

**FIFTH AMENDING AGREEMENT  
TO THE MAXIM POWER CORP.  
AMENDED AND RESTATED CREDIT AGREEMENT DATED AS OF JUNE 30, 2021**

THIS FIFTH AMENDING AGREEMENT is dated as of September 6, 2022.

**AMONG:**

**MAXIM POWER CORP.,**  
as Borrower

- and -

**ATB FINANCIAL,**  
as Administrative Agent

- and -

**ATB FINANCIAL and FIERA PRIVATE DEBT FUND VI LP**  
as Lenders

Recitals:

- A. Maxim Power Corp., as borrower (the “**Borrower**”), ATB Financial, as administrative agent (the “**Administrative Agent**”), Fiera Private Debt Fund VI LP, as syndication agent (the “**Syndication Agent**”) and ATB Financial, Fiera Private Debt Fund IV LP, and others that from time to time become lenders, as lenders (the “**Lenders**”) are parties to an amended and restated credit agreement dated as of June 30, 2021, as amended by the first amending agreement dated as of November 3, 2021, a second amending agreement dated as of November 23, 2021, a third amending agreement dated as of April 27, 2022 and a fourth amending agreement dated as of June 8, 2022 (as so amended, the “**Credit Agreement**”).
- B. The Borrower, the Lenders and the Administrative Agent wish to amend the Credit Agreement on the terms and conditions herein provided.

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

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

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

- (a) “**Agreement**” or “**Fifth Amending Agreement**” means this fifth amending agreement, as amended, modified, supplemented or restated from time to time;
- (b) “**Amended Credit Agreement**” means the Credit Agreement as amended by the Fifth Amending Agreement; and

(c) **“Fifth Amendment Effective Date”** means the date first written above.

All capitalized terms used but not otherwise defined herein shall have the same meaning ascribed thereto in the Credit Agreement.

## 1.2 **Headings**

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

## 1.3 **References**

Unless something in the subject matter or context is inconsistent therewith, all references to Articles, Sections and Schedules shall be construed to refer to Articles and Sections of, and Schedules to, this Agreement, and 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.

# ARTICLE 2 AMENDMENTS

## 2.1 **Amendments**

Effective as of the Fifth Amendment Effective Date, the Credit Agreement shall be amended as follows:

(a) Section 1.1 of the Credit Agreement is hereby amended by adding the following new definitions in the appropriate alphabetical order:

**“Balancing Pool Cash Collateral Account”** means collectively, one or more accounts maintained by either Milner Power LP or the Borrower with the Administrative Agent (which is currently described in Schedule 6 to this Agreement as the “Balancing Pool Cash Collateral Account”) and all supplements, renewals, replacements and substitutions therefor which may be agreed to from time to time with the consent of the Administrative Agent, Milner Power LP and the Borrower, from which neither Milner Power LP nor the Borrower, as applicable, shall have any withdrawal rights or privileges, except to deliver cash collateral security to the Balancing Pool pursuant to Section 5.4(d) of the Bilateral Agreement and in accordance with the terms hereof, 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 Lien in favour of the Administrative Agent on behalf of the Lenders.”;

**“Milner Power LP Decommissioning and Reclamation Obligations”** means the decommissioning, reclamation, restoration, mitigation and other similar obligations and liabilities of Milner Power LP arising under applicable law and under the Bilateral Agreement related to the HR Milner Generating Station.”;

(b) Section 1.1 of the Credit Agreement is hereby amended by deleting the definition of “Bilateral Agreement” in its entirety and replacing it with the following:

**“Bilateral Agreement”** means the amended and restated bilateral agreement dated as of June 27, 2022 between Milner Power LP and the Balancing Pool, as amended, supplemented or extended from time to time as permitted hereunder.”;

- (c) Section 1.1 of the Credit Agreement is hereby amended by deleting the definition of "Collateral Accounts" in its entirety and replacing it with the following:

**"Collateral Accounts"** means the Borrower Cash Collateral Account, the Construction Escrow Account, the Construction Accounts, the BLA Holdback Account and the Balancing Pool Cash Collateral 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.";

- (d) The definition of "**Permitted Encumbrances**" in Section 1.1 of the Credit Agreement is hereby amended by:

- (i) deleting the word "and" at the end of paragraph (r); and  
(ii) deleting paragraph (s) and replacing it with the following:

"(s) Liens provided to the AESO over cash or cash equivalents in connection with any amounts due from Milner Power II LP to the AESO under the ISO Rules, the tariff of the ISO approved by the Alberta Utilities Commission and in effect from time to time pursuant to the *Electric Utilities Act* (Alberta), any construction commitment agreement, any system access agreement, or any other agreement between the AESO and Milner Power II LP in amounts not to exceed **\$Redacted** in the aggregate at any time; **[Commercially sensitive amounts redacted]** and

(t) any other Liens expressly consented to by the Lenders."

- (e) Section 2.10 of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

**"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 and the Balancing Pool Cash Collateral 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, (b) the Borrower Cash Collateral Account for Outstanding Credit Obligations other than in relation to the Letter of Credit Facility, or (c) the Balancing Pool Cash Collateral Account for amounts due hereunder, unless an Event of Default has occurred and is continuing.";

- (f) Section 7.12.4 of the of the Credit Agreement is hereby amended by deleting the reference to "**\$Redacted**" and replacing it with "**\$Redacted**"; **[Commercially sensitive amounts redacted]**

- (g) Section 8.13 of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

**"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 Escrow Account, the Construction Accounts, the BLA Holdback Account and the Balancing Pool Cash Collateral 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 the occurrence of an Event of Default that is continuing. The applicable Loan Parties shall be permitted to withdraw amounts from (i) the Borrower Cash Collateral Account in accordance with Section 5.11, (ii) the Construction Escrow Account in accordance with Section 3.2.1(b), (iii) the Construction Accounts in accordance with Section 10.1.16(a), (iv) the BLA Holdback Account in accordance with Section 10.1.19, and (v) the Balancing Pool Cash Collateral Account in accordance with Section 10.1.38.”;

- (h) Subsection 10.1.16(b) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(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, Milner Power LP or Milner Power II LP, as applicable, and shall be maintained with the Administrative Agent. All funds held in a Collateral Account shall be invested by the Borrower, Milner Power LP and Milner Power II LP in Approved Securities. The Borrower, Milner Power LP and Milner Power II LP shall not be entitled to withdraw amounts from a Collateral Account except as provided herein.”;

- (i) Section 10.1 of the Credit Agreement is hereby amended by adding the following new subsection 10.1.38 at the end of such Section:

“10.1.38 Balancing Pool Cash Collateral Account

Either the Borrower or Milner Power LP (as used in this Section, the “**Balancing Pool Cash Collateral Account Holder**”) will establish the Balancing Pool Cash Collateral Account with the Administrative Agent on or prior to the date that the Bilateral Agreement is entered into by Milner Power LP and the Balancing Pool. The Balancing Pool Cash Collateral Account Holder shall, pursuant to Section 2.2(b) of the Bilateral Agreement, direct the Balancing Pool to transfer or deposit the cash collateral held by the Balancing Pool in the amount of **\$Redacted** into the Balancing Pool Cash Collateral Account. Funds in the Balancing Pool Cash Collateral Account may only be withdrawn and used by the Balancing Pool Cash Collateral Account Holder to satisfy Milner Power LP’s obligation to provide cash collateral security to the Balancing Pool pursuant to and in accordance with Section 5.4(d) of the Bilateral Agreement, upon receipt by the Administrative Agent of an officer’s certificate of Milner Power LP certifying the estimated cost of the Milner Power LP Decommissioning and Reclamation Obligations and setting forth the calculation of the amount of cash collateral required to be delivered by the Balancing Pool Cash Collateral Account Holder to the Balancing Pool pursuant to Section 5.4(d) of the Bilateral Agreement. The Balancing Pool Cash Collateral Account Holder will be entitled to withdraw any funds remaining in the Balancing Pool Cash Collateral Account upon receipt by the Administrative Agent of: (i) a certified copy of a reclamation certificate or its equivalent regulatory closure instrument issued by the applicable Official Body evidencing full and final satisfaction of all Milner Power LP Decommissioning and Reclamation Obligations, and (ii) evidence in form and substance satisfactory to the Lenders of full and final payment, performance and satisfaction of Milner Power LP’s obligations under the Bilateral Agreement in accordance with its terms. Until the amounts in the Balancing Pool Cash Collateral Account are withdrawn in accordance with the foregoing, such amounts may be invested in term deposits or guaranteed investment

certificates, with the Administrative Agent provided that Balancing Pool Cash Collateral Account Holder shall and shall be deemed to irrevocably and unconditionally direct the Administrative Agent to deposit all of the proceeds of any such term deposits or guaranteed investment certificates in the Balancing Pool Cash Collateral Account upon the maturity or redemption thereof.”; **[Commercially sensitive amounts redacted]**

- (j) Subsection 10.2.17 of the Credit Agreement is hereby amended by deleting the reference to “**\$Redacted**” and replacing it with “**\$Redacted**”; **[Commercially sensitive amounts redacted]** and
- (k) Schedule 6 of the Credit Agreement is hereby deleted in its entirety and replaced with Schedule 6 attached as Exhibit 1 hereto.

### **ARTICLE 3 CONSENTS**

#### **3.1 Lender Consents**

Each of the Administrative Agent and the Lenders hereby confirm their consent to:

- (a) the amendment and restatement of the Bilateral Agreement in the form of the amended and restated bilateral agreement provided to the Lenders by the Administrative Agent on July 1, 2022; and
- (b) release from the Security, pursuant to a no interest letter in form and substance satisfactory to the Administrative Agent, any cash collateral provided by Milner Power II LP to the AESO as security for Milner Power II LP’s obligations to the AESO under the ISO Rules, the Tariff of the ISO approved by the Alberta Utilities Commission and in effect from time to time pursuant to the *Electric Utilities Act* (Alberta), any construction commitment agreement, any system access agreement, or any other agreement between the AESO and Milner Power II LP up to a maximum aggregate amount of **\$Redacted**. **[Commercially sensitive amounts redacted]**

### **ARTICLE 4 CONDITIONS PRECEDENT**

#### **4.1 Conditions Precedent**

This Agreement will not become effective until the following conditions precedent have been satisfied, fulfilled, waived or otherwise met to the satisfaction of the Administrative Agent on the Fifth Amendment Effective Date:

- (a) the Administrative Agent shall have received a duly executed copy of this Agreement (including the Consent and Agreement of Guarantors annexed hereto);
- (b) the Administrative Agent shall have received a certified copy of the Bilateral Agreement (as defined under the Amended Credit Agreement);
- (c) the Administrative Agent shall have received a true and complete copy of the cash collateral agreement granted by Milner Power II LP in favour of the AESO;
- (d) the Administrative Agent shall have received certificates of status (or equivalents thereof) with respect to the Borrower and each other Loan Party issued by the appropriate Official Body in their respective jurisdictions of formation; and

- (e) the Administrative Agent shall have received such other documentation as the Lenders may reasonably request.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Representations and Warranties**

The Borrower agrees with and confirms to the Administrative Agent and the Lenders that, as of the Fifth Amendment Effective Date, and both immediately before and immediately after giving effect to the consents described in Section 3.1 above, each of the representations and warranties listed in Article 7 of the Amended Credit Agreement (other than those made as of a specific date) is true and accurate. Further, the Borrower hereby represents and warrants to the Administrative Agent that:

- (a) the execution and delivery of this Agreement and the performance by it of its obligations hereunder and under the Amended Credit Agreement (i) are within its corporate powers, (ii) have been duly authorized by all necessary corporate action, (iii) have received all necessary governmental approval (if any required), and (iv) do not and will not contravene or conflict with any provision of any Applicable Law or of its constituting documents or by-laws;
- (b) this Agreement and the Amended Credit Agreement are each legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, winding-up, moratorium or similar Applicable Laws relating to the enforcement of creditors' rights generally and by general principles of equity; and
- (c) as of the Fifth Amendment Effective Date, and both immediately before and immediately after giving effect to the consent described in Section 3.1 above, no Default or Event of Default has occurred and is continuing.

## **ARTICLE 6 MISCELLANEOUS**

### **6.1 Confirmation of Security**

The Borrower agrees with and confirms to the Administrative Agent that as of the Fifth Amendment Effective Date, the Security delivered by the Borrower is and shall remain in full force and effect in all respects and shall continue to exist and apply to all of the Obligations of the Borrower under, pursuant or relating to the Amended Credit Agreement. This confirmation of security is in addition to and shall not limit, derogate from or otherwise affect any provisions of the Security.

### **6.2 Governing Law**

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

**6.3 Continuing Effect**

Each of the parties acknowledges and agrees that the Amended Credit Agreement, the Security and all other documents executed and delivered pursuant thereto or in connection therewith, will be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder will not be affected or prejudiced in any manner except as specifically provided herein.

**6.4 Further Assurances**

The Borrower will from time to time forthwith at the Administrative Agent's request and at the Borrower's own cost and expense, make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, assignments, acts, matters and things which may be reasonably required by the Lenders and as are consistent with the intention of the parties as evidenced herein, with respect to all matters arising under this Agreement.

**6.5 Counterparts**

This Agreement may be executed in any number of counterparts (including by facsimile or other electronic transmission), each of which when executed and delivered will be deemed to be an original, but all of which when taken together constitutes one and the same instrument. Any party may execute this Agreement by signing any counterpart.

***[signature page follows]***

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

**MAXIM POWER CORP.**, as Borrower

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**ATB FINANCIAL**, as Administrative Agent

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**ATB FINANCIAL**, as Lender

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**FIERA PRIVATE DEBT FUND VI LP**, by its  
general partner, **FIERA PRIVATE DEBT  
FUND GP INC.**, as Lender

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**CONSENT AND AGREEMENT OF GUARANTORS**

Each undersigned Loan Party hereby consents and agrees to the terms of this Fifth Amending Agreement, acknowledges and confirms the representations and warranties applicable to it in this Fifth Amending Agreement and in the Amended Credit Agreement, acknowledges and agrees that all Security granted by it to the Administrative Agent in support of its obligations thereunder remains in full force and effect, unamended and enforceable against it in accordance with its terms (except as enforceability may be limited by general principles of equity and by bankruptcy, insolvency, reorganization or similar laws affecting creditor's rights generally). The undersigned undertakes and agrees to take all such actions as may be required of it to give effect to and cause the performance of the terms and conditions of this Fifth Amending Agreement and the Amended Credit Agreement.

Dated effective \_\_\_\_\_, 2022.

**MILNER POWER INC., as Guarantor**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**MILNER POWER LIMITED PARTNERSHIP,  
by its general partner MILNER POWER INC.,  
as Guarantor**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**MILNER POWER II INC., as Guarantor**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**MILNER POWER II LIMITED  
PARTNERSHIP**, by its general partner  
**MILNER POWER II INC.**, as Guarantor

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

Per: (signed)  
Name: **Redacted**  
Title: **Redacted**

**EXHIBIT 1**  
**to the Fifth Amending Agreement dated September 6, 2022**

---

**SCHEDULE 6**  
**ACCOUNTS**

[Confidential account information redacted]