorney shall be governed in all respects by the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Borrower and the Bank hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of such jurisdiction in respect of all matters arising out of this power of attorney.

In the event of a conflict between the provisions of this Power of Attorney and the Credit Agreement, the Credit Agreement shall prevail.

SCHEDULE 26

[Intentionally Deleted]

SCHEDULE 27
PENSION PLAN DISCLOSURE

Nil.

SCHEDULE 28

Redacted

[Commercially sensitive agreement redacted]